

**EXPLANATORY MEMORANDUM TO
THE MARKETING OF SEEDS AND PLANT PROPAGATING MATERIAL
(AMENDMENT ETC.) (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 etc.) (EU Exit) Regulations 2018 amend the Seeds (National Lists of Varieties) Regulations 2001 (the “National List Regulations 2001”) and retained EU law on the marketing of seeds. The amendments address operability issues so that the National List Regulations 2001 and retained EU law continue to function after withdrawal and revoke any retained EU law which will become redundant. The amendments are for provisions which are inappropriate or redundant on withdrawal and are to ensure continuity of seed supply.

Explanations

What did any relevant EU law do before exit day?

- 2.2 A set of EU directives regulates the marketing of seed and plant propagating material in the EU. This includes Common Catalogue directives for the registration of varieties of the agricultural and vegetable species by Member States (known as national listing, a prerequisite for marketing a variety) and to compile these national lists in the Common Catalogues. A variety on a Common Catalogue is marketable across the EU.
- 2.3 National listing is the first requirement for the statutory certification and marketing of seed and other propagating material of agricultural and vegetable species. It provides consumer protection by ensuring identity of the variety. Other directives in the set prescribe the certification process and set minimum quality standards for marketed material.
- 2.4 This instrument amends legislation with UK application, that is the National List Regulations 2001 and the directly applicable EU decisions and regulations listed below. Other certification and marketing legislation is devolved and is dealt with for England, and partly for Wales, in a separate instrument.
 - i. Commission Regulation (EC) 217/2006: authorises Member States to permit temporarily the marketing of seed which does not meet the required germination standard;
 - ii. Commission Decision 80/512/EEC: permits the United Kingdom to relax certain seed testing requirements;
 - iii. Council Decision 2003/17/EC: confers equivalence status to third countries whose processes for seed production and certification are considered comparable to those of the European Union;

- iv. Council Decision 2005/834/EC: lists third countries whose processes for maintaining plant varieties are considered equivalent to those of the European Union;
- v. Commission Implementing Decision 2012/340/EU: permits Member States to participate in a temporary experiment to assess the efficacy of field inspections of certain types of crops being carried out by industry under license rather than by officials;
- vi. Commission Implementing Decision 2014/150: permits Member States to participate in a temporary experiment to produce and market seed of genetically diverse populations, rather than uniform varieties, to assess potential benefits such as disease resistance;
- vii. Commission Implementing Decision 2017/547/EU: permits Member States to participate in a temporary experiment to assess the quality of seed potato tubers derived from true potato seed.

Why is it being changed?

- 2.5 This instrument amends provisions which are inappropriate or redundant as a result of the UK's withdrawal from the EU and makes changes to ensure that the law functions effectively. For example, the National List Regulations 2001 allow varieties registered on the EU Common Catalogues to be marketed in the UK. In a no deal scenario, the UK National List will be deleted from the Common Catalogue and, after a temporary period to ensure seed supply, it will no longer be appropriate for the UK to recognise the Common Catalogue.
- 2.6 Each of the directly applicable EU decisions and regulations listed in section 2.4 requires amendment to ensure that retained EU law continues to operate effectively. For example, there are references to the Commission, Community, Member States and third countries, plus reporting obligations which will no longer be appropriate after exit.

What will it now do?

- 2.7 This instrument firstly uses the European Communities Act 1972 to update the list of species for which the UK has a derogation for the implementation of EU legislation. This concerns crops such as rice for which there is little or no marketing of seed in the UK. Different approaches have been taken in the past when the list of derogated species has been revised by the EU, which unless updated in UK legislation, will lack transparency for businesses and consumers after withdrawal. This instrument also corrects an out of date reference to the Novel Food Regulations relating to the marketing of seed of genetically modified organisms.
- 2.8 The main parts of this instrument make operability changes to allow UK seeds law to continue to function effectively on exit. References to the Common Catalogue will be removed.
- 2.9 This instrument also provides for a temporary two year period during which time Basic Seed certified in the European Economic Area and Switzerland may be accepted into the UK certification system for further seed production.
- 2.10 This instrument will amend retained EU law, such as the provisions allowing the temporary relaxation of seed germination standards to resolve seed supply difficulties due to adverse weather conditions. It will amend retained EU law for the continuation

of temporary experiments established to test improved alternatives to current seed marketing practices and for existing equivalent third countries to continue to trade with the UK. These amendments are to make existing provisions operable and do not introduce new legislative powers.

- 2.11 This instrument will revoke retained EU law which becomes redundant on withdrawal.

3. Matters of special interest to Parliament

Matters of special interest to the Sifting Committees

- 3.1 This instrument is being laid for sifting under the powers of 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 the United Kingdom.
4.2 The territorial application of this instrument is the United Kingdom.

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 National List Regulations 2001 using powers under section 2(2) of the European Communities Act 1972 to update the list of derogated species and correct the definition of the Novel Food Regulations.
- 6.2 This instrument amends the National List Regulations 2001 through the European Union (Withdrawal) Act 2018 to address deficiencies arising from the UK's exit from the European Union.
- 6.3 Through the European Union (Withdrawal) Act 2018, directly applicable EU regulations and decisions (retained EU law) on the marketing of plant propagating material listed in section 2.1 will be converted into UK law. This instrument amends this retained EU law to make it operable once the UK leaves the EU or revokes it where it is considered to have no practical application or is otherwise redundant.
- 6.4 The National List Regulations 2001 were made on a UK basis though the subject matter of seeds and plant propagating material is devolved. This instrument has been developed in collaboration with Devolved Administration officials and the amendments being made by this instrument provide a common UK approach.

7. **Policy background**

What is being done and why?

- 7.1 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. This instrument remedies deficiencies that will arise in both domestic and European legislation retained under the 2018 Act, for example inappropriate references, or references which have no practical application in relation to the UK.

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(1) 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 that Act (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 full public consultation on this instrument but has carried out a series of targeted consultations with industry representative organisations in the sector. These organisations, who represent the majority of businesses directly affected by the amendments, are content with Defra's approach. Defra continues to update the sector at regular and established stakeholder forums.

11. **Guidance**

- 11.1 As this legislation does not substantively change the processes for variety registration and retains the EU law required for processes to continue, 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 is expected to be as follows: Given the UK's significant dependence on the EU for the import of seed to enable certain produce to be grown, the UK plans to recognise Common Catalogue varieties for a temporary two year period. This is expected to mitigate the impacts that would otherwise be felt by the industry sectors marketing seed and propagating material of agricultural and vegetable species. Without this, or any adaptation by the industry to source seed from non-EU countries or produce UK seed, there could be significant losses to these immediate sectors and beyond, such as food manufacturing and retail,

worth a total of around £3bn annually. This figure has been taken from Defra's 2017 Agriculture in the UK document estimating £3bn of Gross Value Added (GVA) from crop and horticulture sectors. Estimates are based on calculating crop and horticulture output as a proportion of overall agriculture output, and applying to overall GVA.

- 12.2 In the longer term, for varieties where the UK is not the primary market and UK businesses rely on 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 the service.
- 12.3 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 the increase for businesses described in section 12.2. The costs will be largely recovered through fees paid by businesses using the service.
- 12.4 An Impact Assessment has not been prepared for this instrument because no, or 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 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is for this instrument to maintain the status quo, therefore making no changes which would otherwise introduce duties or burdens on businesses.

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 for national listing of varieties or the marketing of seed and propagating material are being introduced.
- 14.2 As this instrument is made primarily under the European Union (Withdrawal) Act 2018, no review clause is required.

15. **Contact**

- 15.1 Andy Mitchell at the Department for Environment Food and Rural Affairs. Telephone 02080 265714 or 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 at the Department for Environment Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

Annex
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 exercising powers in	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give

		Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
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 under 2(2)	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House

ECA 1972		subordinate legislation made under s.2(2) ECA	<p>of Parliament,</p> <p>b) containing information about the relevant authority's response to—</p> <p>(i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and</p> <p>(ii) any other representations made to the relevant authority about the published draft instrument, and,</p> <p>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 etc.) (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 technical changes not affecting current processes 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 etc.) (EU Exit) Regulations 2018 does no more than is appropriate”.

- 2.2 This is the case because the instrument only contains technical changes not affecting current standards and practices.

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 7.1 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 instrument 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.