

## POLICY NOTE

### THE SEED, PLANT PROPAGATING MATERIAL AND FOREST REPRODUCTIVE MATERIAL (EU EXIT) (SCOTLAND) (AMENDMENT ETC.) REGULATIONS 2020

#### SSI 2020/445

The above instrument (“the SSI”) was made by exercise of powers under section 2(2) of the European Communities Act 1972 and paragraph 1(1) and (3) of schedule 2 and paragraph 21(b) of schedule 7 of the European Union (Withdrawal) Act 2018 (“the 2018 Act”).

The SSI is subject to negative procedure.

#### **Purpose of the Instrument**

The SSI amends, in particular, the following instruments (“the earlier EU Exit Regulations”):

- The Seed and Propagating Material (EU Exit) (Scotland) (Amendment) Regulations 2019;
- The Forestry (EU Exit) (Scotland) (Amendment etc.) Regulations 2019.

It does so to update, before they come into force, amendments provided for in the earlier EU Exit Regulations to the following instruments (“the principal Regulations”):

- The Vegetable Seed Regulations 1993;
- The Marketing of Vegetable Plant Material Regulations 1995;
- The Marketing of Ornamental Plant Propagating Material Regulations 1999;
- The Oil and Fibre Plant Seed (Scotland) Regulations 2004;
- The Cereal Seed (Scotland) Regulations 2005;
- The Fodder Plant Seed (Scotland) Regulations 2005;
- The Beet Seed (Scotland) (No. 2) Regulations 2010;
- The Seed Potatoes (Scotland) Regulations 2015;
- The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017; and
- The Forest Reproductive Material (Great Britain) Regulations 2002.

The earlier EU Exit Regulations as amended by the SSI will amend the principal Regulations to address deficiencies in those Regulations arising from the United Kingdom’s withdrawal from the European Union to ensure that they continue to operate effectively following the end of the implementation period.

The SSI also makes amendments to the following instruments in order to revoke provision therein which is made redundant by provision in the SSI:

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

- The Seed, Propagating Material and Common Agricultural Policy (EU Exit) (Scotland) (Amendment) Regulations 2019.

The SSI also contains amendments to update provisions in some of the principal Regulations before they all become retained EU law following the end of the implementation period.

## **Policy Objectives**

The SSI amends the earlier EU Exit Regulations before they come into force. The earlier EU Exit Regulations, as amended by the SSI, will address deficiencies in the principal Regulations arising from the withdrawal of the United Kingdom from the European Union so that the principal Regulations will continue to be operable after the end of the implementation period.

## **Explanation of the law being amended by the regulations**

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 66/401/EEC of 14 June 1966 on the marketing of fodder plant seed;
- ii. Council Directive 66/402/EEC of 14 June 1966 on the marketing of cereal seed;
- iii. Council Directive 1998/56/EC of 20 July 1998 on the marketing of propagating material of ornamental plants;
- iii. Council Directive 2002/54/EC of 13 June 2002 on the marketing of beet seed;
- iv. Council Directive 2002/55/EC of 13 June 2002 on the marketing of vegetable seed;
- v. Council Directive 2002/56/EC of 13 June 2002 on the marketing of seed potatoes;
- vi. Council Directive 2002/57/EC of 13 June 2002 on the marketing of seed of oil and fibre plants;
- vii. Council Directive 2008/72/EC of 15 July 2008 on the marketing of vegetable propagating and planting material, other than seed;
- viii. Council Directive 2008/90/EC of 29 September 2008 on the marketing of fruit plant propagating material and fruit plants intended for fruit production; and
- ix. Council Directive 1999/105/EC of 22 December 1999 on the marketing of forest reproductive material.

The relevant Directives, which are transposed by the principal Regulations, prescribe processes to ensure minimum quality standards and traceability for marketed seed and plant propagating material. They also set out administrative provisions, impose record-keeping requirements and provide for the licensing of industry crop inspectors, seed samplers and seed testing stations to carry out these statutory functions.

The earlier EU Exit Regulations were made to amend provisions in the principal Regulations which are inappropriate or redundant as a result of the withdrawal of the UK from the EU. They made changes to the principal Regulations to correct such deficiencies and ensure that the law would remain operable and function correctly going forward.

## **Reasons for and effect of the proposed changes**

### Part 2

Part 2 of the SSI principally updates out of date references to EU instruments that are referred to in the principal Regulations.

### Part 3

In the time since the earlier EU Exit Regulations were made there have been developments which require the content of those instruments to be reviewed and updated:

- there have been amendments to some of the relevant Directives at an EU level which in turn necessitated amendments to be made to the principal Regulations during the implementation period (during which EU law continued to apply in the United Kingdom);
- a Withdrawal Agreement between the UK and the EU has been signed which includes the Protocol on Ireland / Northern Ireland (“the NI Protocol”).

As a result, Part 3 of the SSI updates the earlier EU Exit Regulations by amending them to ensure that the amendments they make to the principal Regulations are appropriate to correct deficiencies in light of these developments and ensure that those Regulations remain operable following the end of the implementation period. For example, the SSI amends the earlier EU Exit Regulations to replace references to “exit day” with references to “IP completion day”. These are technical amendments to reflect the fact that exit day has passed and therefore the deficiency fixes to the principal Regulations will now come into force at the end of the implementation period.

The amendments made by the earlier EU Exit Regulations as amended by the SSI will address deficiencies in the principal Regulations, e.g. by removing references to EU institutions that are no longer appropriate; removing obligations to report to, or seek approval from, the European Commission; and removing or updating other provisions that will no longer operate properly as they stand following the end of the transition period.

The principal Regulations will be updated by the earlier EU Exit Regulations as amended by the SSI so that appropriate alternative provision is made for the domestic context after the end of the transition period. So, for example, the changes provide that Ministers may act in place of the Commission and that EU labels become GB labels.

In line with the approach elsewhere in GB, a provision which was to be inserted into some of the principal Regulations by the Seed and Propagating Material (EU Exit) (Scotland) (Amendment) Regulations 2019 to provide for a temporary two year period during which it would still have been possible to import certain seed and propagating material from the EU has been removed by the SSI. The principal Regulations (as amended by the earlier EU Exit Regulations as amended by the SSI) will now reflect that remaining EU Member States are to be treated as ‘third countries’ and that their rules and standards are required to be assessed as equivalent to our own if ‘equivalence’ is to be granted to allow seed/propagating material from those third countries to be marketed in GB.

The changes to the principal Regulations also reflect changes made to legislation on variety registration. At the moment there are UK National Lists for varieties of agricultural and

horticultural species that can be marketed in the UK. As a result of provision in the NI Protocol, after the end of the implementation period there will be a GB variety list and a Northern Ireland variety list. The SSI makes changes to the principal Regulations to reflect this change so that existing references to UK National List become references to GB variety list and NI variety list.

#### Part 4

Part 4 of the SSI revokes some provision in the Seed and Propagating Material (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2019 and the Seed, Propagating Material and Common Agricultural Policy (EU Exit) (Scotland) (Amendment) Regulations 2019 which is made redundant by provision in the SSI.

### **STATEMENTS TO BE MADE BY THE MINISTER FOR –**

#### ***The Seed, Plant Propagating Material and Forest Reproductive Material (EU Exit) (Scotland) (Amendment etc.) Regulations 2020***

#### **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**

Cabinet Secretary for Rural Economy and Tourism, Fergus Ewing, has made the following statement “In my view the Seed, Plant Propagating Material and Forest Reproductive Material (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 do no more than is appropriate.”. This is the case because the amendments are limited to what is necessary to correct deficiencies in relevant legislation. The amendments do 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**

Cabinet Secretary for Rural Economy and Tourism, Fergus Ewing, 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 the end of the implementation period, 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**

Cabinet Secretary for Rural Economy and Tourism, Fergus Ewing, has made the following statement “In my view the Seed, Plant Propagating Material and Forest Reproductive Material (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 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**

Cabinet Secretary for Rural Economy and Tourism, Fergus Ewing, has made the following statement “In my view the Seed, Plant Propagating Material and Forest Reproductive Material (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 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**

Cabinet Secretary for Rural Economy and Tourism, Fergus Ewing, has made the following statement “In my view the Seed, Plant Propagating Material and Forest Reproductive Material (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 have had due regard 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)**

Cabinet Secretary for Rural Economy and Tourism, Fergus Ewing has made the following statement “In my view the Seed, Plant Propagating Material and Forest Reproductive Material (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 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 the end of the implementation period, 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.**

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**

Negative procedure is considered appropriate as this instrument amends earlier EU exit SSIs which were themselves subject to negative procedure. The earlier EU exit SSIs as amended by

this instrument make minor and technical amendments to legislation relating to seeds and plant propagating material which do no more than is necessary to ensure that the legislation continues to operate effectively following the end of the implementation period. 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**

The SSI does not amount to a change in policy and is being made to amend the earlier EU Exit Regulations to resolve deficiencies arising as a result of the UK's withdrawal from the EU. There have been no formal public consultations during the implementation period, however we have worked closely with all stakeholders to discuss the Withdrawal Agreement and NI Protocol and what they signify for the different sectors.

Insofar as the SSI will amend the earlier EU Exit Regulations and the Seed and Propagating Material (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2019 and the Seed, Propagating Material and Common Agricultural Policy (EU Exit) (Scotland) (Amendment) Regulations 2019 in exercise of the powers in the 2018 Act, the amendments need to come into force before the SSIs being amended and therefore before IP completion day. Accordingly, to the extent the SSI as made in exercise of the powers in the 2018 Act is required to come into force before IP completion day, consultation with the Secretary of State is required under paragraph 4 of schedule 2 of the 2018 Act. Therefore we have consulted with the Secretary of State in relation to the relevant amendments in the SSI.

### **Impact Assessments**

Full impact assessments have not been prepared for the SSI as it will amend the earlier EU Exit Regulations which will amend the principal Regulations with a view to preserving the effect of the current regulatory regimes. 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**

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

Scottish Government  
Agriculture and Rural Economy Directorate

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