

Explanatory Memorandum to the Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017

This Explanatory Memorandum has been prepared by the Plant Health and Environment Protection Branch within the Economy, Skills and Natural Resources Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the **Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017**.

Lesley Griffiths

Cabinet Secretary for Environment and Rural Affairs

14 June 2017

1. Description

These Regulations revoke and replace the Marketing of Fruit Plant Material Regulations 2010. Their purpose is to implement new EU Directives introducing standards for the identity and quality of fruit propagating material. The following EU Directives are being transposed:

- Directive 2014/96 on requirements for labelling, sealing and packaging of fruit plant and propagating material.
- Directive 2014/97 on the registration of suppliers and of varieties and the common list of varieties; and
- Directive 2014/98 on specific requirements for production and marketing of fruit plant and propagating material.

The Regulations continue to implement Council Directive 2008/90/EC.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

Paragraph 3 explains that these Regulations are made in reliance on section 2(2) of the European Communities Act 1972 (“the ECA 1972”).

When exercising the power under section 2(2) of the ECA, the Welsh Ministers are to determine whether that instrument is subject to the negative or affirmative procedure (section 59(3) of the Government of Wales Act 2006).

As these regulations implement new European legislation where there is limited discretion, the Welsh Ministers have determined that this instrument is subject to the negative resolution procedure.

The transposition date for the 2014 Directives was 1st January 2017. This deadline was missed due to a number of delays, including a delay in issuing the consultation. The European Commission issued a letter of formal notice in late January, and the response committed to a revised transposition date of 19th June 2017. Any delay beyond this revised deadline is likely to result in the Commission issuing a reasoned opinion.

A delay beyond 19th June will also affect trade as without this instrument, the industry is not able to produce and market certified fruit material and will not be able to export that material to the rest of Europe.

In order to comply with the commitment given to the Commission to have the Regulations in force by 19 June 2017, and to ensure the industry is able to market fruit material as soon as possible, it is necessary that this instrument breaches the 21 day rule.

England introduced equivalent regulations which came into force on 1 June 2017 by breaching the 21 day rule. The Llywydd has been notified of the breach by letter.

3. Legislative background

Section 59(2) of the Government of Wales Act 2006 enables the Welsh Ministers to exercise the power under section 2(2) in relation to any matter, or for any purpose, for which they have been designated.

The Welsh Ministers are designated for the purposes of section 2(2) of the ECA 1972 in relation to the common agricultural policy of the European Union by virtue of Article 3 of the European Communities (Designation) (No. 5) Order (S.I. 2010/2690). These Regulations are made by the Welsh Ministers in exercise of their powers under section 2(2) of, and paragraph 1A of Schedule 2 to the ECA 1972.

The Regulations are subject to the negative procedure.

4. Purpose & intended effect of the legislation

The marketing of fruit plant and propagating material of the main fruit species has been regulated by EU Directives since 1992. The underlying Directive was revised in 2008 (Council Directive 2008/90/EC) and corresponding UK Regulations were introduced in 2010.

Three new EU Directives 2014/96/EU, 2014/97/EU, 2014/98/EU agreed in 2014 give detailed requirements for the production and sale of fruit propagating material to assure identity and quality of material sold to consumers and to facilitate the single market by harmonising standards. They formalise the previous voluntary scheme which was administered by APHA and the Nuclear Stocks Association. The following EU Directives are being transposed:

- Directive 2014/96 on requirements for labelling, sealing and packaging of fruit plant and propagating material.
- Directive 2014/97 on the registration of suppliers and of varieties and the common list of varieties; and
- Directive 2014/98 on specific requirements for production and marketing of fruit plant and propagating material.

The main species relevant to the UK are strawberry, raspberry, blackberry and blueberry.

5. Consultation

Defra conducted an England and Wales six week targeted consultation with the Nuclear Stock Association (the main industry representative organisation) and approximately 400 commercial producers and suppliers. Three responses were received; the Nuclear Stock Association responded on behalf of its members and was fully supportive of our proposals. Of the remaining two responses, one supported our proposals and the other expressed a preference for retaining the current voluntary certification scheme.

The consultation started on 30 September and ended on 25 November. The summary of responses was published on 1 February 2017. Details of the consultation, including a summary of responses, can be found at:

<https://www.gov.uk/government/consultations/updating-the-marketing-of-fruit-plant-and-propagating-material-regulations>

6. Regulatory Impact Assessment (RIA)

A Regulatory Impact Assessment has not been prepared for these Regulations.

A Regulatory Triage Assessment (RTA) was prepared by Defra on a Wales and England basis. There will be additional costs of labelling, and reduced costs for inspection with a small overall benefit.

No significant impact on the private, voluntary or public sector is foreseen.