

EXPLANATORY MEMORANDUM TO
THE MARKETING OF SEED, PLANT AND PROPAGATING MATERIAL
(ENGLAND) REGULATIONS 2020

2020 No. 682

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 certain domestic marketing legislation to update and amend the pest requirements on plant reproductive material intended for marketing. This is to ensure that this material is practically free from Union regulated non-quarantine pests (“RNQPs”) at the place of production and that the presence of such pests does not exceed specified thresholds. These requirements complement and are in addition to those in existing plant health legislation which introduced this new category of pests.
- 2.2 This instrument is required to ensure that the UK fulfils its obligations under the Withdrawal Agreement to transpose EU law into domestic legislation until the end of the Implementation Period (31st December 2020). It transposes Commission Implementing Directive (EU) 2020/177 which makes amendments to certain marketing directives for seed and other propagating material as regards pests of plants on seeds and other plant reproductive material (OJ No L. 41, 13.2.2020, p. 1) (“the 2020 Directive”) in relation to RNQPs.
- 2.3 This instrument also removes the statutory review clause in the Seed Marketing Regulations 2011 following the completion of a post implementation review in 2016 that concluded that the Regulations are fit for purpose.

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 this 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 territorial extent of this instrument is England and Wales. The territorial application of this instrument is England.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 This instrument amends:

- The Marketing of Vegetable Plant Material Regulations 1995 (SI 1995/2652) (“the 1995 Regulations”);
- the Marketing of Ornamental Plant Propagating Material Regulations 1999 (SI 1999/1801) (“the 1999 Regulations”);
- the Seed Marketing Regulations 2011 (SI 2011/463) (“the 2011 Regulations”);
- the Seed Potatoes (England) Regulations 2015 (SI 2015/1953) (“the 2015 Regulations”); and
- the Marketing of Fruit Plant and Propagating Material (England) Regulations 2017 (SI 2017/595) (“the 2017 Regulations”).

6.2 Commission Implementing Regulation (EU) 2019/2072 establishing uniform conditions as regards protective measures against pests of plants (OJ No L. 319, 10.12.2019, p. 1) (“the Phytosanitary Conditions Regulation”) implements Regulation (EU) 2016/2031 as regards protective measures against pests of plants (OJ No L. 317, 23.11.2016, p. 4) (“the Plant Health Regulation”). The Plant Health Regulation and the Phytosanitary Conditions Regulation have applied to the UK since December 2019 and introduce a revised plant health import and movement regime including a new category of pests known as RNQPs. They are part of the wider EU Smarter Rules for Safer Food package of regulations which modernises the existing health and safety standards of the agri-food chain.

6.3 The 2020 Directive amends the pest and disease requirements and standards found in the EU marketing directives (listed in paragraph 6.4) to provide requirements concerned with RNQPs that complement and are in addition to those in the Phytosanitary Conditions Regulation.

6.4 The EU marketing directives (“the Marketing Directives”) have been transposed into domestic legislation as follows:

- The 1995 Regulations implement:
 - Council Directive 2008/72/EC on the marketing of vegetable propagating and planting material, other than seed (OJ No. L 205, 1.8.2008, p. 28); and
 - Commission Directive 93/61/EEC setting out the schedules indicating the conditions to be met by vegetable propagating and planting material, other than seed pursuant to Council Directive 2008/72/EC (OJ No. L 250, 7.10.1993, p. 19).
- The 1999 Regulations implement:
 - Council Directive 98/56/EC on the marketing of propagating material of ornamental plants (OJ No. L 226, 13.8.1998, p. 16); and
 - Commission Directive 93/49/EEC setting out the schedule indicating the conditions to be met by ornamental plant propagating material and

ornamental plants pursuant to Council Directive 93/682/EEC (OJ No. L 250, 7.10.1993, p. 9).

- The 2011 Regulations implement:
 - Council Directive 66/401/EEC on the marketing of fodder plant seed (OJ No. L 125, 11.7.1966, p. 2298);
 - Council Directive 66/402/EEC on the marketing of cereal seed (OJ No. L 125, 11.7.1966, p. 2309);
 - Council Directive 2002/55/EC on the marketing of vegetable seed (OJ No. L 193, 20.7.2002, p. 33); and
 - Council Directive 2002/57/EC on the marketing of seed of oil and fibre (OJ No. L 193, 20.7.2002, p. 74).
 - The 2015 Regulations implement:
 - Council Directive 2002/56/EC on the marketing of seed potatoes (OJ No. L 193, 20.7.2002, p. 60); and
 - Commission Implementing Directive 2014/21/EU determining minimum conditions and Union grades for pre-basic seed potatoes (OJ No. L 38, 7.2.2014, p. 39).
 - The 2017 Regulations implement:
 - Council Directive 2008/90/EC on the marketing of fruit plant propagating material and fruit plants intended for fruit production (OJ No. L 267, 8.10.2008, p. 8); and
 - Commission Implementing Directive 2014/98/EC implementing Council Directive 2008/90/EC as regards specific requirements for the genus and species of fruit plants referred to in Annex I thereto, specific requirements to be met by suppliers and detailed rules concerning official inspections (OJ No. L 298, 16.10.2014, p. 22).
- 6.5 The 1995 and 1999 Regulations apply to Great Britain, similar legislation operates in Northern Ireland. The 2011, 2015 and 2017 Regulations apply to England only, similar legislation operates in Scotland, Wales and Northern Ireland.
- 6.6 Council Directive 68/193/EEC on the marketing of material for the vegetative propagation of vine (OJ No. L 93, 17.4.1968, p. 15) is also amended by the 2020 Directive, however the UK is derogated from the requirement to transpose and implement legislation concerned with vine propagating material.
- 6.7 This instrument amends the domestic legislation listed in paragraph 6.1 to transpose amendments made by the 2020 Directive to the Marketing Directives. In addition, amendment is made to the 1995 and 2017 Regulations to transpose notification requirements in Council Directives 2008/72/EC and 2008/90/EC for a producer or supplier of vegetable propagating material or fruit plant propagating material to report to an inspector the presence of a regulated pest of plants, including RNQPs.
- 6.8 This instrument also removes the review provision in the 2011 Regulations in the absence of factors that would support continuation of the obligation to review those regulations.

7. Policy background

What is being done and why?

- 7.1 The marketing of the following types of plant reproductive material is regulated at EU level by the Marketing Directives:
- fodder seed;
 - cereal seed;
 - propagating material of ornamental plants;
 - vegetable seed;
 - vegetable propagating and planting material;
 - seed potatoes;
 - seed of oil and fibre; and
 - fruit plant propagating material and fruit plants intended for fruit production.
- 7.2 The Marketing Directives establish a regime to ensure that purchasers throughout the European Union receive seed, plants and other plant propagating material (“plant material”) which is healthy and of good quality. They set quality standards to be met by certain species of plant material when marketed and prescribe conditions to be satisfied by suppliers of plant material.
- 7.3 The Phytosanitary Conditions Regulation establishes uniform conditions for the implementation of the Plant Health Regulation. This includes an update to the phytosanitary status of pests found in the Marketing Directives following a review of pests carried out by the European and Mediterranean Plant Protection Organisation (“EPPO”). Certain pests, some of which are listed in the Marketing Directives, fulfil the conditions provided for in the Plant Health Regulation to be included in the list of RNQPs.
- 7.4 The Phytosanitary Conditions Regulation lists the RNQPs relating to specific plants for planting, categories and thresholds. It also provides the measures to be taken to prevent the presence of RNQPs on those specific plants for planting.
- 7.5 The 2020 Directive makes consequential amendments to the Marketing Directives to take account of the updated pest status of the pests listed in those directives and updates the measures to determine the presence of pests. It also introduces pests that were quarantine pests but are now assessed, following the review carried out by EPPO, as RNQPs or new pests for regulation as an RNQP. The amendments align with the directly applicable Phytosanitary Conditions Regulation.
- 7.6 This instrument adapts or removes provisions concerning pest and disease standards regulated in the marketing regulations listed in paragraph 6.1 which have been re-classified as RNQPs. This instrument transposes the requirement for the crop and seed produced by the crop to comply with the conditions of the Phytosanitary Conditions Regulation as a condition of certification in the 2011 Regulations.
- 7.7 Council Directives 2008/72/EC and 2008/90/EC contain provisions for reporting the presence of pests on vegetable propagating and planting material and fruit plant propagating material and fruit plants intended for fruit production. This instrument transposes those requirements in full and makes clear that a reporting requirement exists for all pests, including the reclassified RNQPs.

7.8 The 2011 Regulations include a statutory review clause which require a post implementation review and publication of a report setting out the conclusions from that review to be published before the end of five years beginning on 6 January 2012. This report was published in March 2017 and concluded that the 2011 Regulations are fit for purpose. Since this review was completed, statutory guidance, on determining whether it is appropriate to make provision for review under section 31 of the Small Business, Enterprise and Employment Act 2015 was published in December 2017. As the net annual impact of these Regulations was less than £5 million a review clause is no longer considered necessary. As there are no other factors that would support continuation of the obligation to review it is appropriate to remove this review provision.

7.9 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 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 / 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 Defra has not undertaken a full public consultation on this instrument but has carried out a series of targeted engagements and awareness-raising activities with the Agriculture and Horticulture Development Board, the Agricultural Industries Confederation, the British Society of Plant Breeders, the National Association of Agricultural Contractors, the National Farmers' Union and the National Institute of Agricultural Biology. These industry organisations represent the businesses directly affected by the amendments and have raised no concerns with Defra's approach.

11. Guidance

11.1 The main seed and plant propagating material stakeholders have been informed of the changes. Details of the existing requirements established through the plant health legislation to which this legislation is linked has been placed on gov.uk: <https://planthealthportal.defra.gov.uk/smarter-rules-for-safer-food-srsf/>

11.2 The existing guidance on marketing requirements is being updated to reflect the changes introduced and will be available by the end of August 2020.

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 no significant impact on business or the voluntary sector is foreseen and the amendments are consequential to the already directly applicable Phytosanitary Conditions Regulation.

13. Regulating small business

- 13.1 The 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 seed and other plant propagating material are being introduced.
- 14.2 The 2011 Regulations contain a statutory review clause at regulation 33A. As there are no factors that would support continuation of the obligation to review it is appropriate to remove this review provision from the 2011 Regulations.
- 14.3 The 2015 Regulations contain a statutory review clause at regulation 26 and the 2017 regulations contain a statutory review clause at regulation 31.
- 14.4 The 1995 Regulations and the 1999 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, Parliamentary Under Secretary of State for Rural Affairs and Biosecurity at Defra, has made the following statement:

“The amendments to the Marketing of Vegetable Plant Material Regulations 1995, the Marketing of Ornamental Plant Propagating Material Regulations 1999 and the Seed Marketing Regulations 2011 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. The Seed Potatoes (England) Regulations 2015 and the Marketing of Fruit Plant and Propagating Material (England) Regulations 2017 already contain a review clause.”

15. Contact

- 15.1 Fiona Hopkins at the Department for Environment, Food and Rural Affairs
Telephone: 0208 02 65786 or email: fiona.hopkins@defra.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Nicola Spence, Deputy Director and Chief Plant Health Officer at the Department for Environment, Food and Rural Affairs can confirm that this explanatory memorandum meets the required standard.
- 15.3 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble, at the Department for Environment, Food and Rural Affairs can confirm that this explanatory memorandum meets the required standard.