



Llywodraeth Cymru
Welsh Government

POLICY AND STRATEGY

Concordat between the Food and Environment Research Agency and the Welsh Government

This concordat sets out a framework for co-operation between the Food and Environment Research Agency (FERA) and the Welsh Government. It's subject is plant health and seeds functions in England and Wales.

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Contents

Introduction

Purpose

Legislation

Plant health

Seeds

Plant Health and Seeds Inspectorate

European obligations

Plant health

Pest interceptions and outbreaks

Plant varieties and seeds and plant varieties rights

Plant breeders' rights and national listing (Controller)

Seed marketing legislation

Seed certification – agricultural crops (except potatoes)

Seed certification – potatoes

Plant varieties and seeds tribunal

Exchange of information

Financial arrangements

Reaching agreement and dispute resolution

Confidentiality

Changes to the concordat

Duration and review

Introduction

1. This concordat, made under section 83 of the Government of Wales Act 2006, sets out the arrangements between the Food and Environment Research Agency ("FERA") an executive agency of the Department for Environment, Food and Rural Affairs ("DEFRA") and the Department for Environment of the Welsh Government ("the department") in respect of plant health and seeds functions carried out by the agency on behalf on the department.
2. It establishes an agreed framework for cooperation between FERA and the department in all matters relating to plant health and seeds functions in England and Wales. The aim is to promote close working relationships and good communication at all levels between FERA and the department and is without prejudice to any potential changes in responsibilities or legislation by DEFRA or the department.
3. It is entered into in the spirit of co-operation and the best interests of both parties and it is not intended that the concordat should constitute a legally enforceable contract or create any rights or obligations that are legally enforceable. The principles set out in the main concordat between DEFRA and the Welsh Government apply to this specific concordat. This concordat is consistent with, and operates within, the existing overarching framework of

the main concordat between DEFRA and the then Welsh Assembly Government.

Purpose

4. This concordat establishes an agreed framework for the roles, responsibilities, relationships and co-operation between FERA and the Department in relation to the regulation of plant health and seeds in England and Wales. FERA's role will be to provide robust evidence, rigorous analysis and professional advice to the Department and will include:
 - policy issues – particularly relating to seeds and plant health
 - research – dissemination of research findings in relation to plant health and seeds
 - inspection and enforcement services necessary to ensure protection for plants and seeds
 - multi-disciplinary science to rapidly diagnose threats, evaluate risks and inform policy in environmental areas
 - responding to and recovering from unforeseen or emergency situations

Legislation

5. References to legislation should be taken to include the following legislation and any amendments made to them.

Plant health

6. Plant health legislation:
 - The Plant Health (Wales) Order 2006 (2006/1643)
 - The Plant Health (Licence Fees)(England and Wales) Regulations 1996 (1996/26)
 - The Plant Passport (Plant Health Fees)(England and Wales) Regulations 1993 (1993/1642)
 - The Plant Health (Import Inspection Fees)(Wales) Regulations 2006 (2006/2832)

- The Plant Health (Export Certification)(Wales) Order 2006 (2006/1701)
- The Plant Health (Phytophthora ramorum)(Wales) Order 2006 (2006/1344)
- The Seed Potatoes (Wales) Regulations 2006 (2006/2929)
- The Seed Potatoes (Fees)(Wales) Regulations 2006 (2006/2961)
- The Potatoes Originating in Egypt (Wales) Regulations 2004 (2004/2245)
- The Plant Health (Wales)(Amendment) Order 2008 (2008/2781)
- The Marketing of Ornamental Plant Propagating Materials Regulations 1999 (1999/1801)
- The Marketing of Fruit Plant Material Regulations 2010 (2010/2079)
- The Marketing of Vegetables Plant Material Regulations 1995 (1995/2652)

Seeds

7. Seeds legislation:

8. Seeds legislation falls into 3 main parts:

- seed breeding and intellectual property rights (Plant Breeders' Rights)
- authorisation to grow a variety (National Listing)
- legislation governing seed production and marketing (Seed Certification).

The legislation also covers plants propagated vegetatively or by tissue culture. All of the legislation is driven by European Union Directives.

- 1966/401/EEC Marketing of Fodder Seed
- 1966/402/EEC Marketing of Cereal Seed
- 2008/72/EEC Marketing of Vegetable Plant Propagation Material and plant material other than seed
- 1993/34/EEC Marketing of Fruit Propagation Material
- 2002/54/EC Marketing of Beet Seed
- 2002/55/EC Marketing of Vegetable Seed
- 2002/56/EC Marketing of Seed Potatoes
- 2002/57/EC Marketing of Oil and Fibre Plant Seeds
- 2002/53/EC Common Catalogue of Agricultural Plant Species

- Plant Varieties and Seeds Act 1964 (Part II) and subordinate legislation made under the Act
- Plant Varieties Act 1997
- Seeds (National Lists of Varieties) Regulations 2001 (made under section 2(2) of the European Communities Act 1972) (2001/3510)
- The Oil and Fibre Plant Seed (Wales) Regulations 2004 (2004/2881)
- The Fodder Plant Seed (Wales) Regulations 2005 (2005/1207)
- The Cereal Seed (Wales) Regulations 2005 (2005/3036)
- The Beet Seed (Wales) Regulations 2005 (2005/3037)
- The Vegetable Seed (Wales) Regulations 2005 (2005/3035)
- The Marketing of Fruit Plant Material Regulations 2010 (2010/2079)
- The Seeds Registration, Licensing and Enforcement (Wales) Regulations 2005 (2005/3038)
- The Seed Potato (Wales) Regulations 2006 (2006/2929)

Plant Health and Seeds Inspectorate (PHSI)

9. PHSI is part of the Executive Agency of FERA that covers England and Wales. PHSI will continue to operate in Wales for the purposes of implementing statutory and other functions relating to plant health (except in relation to pests of forest trees or wood) and includes actions under the *Phytophthora ramorum* (Pr) and *Phytophthora kernoviae* (Pk) Programme and seed certification. All inspectors undertaking activities in Wales will be employed by FERA, but authorised by the Department and will liaise and provide advice to the Welsh Government as appropriate. PHSI offices in Wales are based at Llandrindod Wells (base for Senior Plant Health and Seeds Inspector and provides support to seed potato licensing for England and Wales), Swansea and Aberystwyth. Several of the England-based offices of the PHSI (including Hereford and Shrewsbury) also cover areas of Wales. The Department shall continue to provide appropriate facilities to FERA staff undertaking functions on behalf of the Department to enable them to carry out this work effectively. This will include office accommodation and supplies, administrative support, IT access and the opportunity to undertake Welsh language training.

European obligations

10. FERA and the department undertake to provide each other with comprehensive open access to UK and EU information required to discharge their responsibilities.
11. To ensure a consistency of approach on plant health and seeds issues in England and Wales, both parties will consult on the timetable for implementation of European obligations. When parallel legislation is to apply, both parties will consult each other on draft instructions for lawyers and exchange copies of draft, keyed and finalised legislation.
12. FERA will co-ordinate and confirm UK policy positions on plant health and seeds issues prior to EU Standing Committees and any other relevant international meetings in consultations with the Department and other UK administrations. This will usually be through FERA's monthly Risk Management Workstream (RMW) meetings.

Plant health

14. FERA will continue to facilitate the UK Plant Health Co-ordination Committee (UKPHCC) which will meet at least twice a year to co-ordinate and review UK policy positions on plant quarantine risks which facilitate domestic responses and inform international and EU consideration.
15. FERA will hold monthly Risk Management Workstream meetings in preparation for EU Standing Committee and Plant Health meetings. The department will continue to participate.
16. FERA will continue through the UKPHCC and RMW to lead on the development of UK policy positions on plant health matters and will seek the views of the department on the UK line.
17. Licensing arrangements under the Plant Health (Wales) Order 2006 for the import and/or retention of prohibited plants, plant pests and other material for scientific purposes will continue to be operated in Wales by FERA on behalf of the Welsh Government.
18. FERA, in liaison with the department, will continue to produce codes of practice, guidance and publicity on plant health matters and waste disposal on an England and Wales basis. The department will be responsible for the

production of such guidance in the Welsh language.

19. FERA will lead on arrangements for publicity and plant health work undertaken in Wales.
20. FERA and the department will work together and share information on any impact assessments undertaken on matters of mutual interest.
21. On behalf of the Welsh Government, FERA will provide appropriate representation of resource in terms of dealing with outbreaks of Phytophthora.
22. FERA, in liaison with the department, will continue to lead on England and Wales research budgets on plant health and seeds.
23. FERA and the department will continue to work together on the delivery of the England and Wales Phytophthora programme, ensuring a consistency of approach in England and Wales.

Pest interceptions and outbreaks

24. In the course of their work, inspectors working on plant health issues in England, Wales, Scotland and Northern Ireland, along with diagnosticians and researchers in the respective laboratories make interceptions and discover outbreaks of plant pests and diseases.
25. This concordat will ensure that information on interceptions and outbreaks is exchanged as promptly and as comprehensively as possible in accordance with the Information Exchange Agreement in order to ensure that all parties are aware and able to take any necessary actions in order to protect plant health in its widest sense within England and Wales.

Plant varieties and seeds and plant varieties rights

26. FERA has statutory responsibilities for delivering legislation for National Listing and Plant Breeders' Rights for new varieties and for the certification and marketing of seed.
27. Under the existing contractual arrangements with the National Institute for Agricultural Botany, NIAB TAG will manage the seed testing and provide

scientific and technical advice on plant breeders' rights, national listing and seed certification for FERA and the department.

28. FERA will continue to administer the registration of seed companies, administer the licensing of seed samplers, crop inspectors and seed testing stations on behalf of the department.
29. FERA administers the Plant Breeders' Rights and National Listing for the UK, and is the certifying authority for England and, on behalf of the Welsh Government, for Wales. Wales is a member of the Plant Varieties and Seeds Committee (PVSC), chaired by FERA. PVSC will continue to advise on national listing and the department will continue to attend the PVSC and to have access to all relevant papers, including those of PVSC technical groups, on request.

Plant breeders' rights and national listing (Controller)

30. The appointment of the Controller of Plant Variety Rights will be agreed jointly by the Secretary of State for Environment, Food and Rural Affairs, the Welsh Ministers and Ministers of the other UK devolved administrations.
31. In 2009, the Secretary of State for Environment, Food and Rural Affairs, the Welsh Ministers and Ministers of the other UK Devolved Administrations agreed jointly that the FERA Team Leader for Varieties and Seeds, and future holders of that post, will act as Controller of Plant Variety Rights.
32. Plant Breeders' Rights offers protection and return for the investment made by plant breeding companies in developing and marketing new varieties, allowing royalties to be claimed on seed or propagating material.
33. FERA manages all applications from breeders for Plant Breeders' Rights and for National Listing of agricultural, fruit and vegetable crops. Wales is a member of the National List and Seeds Committee, chaired by FERA. The department will continue to attend the NLSC and to have access to all relevant papers.

Seed marketing legislation

34. The legislation lays down minimum standards for seed of all the main agricultural and vegetable species. FERA implements the legislation in Wales on behalf of the Welsh Government, mainly through a system of quality assurance using a combination of official and licensed inspections of seed crops, sampling and seed testing.

Seed certification – agricultural crops (except potatoes)

35. FERA manages the seed certification systems for all agricultural crops (except potatoes) in England and, on behalf of the Welsh Government, in Wales. Licensed Seed Testing Stations responsible for seed activities in England and Wales are licensed by FERA to operate in accordance with seed regulations.

Seed certification – potatoes

36. PHSI manage the certification of seed potatoes in England and Wales through the Seed Potato Classification Scheme (SPCS). Under SPCS, FERA conducts all the inspections, tests and controls, including sampling of soil, plants and tubers, crop and tuber inspections, laboratory tests and administrative controls on behalf of the Welsh Government in Wales. Seed crops are inspected during the growing season, while tubers are inspected during sorting/grading to check that the standards for disease and defects in regulations have been met.

Plant varieties and seeds tribunal

37. FERA will liaise as appropriate with the Department and, with the Department's agreement, with the Ministry of Justice on issues relating to the Plant Varieties and Seeds Tribunal affecting Wales.

Exchange of information

38. FERA will notify the department in advance and in writing of any proposal to refer a matter for decision to the minister, which has implications for plant health policy in Wales.
39. FERA and the department will keep each other fully informed and copied into all relevant information in respect of plant health and seeds including:
 - policy development
 - regulatory functions
 - administrative procedures
 - EU-related policies and rules
 - statutory and non-statutory codes of practice
 - information on any impact assessments undertaken on matters of mutual interest
 - research developments and findings
40. Both parties will endeavour to ensure the timely circulation of documents for approval, information or publication, particularly in relation to secondary legislation and to ensure that any representations made by the other party will be taken fully into account.

Financial arrangements

41. FERA shall collect and retain all statutory receipts due in relation to work carried out on behalf of the Department which is specified in this concordat.

Reaching agreement and dispute resolution

42. FERA and the Department commit themselves, wherever possible, to conduct business in relation to plant health and seeds through standard administrative channels, either at official or ministerial level.
43. Resolution of disputes will take place in accordance with the principles and procedures set out in the Memorandum of Understanding Supplementary Agreement between the UK government, the Scottish Ministers, the Welsh Ministers and the Northern Ireland Executive Committee (March 2010). The

parties are committed to resolving issues at official level where possible, or it if becomes necessary, at Senior Civil Service level. Only exceptionally will matters be referred to Ministers or to the Joint Ministerial Committee.

Confidentiality

44. FERA and the department wish to ensure that the information each supplies to the other is subject to appropriate safeguards, and will respect the confidentiality and sensitivity of information. Therefore, without prejudice to the requirements of the data protection and freedom of information legislation, FERA and the department will not disclose unpublished information to third parties without the written permission of the administration which provided the information, subject to the requirements of law.

Changes to the concordat

45. FERA and the department will consult each other if a change to the concordat is proposed. Any changes made to this concordat must be made with the written agreement of both parties.

Duration and review

46. This concordat will initially run for one year commencing 1 November 2011. This concordat shall terminate on the expiry of 3 months written notice given by either party.
47. The concordat will initially be reviewed one year after coming into being ie 1 November 2012 and thereafter at periods to be agreed between the parties.

Signatures

For the Department for Environment, Food and Rural Affairs

Brian Harding
Director, Food Chain, Bovine TB and Endemic Diseases

Date: 1 November 2011

For the Food and Environment Research Agency

Adrian Belton
Chief Executive

Date: 1 November 2011

For the Department for Environment of the Welsh Government

Chris Lea
Head of Division for Sustainability and Environmental Evidence Division and
Nature, Access and Marine Unit

Date: 1 November 2011