

POLICY NOTE

The Seed and Propagating Material (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2019

SSI 2019/190

1. The above instrument is made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972() and paragraph (1) and (3) of schedule 2 of the European Union (Withdrawal) Act 2018. The instrument is subject to negative procedure.

Purpose of the Instrument

2. To amend the marketing regulations for the following seed and plant propagating materials–

- The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017
- The Vegetable Seed Regulations 1993
- The Cereal Seed (Scotland) Regulations 2005
- The Seed Potatoes (Scotland) Regulations 2015.

2.1. The Seed and Propagating Material (EU Exit) (Scotland) (Amendment) Regulations 2019, which provided for deficiencies in the relevant marketing regulations, arising from the United Kingdom’s withdrawal from the European Union in a no deal scenario, had a few minor drafting errors that have now been addressed by this instrument, fulfilling a commitment to the Scottish Parliament.

2.2 This instrument also provides for the implementation of Commission Implementing Decision (EU) 2019/120, which amends Article 12(2) of Council Directive 2008/90/EC, extending the date in a derogation for the marketing of fruit plants and propagating material to third countries for a further four year period (until 31 December 2022).

Policy Objectives

3. The Seed and Propagating Material (EU Exit) (Scotland) (Amendment) Regulations 2019 addressed deficiencies in domestic legislation on the marketing of seeds and plant propagating material arising from the withdrawal of the United Kingdom from the European Union so that the relevant regulations will continue to be operable after EU exit. During their scrutiny of those Regulations, the Delegated Powers and Law Reform Committee (DPLRC) identified a few minor drafting errors that this instrument addresses in fulfilment of a commitment to do so.

3.1. This instrument also implements Commission Implementing Decision (EU) 2019/120, which amends Article 12(2) of Council Directive 2008/90/EC to implement a derogation to allow soft fruit growers / breeders in Scotland to import fruit plants and propagating material from 3rd countries producing high quality root stocks / plants.

Explanation of the law being amended by the regulations

4. The marketing of seed and plant propagating material is regulated at European Union level by the directives listed below (“the relevant Directives”):

- i. Council Directive 66/402/EEC of 14 June 1966 on the marketing of cereal seed;
- ii. Council Directive 2002/55/EC of 13 June 2002 on the marketing of vegetable seed;
- iii. Council Directive 2002/56/EC of 13 June 2002 on the marketing of seed potatoes;
- iv. Council Directive 2008/90/EC of 29 September 2008 on the marketing of fruit plant propagating material and fruit plants intended for fruit production.

The relevant directives, which are transposed by the relevant regulations being amended by this instrument, prescribe processes to ensure minimum quality standards and traceability for marketed seed and plant propagating material.

Reasons for and effect of the proposed change

5. This instrument amends the minor errors that occurred in The Seed and Propagating Material (EU Exit) (Scotland) (Amendment) Regulations 2019, which provided provisions in the relevant regulations where they were inappropriate or redundant as a result of the withdrawal of the UK from the EU

5.1. However, there was the need to provide more clarity in three regulation and this has now been addressed by –

- To update the definition of the “Food and Feed Regulations” and to remove the redundant definition of “Regulation (EC) No 1829/2003”;
- To restate the provision enabling the continued marketing of cereal seed produced in EU Member States for a two year period following exit day and;
- To restate the amendment to the Seed Potatoes (Scotland) Regulations 2015, so that it refers to Commission Directive 2008/62/EC (which is already a defined term in those Regulations).
- In consequence, to revoke some redundant amendments contained in the Seed and Propagating Material (EU Exit)(Scotland)(Amendment) Regulations 2019.

5.2 Whilst undertaking this exercise to address these errors, Scottish Government has received notification of Commission Implementing Decision (EU) 2019/120, which extends the derogation available to Member States relating to import conditions for fruit plant propagating material and fruit plants from third countries. This extends that derogation from 31 December 2018 until 31 December 2022. Implementation ensures Scotland’s soft fruit breeders are still able to import new varieties of a high quality, to be used in their own breeding programmes.

Statements required by European Union (Withdrawal) Act 2018

Statement that in their opinion Scottish Ministers consider that the regulations do no more than is appropriate

6. The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, has made the following statement “In my view the Seed and Propagating Material (EU Exit) (Scotland) (Amendment) (N^o 2) Regulations 2019 do no more than is appropriate. This is the case because the amendments are being made to rectify minor drafting errors in the Seed and Propagating Material (EU Exit) (Scotland) (Amendment) Regulations 2019, which ensured that following a ‘no deal’ exit from the European Union, the legislation would continue and still be effective. The amendments did not introduce any policy changes and do not have a substantive impact on current marketing practices because the underlying processes and standards are unchanged.”.

Statement as to why the Scottish Ministers consider that there are good reasons for the regulations and that this is a reasonable course of action

7. The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, has made the following statement “In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action. These are to ensure, following a ‘no deal’ United Kingdom exit from the European Union, the continued and effective regulation of seed and propagating material within Scotland in order to ensure continuity of supply of seed and propagating material for the agricultural / horticultural sector. The amendments made by the instrument are technical in nature to ensure legislative operability only.”.

Statement as to whether the SSI amends, repeals or revokes any provision of equalities legislation, and, if it does, an explanation of that amendment, repeal or revocation

8. The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, has made the following statement “In my view the Seed and Propagating Material (EU Exit) (Scotland) (Amendment) (No 2) Regulations 2019 do not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”.

Statement that Scottish Ministers have, in preparing the regulations, had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010

9. The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, has made the following statement “In my view the Seed and Propagating Material (EU Exit) (Scotland) (Amendment) (No 2) Regulations 2019 have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”.

Additional information provided for EU Exit instruments in terms of the protocol agreed between the Scottish Government and the Scottish Parliament

Statement that Scottish Ministers have, in preparing the regulations, had due regard to the guidance principles on the environment and animal welfare

10. The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, has made the following statement “In my view the Seed and Propagating Material (EU Exit) (Scotland) (Amendment) (No 2) Regulations 2019 have had due regard to the need to the guiding principles on the environment and animal welfare as derived from the equivalent principles provided for in Articles 13 and 191(2) in Titles II and XX respectively of the Treaty on the Functioning of the European Union.”.

Statement explaining the effect (if any) of the regulations on rights and duties relating to employment and health and safety and matters relating to consumer protection (so far as is within devolved competence)

11. The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon has made the following statement “In my view the Seed and Propagating Material (EU Exit) (Scotland) (Amendment) (No 2) Regulations 2019 do not alter current policy on rights and duties relating to employment and health and safety and matters relating to consumer protection (so far as is within devolved competence). The instrument is made to ensure, following a ‘no deal’ United Kingdom exit from the European Union, the continued and effective regulation of the marketing of seed and plant propagating material within Scotland in order to ensure that only seed and propagating material of a required standard is marketed providing high quality and healthy crops for the agricultural / horticultural sector. The amendments made by the instrument are technical in nature to ensure legislative operability only.”.

An indication of how the regulations should be categorised in relation to the significance of the change proposed.

12. Low – The amendments are technical in nature to allow continuity of law and do not amount to a change in policy.

Statement setting out the Scottish Ministers’ reasons for their choice of procedure

13. Negative procedure is considered appropriate as these minor and technical amendments do no more than is necessary to ensure that the legislation continues to operate effectively following the UK’s exit from the EU. The regulations do not include provisions which fall within paragraph 1(2) of schedule 7 of the European Union (Withdrawal) Act 2018.

Further information

Consultation

14. This instrument does not amount to a change in policy and is being made to avoid deficiencies arising as a result of the UK’s withdrawal from the EU. There has been a number of formal public consultation regarding this instrument to cover all seed and propagating material.

Impact Assessments

15. Full impact assessments have not been prepared for this instrument, as it is aimed at preserving the effect of the current regulatory regimes once the UK leaves the EU. The current amendments do not alter the Scottish Government's current environmental policies and priorities and, therefore, do not have a significant impact of the environment. The impact on business, charities or voluntary bodies is expected to be minimal.

Financial Effects

16. The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Agriculture and Rural Economy Directorate

28 May 2019