

EXPLANATORY MEMORANDUM TO
THE VEGETABLE PLANT MATERIAL AND SEED (MISCELLANEOUS
AMENDMENTS) REGULATIONS 2020

2020 No. 579

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs (“Defra”) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends: the Marketing of Vegetable Plant Material Regulations 1995 (“the 1995 Regulations”); the Seeds (National Lists of Varieties) Regulations 2001 (“the 2001 Regulations”); and the Seed Marketing Regulations 2011 (“the 2011 Regulations”).

2.2 This instrument is required to ensure that the United Kingdom fulfils its obligations under the Withdrawal Agreement to transpose EU law into domestic legislation until the end of the Implementation Period (31st December 2020). We are therefore transposing Commission Implementing Directive (EU) 2019/990 amending the list of genera and species in Article 2(1)(b) of Council Directive 2002/55/EC, in Annex II to Council Directive 2008/72/EC and in the Annex to Commission Directive 93/61/EEC (“the 2019 Directive”). We are also transposing Commission Implementing Directive (EU) 2020/432 amending Council Directive 2002/55/EC with regard to the definition of vegetables and the list of genera and species in Article 2(1)(b) (“the 2020 Directive”). The 2020 Directive rectifies an error made by the 2019 Directive, by reinstating the definition of vegetables in Directive 2002/55/EC on the marketing of vegetable seed.

2.3 This instrument changes the common names of certain vegetable species in accordance with the grouping used in the International Code of Nomenclature for Cultivated Plants. It also brings hybrids between the species and groups listed into the scope of the 2011 Regulations. The changes aim to provide greater clarity for businesses in terms of the species covered by the scope of the regulations listed in paragraph 2.1.

2.4 This instrument also brings into line the species *Cichorium intybus* L (Chicory) with Commission Implementing Decision (EU) 2017/478. This Commission Implementing Decision releases certain Member States from the obligation to apply Directive 2002/55/EC to certain species. This instrument therefore extends the derogation from the requirement to provide a national list and restrict marketing in the 2001 Regulations, to the entire species.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The extent of this instrument in respect of the 1995 Regulations is Great Britain, in respect of the 2001 Regulations, the United Kingdom and in respect of the 2011 Regulations, England and Wales.
- 4.2 The territorial application of this instrument is England except in relation to the 2001 Regulations, which apply to the United Kingdom.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The following domestic legislation prescribe the requirements for the marketing of vegetable seed, plant and propagating material:
- The 1995 Regulations, which implement Council Directive 2008/72/EC on the marketing of vegetable propagating and planting material, other than seed, and Council Directive 93/61/EEC setting out the schedules indicating the conditions to be met by vegetable propagating and planting material, other than seed, further to Council Directive 2008/72/EC. They extend and apply to Great Britain. Similar legislation operates in Northern Ireland;
 - The 2001 Regulations, which implement those elements of Council Directive 2002/55/EC, which require member States to establish national lists of vegetable varieties. They extend and apply to the United Kingdom; and
 - The 2011 Regulations, which implement Council Directive 2002/55/EC. They extend to England and Wales and apply to England only. Similar legislation operates in Scotland, Wales and Northern Ireland.
- 6.2 The 2019 Directive amends the list of vegetable species and their associated common names covered by Council Directive 2002/55/EC and Directive 2008/72/EC, to specify the varieties covered by the scope of those Directives. The 2019 Directive takes into account the species where all varieties fall within their scope and those where only certain varieties are covered. It brings into the scope of Council Directive 2002/55/EC hybrids between the species and groups listed. The 2019 Directive also updates the botanical names of certain species in Directive 93/61/EEC, in accordance with the development of scientific knowledge. The 2020 Directive supersedes the amendments made to Directive 2002/55/EC by the 2019 Directive, to re-instate the definition of vegetables in Article 2(1)(b) of that Directive. The domestic legislation described in paragraph 6.1 above is being amended to implement those changes.
- 6.3 The United Kingdom is released from the obligation to apply Directive 2002/55/EC as regards the marketing of vegetable seed and the requirement to provide a national list in respect of the species *Cichorium intybus* L., by virtue of Commission Implementing Decision (EU) 2017/478. The derogation currently applies to

Cichorium intybus L. of the type industrial chicory. This instrument will transpose that Decision as it relates to Cichorium intybus L., in full, by extending the derogation from the requirement to provide a national list and restrict marketing to the species in its entirety.

7. Policy background

What is being done and why?

- 7.1 The marketing of vegetable seed, plant and propagating material is regulated at EU level by Council Directives 2002/55/EC, 2008/72/EC and Commission Directive 93/61/EEC. These Directives establish a regime to ensure that purchasers throughout the European Union receive vegetable seed, plants and propagating material which is healthy and of good quality. They set quality standards to be met by certain genera and species of vegetable seed, plants and propagating material when marketed and prescribe conditions to be satisfied by suppliers of propagating material. Directive 2002/55/EC also provides for a national catalogue to be established listing the vegetable varieties officially accepted for certification and marketing in a Member State's territory.
- 7.2 The Directives specified in section 7.1 above are transposed by the 1995 Regulations, the 2001 Regulations and the 2011 Regulations. These three Regulations provide for the vegetable species they cover by way of a table listing both the scientific names and associated common names. However, certain varieties belong to species listed under their scientific names, but not to the types of varieties described by their common names, risking confusion as to whether a variety is covered by the scope of the regulations. This instrument amends these Regulations to update the lists of vegetable species and associated common names in order to more clearly define which varieties are regulated and, where necessary, specify the species where all varieties fall within the scope of the regulations and those where only certain varieties are covered. It also brings hybrids between the species and groups listed within the scope of the 2011 Regulations.
- 7.3 As the United Kingdom is released from the obligation to apply Directive 2002/55/EC in respect of Cichorium intybus L. as described in section 6.4 above, the 2001 Regulations are being amended to extend the derogation from the requirement to provide a national list and restrict marketing, to that species in its entirety. The 2011 Regulations will, therefore, no longer regulate Cichorium intybus L. of the type large-leaved (Italian) chicory.
- 7.4 The amendments made by this instrument do not amount to changes in policy and will not have a substantive impact on current practices, because the underlying processes and standards are unchanged.

8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union and does not trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

- 9.1 There are no plans for consolidation.

10. Consultation outcome

- 10.1 Given the minor and technical nature of these amendments, Defra has not undertaken a full public consultation on this instrument but has carried out a targeted consultation with the British Society of Plant Breeders, the Agricultural Industries Confederation and the National Farmers' Union. These industry organisations represent the businesses directly affected by the amendments and have raised no concerns with Defra's approach.

11. Guidance

- 11.1 As this is not introducing any new measures, current procedures will remain the same.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because this instrument makes minor technical changes to legislation for which no significant impact on business or the voluntary sector is foreseen.

13. Regulating small business

- 13.1 This legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 13.3 No mitigating action is proposed because this instrument makes no changes to policy and therefore does not introduce new duties or burdens on business.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is through the course of normal departmental business, as no substantive changes to current procedures or standards for the marketing of vegetable seed, plant and propagating material are being introduced.
- 14.2 The 2011 Regulations contain a statutory review clause at regulation 33A. Defra last undertook a domestic review of the Regulations in 2017 and the report from the Regulatory Policy Committee which followed concluded that the Regulations remain fit for purpose. The 2001 Regulations and the 1995 Regulations do not contain statutory review clauses and in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Lord Gardiner of Kimble, the Parliamentary Under Secretary of State for Rural Affairs and Biosecurity has made the following statement:
- “The amendments to the Marketing of Vegetable Plant Material Regulations 1995 and the Seeds (National Lists of Varieties) Regulations 2001 being made in this instrument have no significant annualised net impact on business and it would not therefore be appropriate to undertake a review given the costs of doing so.”

15. Contact

- 15.1 Andy Mitchell at the Department for Environment, Food and Rural Affairs email: andy.mitchell@defra.gov.uk email address can be contacted with any queries regarding the instrument.
- 15.2 Nicola Spence, Deputy Director for Plant Health, Bee Health and Seeds at the Department for Environment, Food and Rural Affairs can confirm that this explanatory memorandum meets the required standard.
- 15.3 Lord Gardiner of Kimble, the Parliamentary Under Secretary of State for Rural Affairs and Biosecurity at the Department for Environment, Food and Rural Affairs can confirm that this explanatory memorandum meets the required standard.