

EXPLANATORY MEMORANDUM TO

**THE MARKETING OF SEEDS AND PLANT PROPAGATING MATERIAL
(AMENDMENT) (ENGLAND AND WALES) (EU EXIT) REGULATIONS 2018**

2018 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment Food and Rural Affairs and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments and the Sifting Committees.

2. Purpose of the instrument

- 2.1 The Marketing of Seeds and Plant Propagating Material (Amendment) (England and Wales) (EU Exit) Regulations 2018 addresses 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 such will continue to be operable after EU exit. The changes are for provisions which are inappropriate or redundant on withdrawal and to ensure continuity of supply of seed and propagating material.

Explanations

What did any relevant EU law do before exit day?

- 2.2 The marketing of seed and plant propagating material is regulated at Community level by the directives listed below:
 - 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
 - iv. Council Directive 1999/105/EC of 22 December 1999 on the marketing of forest reproductive material
 - v. Council Directive 2002/54/EC of 13 June 2002 on the marketing of beet seed
 - vi. Council Directive 2002/55/EC of 13 June 2002 on the marketing of vegetable seed
 - vii. Council Directive 2002/57/EC of 13 June 2002 on the marketing of seed of oil and fibre plants
 - viii. Council Directive 2008/72/EC of 15 July 2008 on the marketing of vegetable propagating and planting material, other than seed
 - ix. Council Directive 2008/90/EC of 29 September 2008 on the marketing of fruit plant propagating material and fruit plants intended for fruit production.

- 2.3 These directives prescribe processes to ensure minimum quality standards and traceability for marketed seed and propagating material. They also set out administrative provisions (including, where appropriate, provision for fees), 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. These directives are transposed by the regulations being amended by this instrument listed in section 2.4.

Why is it being changed?

- 2.4 This instrument amends provisions in the following regulations which are inappropriate or redundant as a result of the withdrawal of the UK from the EU. It makes changes to these regulations to ensure that the law functions correctly after exit day, for example to remove references to the Commission, Community, Member States and third countries, and to remove reporting obligations to the Commission which will no longer be appropriate:
- i. The Marketing of Vegetable Plant Material Regulations 1995
 - ii. The Marketing of Ornamental Plant Propagating Material Regulations 1999
 - iii. The Forest Reproductive Material (Great Britain) Regulations 2002
 - iv. The Seed Marketing Regulations 2011
 - v. The Marketing of Fruit Plant and Propagating Material (England) Regulations 2017.

What will it now do?

- 2.5 This instrument firstly corrects an out of date reference in the Seeds Marketing Regulations 2011 by introducing a definition for the European Economic Area and Switzerland, where appropriate, as ‘European Single Market State’.
- 2.6 The remainder of this instrument makes changes to enable UK law on the marketing of seed and plant propagating material to continue to function effectively on EU exit. This instrument makes minor technical amendments to ensure that industry can function and has no substantive impact on current processes or farming practices.
- 2.7 For climatic and economic reasons, the UK is for many species dependent or semi-dependent on seed and propagating material produced in the EU. This instrument therefore provides for a temporary two year period when imports from the EU will be permitted to guarantee continuity of supply. This transitional arrangement is not required for propagating material of ornamental plants, because the statutory requirements for marketing are simpler, and imports can continue indefinitely. Similarly, it is not required for forest reproductive material because the requirements differ from agricultural, vegetable and fruit crops, such that imports from the EU can be allowed indefinitely.
- 2.8 To avoid financial loss to UK businesses, this instrument provides a temporary two year period to allow existing stocks of pre-printed official EU certification labels to be used up. This is not required for labels for forest reproductive material, ornamentals and vegetable plants where there are different arrangements for labelling.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments and the Sifting Committees

- 3.1 This instrument is being laid for sifting to the European Union (Withdrawal) Act 2018 by the European Statutory Instrument Committee (ESIC) and Secondary Legislation Scrutiny Committee (SLSC).

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.
- 4.2 The territorial application of this instrument is, for Part 1 and regulations 4 and 5, England and Wales; for Part 2 and (in Part 3) regulations 6 to 8, England only.

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 makes a minor amendment to the Seeds Marketing Regulations 2011 using powers under section 2(2) of the European Communities Act 1972 to include references to the European Economic Area States and Switzerland where appropriate.
- 6.2 The main part of this instrument amends the legislation listed at section 2.4 using the powers in the European Union (Withdrawal) Act 2018. The amendments prevent, remedy or mitigate the legislation listed at section 2.4 from failures to operate effectively or deficiencies arising from the withdrawal of the United Kingdom from the European Union.
- 6.3 The Marketing of Vegetable Plant Material Regulations 1995 and the Marketing of Ornamental Plant Propagating Material Regulations 1999 are being amended in respect of England and Wales. This instrument has been developed and agreed in collaboration with Welsh Government officials.

7. Policy background

What is being done and why?

- 7.1 The changes made by this instrument are necessary to ensure that current marketing legislation for seed and propagating material continues to operate effectively after the UK leaves the EU in a no deal scenario. The amendments do not amount to changes in policy and will not have a substantive impact on current marketing practices because the underlying processes and standards are unchanged. This instrument remedies deficiencies that will arise in domestic marketing legislation, for example by

removing references to the Commission, Community and Member States, replacing references to “third countries” and removing reporting obligations to the Commission.

- 7.2 To assure supplies of seed and propagating material on which the UK is currently dependent on the EU, this instrument provides for a temporary two year period when supplies of certified seed and propagating material from the EU may continue to be marketed in the UK.
- 7.3 These transitional arrangements are unnecessary for propagating material of ornamental plants or forest reproductive material (FRM). For FRM, the Forestry Commission will treat basic material registered in EU member states as equivalent to basic material registered in the UK. Material supplied to the EU will need to be marketed and labelled in compliance with the Organisation for Economic Cooperation and Development (OECD) forest seed and plant scheme.
- 7.4 To avoid financial loss to UK businesses, this instrument also provides a temporary two year period to allow existing stocks of pre-printed official EU certification labels to be used up. This does not apply to labels for ornamental and vegetable plant propagating material where suppliers produce their own labels and pre-printed stocks are not held.

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

- 8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union.
- 8.2 This instrument is also being made under paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 (which includes the power to modify retained EU law and to make supplementary, incidental or consequential provision). In accordance with the Act, the Minister has made the relevant statement as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

- 9.1 There are no plans for consolidation.

10. Consultation outcome

- 10.1 Defra has not undertaken a public consultation on this instrument but has carried out a series of targeted consultations with industry representative organisations in the sector who are accepting of Defra’s approach. Defra continues to update the sector at established stakeholder forums

11. Guidance

- 11.1 As this legislation does not substantively change the way that certification or marketing of seed and propagating material functions, or the quality standards, guidance has not been produced at this stage. Businesses are being informed of the changes through workshops and existing guidance for businesses using the services will be updated before exit.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies in respect of the marketing of seed, and propagating material of agricultural, vegetable and fruit species, ornamentals and forest reproductive material is expected to be as follows for imports. Given the UK's significant dependence on the EU for seed and propagating material to enable certain produce to be grown, the UK plans for most crop sectors to recognise EU certified seed and propagating material and Common Catalogue varieties for a temporary two year period. This is expected to mitigate the impacts that would otherwise be felt by these sectors. Without this, or any adaptation by the industry to source seed and propagating material from non-EU countries or produce it in the UK, there could be significant losses to the wider sectors involved in production of plants, worth a total of around £4bn annually, which rely on this seed and propagating material. This figure has been taken from Defra's 2017 Agriculture in the UK document and Forestry Commission data estimating a combined £4bn of Gross Value Added (GVA).
- 12.2 For some sectors, this mitigation is unnecessary, as explained in the preceding sections.
- 12.3 The impact on seed and propagating material produced in the UK is expected to be as follows. In the longer term, for varieties where the UK is not the primary market and UK businesses rely on listing in the Common Catalogue to allow marketing, there will be additional costs in adding varieties to the UK national list. This cost is expected to be below the de minimis threshold for requiring an impact assessment. It is expected to affect fewer than 500 companies in England and Wales in listing between them around 200 varieties of minor agricultural crops and vegetables each year. This cost will apply as and when new varieties are added to the UK national list and will be borne by the businesses who benefit from this service
- 12.4 There is no, or no significant impact on the public sector. The Animal and Plant Health Agency will receive more applications for national listing, corresponding to increase for businesses described in section 12.3. The costs will largely be recovered through fees paid by businesses using the service.
- 12.5 An Impact Assessment has not been prepared for this instrument because no significant impact on business or the voluntary sector is foreseen.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 The temporary period for accepting EU seed and propagating material will constrain the impact on small businesses (employing up to 50 people). This instrument largely maintains the status quo and therefore does not introduce new duties or burdens on business.

14. Monitoring & review

- 14.1 The approach to monitoring this legislation is through the course of normal departmental business, as no substantive changes to current procedures or standards for the marketing of seeds and other plant propagating material are being introduced.
- 14.2 As this instrument is made primarily under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

- 15.1 Andy Mitchell at the Department for Environment Food and Rural Affairs.
Telephone: STD: 02080 265714 or Mobile: 07827 983417 or email:
Andy.Mitchell@defra.gsi.gov.uk
- 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, can confirm that this Explanatory Memorandum meets the required standard.

Annex [x]
Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/ESIC
Appropriateness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on

		<p>exercising powers in Schedule 2</p> <p>In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs</p>	<p>retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.</p>
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the ‘good reasons’ for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister’s opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s.2(2) ECA, identifying the relevant law before exit day, and explaining the instrument’s effect on retained EU law.
Scrutiny statement where amending regulations	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2),

<p>under 2(2) ECA 1972</p>		<p>which modifies subordinate legislation made under s.2(2) ECA</p>	<p>Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.</p>
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Part 2
Statements required when using enabling powers
under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

- 1.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- “In my view the Marketing of Seeds and Plant Propagating Material (Amendment) (England and Wales) (EU Exit) Regulations 2018 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.
- 1.2 This is the case because the instrument contains changes not affecting current standards or procedures and as such would normally not be expected to be debated in Parliament.

2. Appropriateness statement

- 2.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- “In my view The Marketing of Seeds and Plant Propagating Material (Amendment) (England and Wales) (EU Exit) Regulations 2018 does no more than is appropriate”.
- 2.2 This is the case because the instrument contains only technical changes not affecting current standards and procedures.

3. Good reasons

- 3.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- “In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.
- 3.2 These are set out in section 7 in the main body of this explanatory memorandum.

4. Equalities

- 4.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble, has made the following statement “The Marketing of Seeds and Plant Propagating Material (Amendment) (England and Wales) (EU Exit) Regulations 2018 does 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.
- 4.2 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- “I, Lord Gardiner of Kimble, Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, 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.”.

5. Explanations

- 5.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.