

**EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION  
WITHIN THE SCOPE OF THE UK/EU WITHDRAWAL AGREEMENT AND  
WINDSOR FRAMEWORK**

**COM(23)414 + ANNEX**

**COM(23)415 + ANNEX**

**SEC(23)414**

**SWD(23)410**

**SWD(23)414**

**SWD(23)415**

**PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF  
THE COUNCIL ON THE PRODUCTION AND MARKETING OF PLANT  
REPRODUCTIVE MATERIAL IN THE UNION, AMENDING REGULATIONS (EU)  
2016/2031, 2017/625 AND 2018/848 OF THE EUROPEAN PARLIAMENT AND OF  
THE COUNCIL, AND REPEALING COUNCIL DIRECTIVES 66/401/EEC,  
66/402/EEC, 68/193/EEC, 2002/53/EC, 2002/54/EC, 2002/55/EC, 2002/56/EC,  
2002/57/EC, 2008/72/EC AND 2008/90/EC (REGULATION ON PLANT  
REPRODUCTIVE MATERIAL)**

**PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF  
THE COUNCIL ON THE PRODUCTION AND MARKETING OF FOREST  
REPRODUCTIVE MATERIAL, AMENDING REGULATIONS (EU) 2016/2031 AND  
2017/625 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AND  
REPEALING COUNCIL DIRECTIVE 1999/105/EC (REGULATION ON FOREST  
REPRODUCTIVE MATERIAL)**

**REGULATORY SCRUTINY BOARD OPINION**

**SUBSIDIARITY GRID**

**IMPACT ASSESSMENT**

**IMPACT ASSESSMENT EXECUTIVE SUMMARY**

Submitted by Department for Environment Food and Rural Affairs

11 August 2023

## SUBJECT MATTER

1. These two European Commission proposals represent a restructure of the existing legislation on plant reproductive material (“PRM proposal”) and forest reproductive material (“FRM proposal”)<sup>1</sup>. The published regulations will be followed by a series of implementing and delegated acts, which will contain the detail of how the regulations should be implemented in practice. Once this detail is available, a fuller assessment will be provided on the level of divergence between the proposed regulations and the current legislation.
2. Access to high quality PRM and FRM is important to the success of agriculture, horticulture, and establishment of forests, and in encouraging the continued development of new and innovative plant varieties. The current EU legislation aims to ensure that access to PRM and FRM that:
  - meets the requirements for variety identify and purity, providing growers with the confidence that the PRM/FRM they buy is of the specified variety,
  - is of high quality, will grow and germinate and is free from contaminants like weed seeds, and
  - is healthy and free of significant pests and diseases or other organisms that reduce the quality of the PRM/FRM.

Some parts of the current EU legislation do, however, date back decades and therefore do not take into account technological developments or address the challenges posed by climate change. This EU proposal therefore looks to encourage the development of new varieties that will help address these challenges. The current legislation also applies more stringent requirements to the development of new varieties of certain agricultural species in comparison to other species (for example, fruit or vegetable varieties). Again, this proposal aims to address this by creating a common and simplified framework.

The proposal also aims to improve coherence of the PRM/FRM legislation with plant health legislation, particularly in relation to the control of Regulated Non-Quarantine Pests (RNQPs).<sup>2</sup>

The Commission’s proposals can be found in full here: [Future of EU rules on plant and forest reproductive material \(europa.eu\)](#)

3. The existing EU rules on PRM (10 Directives on marketing) and FRM (one Directive), which are proposed to be revoked and replaced by these new proposals,

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<sup>1</sup> Plant Reproductive Material (PRM) is all types of plant material (seeds, tubers or whole plants) intended for producing entire plants. Forest Reproductive Material is plant material including seeds and whole plants intended for forestry purposes.

<sup>2</sup> RNQPs are pests that are present in the Union, are mainly spread by plants for planting and whose presence on plants for planting has an unacceptable economic impact

were transposed into GB law prior to EU exit. This Retained EU Law (REUL) makes up a significant proportion of the legislation governing plant and forest reproductive material in GB and refers to the EU PRM/FRM Marketing Directives as of IP completion day.

4. Under the Windsor Framework, limited areas of EU law – including that for plant reproductive material – continue to apply in Northern Ireland. Northern Ireland will therefore continue to apply the requirements of the Directives covering the marketing and variety registration of plant varieties and any new European Union acts made under powers within those Directives.

## **SCRUTINY HISTORY**

5. The Parliament Scrutiny history relevant to this Explanatory Memorandum is contained in Annex A.

## **MINISTERIAL RESPONSIBILITY**

6. Responsibility lies with the Secretary of State for Environment, Food and Rural Affairs.

## **INTEREST OF THE DEVOLVED ADMINISTRATIONS**

7. The Department of Agriculture, Environment and Rural Affairs (DAERA) in the Northern Ireland Executive will have a particular interest in this proposal as it would apply directly to Northern Ireland, once agreed at EU level. DAERA were consulted on this EM but did not have comments.
8. Scottish Government and Welsh Government have an interest as this policy area is devolved and is subject to the [Provisional] Common Framework on Plant Varieties and Seeds. Welsh Government were consulted and asked that the EM make it clear that this is a devolved policy area, as well as providing suggested edits on the importance of the current PRM and FRM legislation. Scottish Government were consulted and provided drafting comments, with suggestions to some terms used in the document, with Welsh Government also agreed with.

## **LEGAL AND PROCEDURAL ISSUES**

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### **i. Legal Base**

The legal basis for both proposals is Article 43(2) of the Treaty on the Functioning of the European Union (TFEU), that provides the legal basis for adopting

provisions necessary for the pursuit of the objectives of the common agricultural policy.

## ii. **Voting Procedure**

Ordinary Legislative Procedure.

## iii. **Timetable for adoption and implementation**

The Commission does not appear to have set out a timetable for adoption. Both proposals contain provisions for application 36 months/3 years after the date of entry into force, apart from some minor new provisions in the PRM proposal applying 60 months after the date of entry into force. Article 40 (4) of the PRM proposal will apply from 3 days after the entry into force of the regulations – this will require Member States to notify non-compliant labels of imported PRM.

## **POLICY AND LEGAL IMPLICATIONS**

10. The Government's initial review of the proposals suggests that much of the existing EU system of listing new plant varieties, and certification of seed and plant propagating material is retained. These proposals appear to be an update aimed at making the existing system a better fit for the modern world, rather than a significant overhaul of legislative provisions.
11. Notably, there are structural changes to the PRM legislation, revoking 10 existing Directives and replacing them with Regulation – this is akin to similar changes made since the introduction of the Lisbon Treaty in parallel policy areas, such as animal health (Regulation (EU) 2016/429) and official controls on food and feed (Regulation (EU) 2017/625). The FRM proposal would also revoke the existing Directive and replace it with a Regulation. Regulations are directly applicable in EU member states (and, in this case, in Northern Ireland), rather than being transposed by domestic legislation in the member state, as Directives are. The proposals also contain significant powers for the European Commission to set out more detail in delegated and implementing acts – again, akin to similar recent legislative revisions.
12. These proposals were long expected as they build on the Commission's 2013 PRM proposal aimed at creating a common and simplified framework for all sectors of seed and other plant reproductive material. The 2013 PRM proposal was rejected in 2014 by the European Parliament (although the Council expressed support) and in 2015 the Commission withdrew the proposal. These latest proposals build on the previous work undertaken by the Commission.

13. In terms of policy changes, there are derogations proposed for stakeholders who sit outside of conventional agricultural production systems. Less stringent requirements are being proposed for the marketing and exchange of PRM in specific scenarios detailed below:
14. **Conservation varieties** – These are plant varieties naturally adapted to local and regional conditions that are at risk of genetic erosion. Such varieties do not meet the usual requirements for listing as they often lack uniformity. Such varieties will now only have to meet the requirements for Standard Seed, which are lower than those for Certified Material.
15. **Seed conservation networks, gene banks etc** – PRM may be marketed to or between seed conservation networks without having to be a registered variety or meet the certification requirements.
16. **PRM of heterogeneous material<sup>3</sup>** – This may be produced and marketed within the union without belonging to a variety.
17. **PRM marketed to final users** - In current legislation PRM of certain species that is intended for non-professional final users (such as amateur gardeners) must meet the same requirements as PRM intended for professional operators. The PRM proposal introduces a derogation for some of these requirements for non-professional final users allowing them to be sold seeds and plant material that has not undergone official certification or does not belong to an officially registered variety.
18. **Seed exchanged in kind between farmers** – This derogation allows farmers to exchange seeds in kind if the seeds fulfil certain conditions. The seeds cannot belong to a variety for which plant variety rights have been granted, and quantities that can be exchanged are limited.
19. **EU Official Controls Regulation** - There is a proposal to extend the EU Official Controls Regulation to PRM and FRM rules, extending the basic rules and principles of the Regulation to PRM and FRM including those for the competences of authorities, delegation of tasks and certification.
20. **Regulated Non-Quarantine Pests** – There is a proposed amendment of the plant health regulations (2016/2031) to provide clarity in relation to Regulated Non-

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<sup>3</sup> Heterogenous material is PRM material with a high level of genetic diversity that, by its nature, cannot meet traditional DUS criteria (Distinctness, Uniformity and Stability) necessary for marketing in GB.

Quarantine Pests (RNQPs) which are currently listed in both the plant health regulations and the marketing legislation for PRM and FRM. Under the proposal, RNQPs will be exclusively regulated under 2016/2031. Under the proposal for FRM, the official label for FRM will be combined with the plant passport.

**21. The proposal introduces the concept of a “quality pest”** – that is a pest which occurs during PRM/FRM production or storage, is not regulated as a quarantine pest or RNQP, and whose presence on plant propagating material has an unacceptable adverse impact on its quality or an unacceptable economic impact. PRM and FRM will be required to be practically free of these quality pests. It is possible that some species currently listed as RNQPs will be reclassified as quality pests. This is because RNQPs are controlled on **all** plants for planting, but in some instances, it may be more appropriate for control only on PRM or FRM, but there is no indication that a list of quality pests will be produced. Such quality pests are still controlled under the current legislation but are defined as “pests which reduce the usefulness or quality” of the PRM.

**22. Organic Varieties** - The proposal introduces adapted rules for organic varieties. This allows varieties that are produced for organic production to have adjusted rules for DUS<sup>4</sup> testing, in particular in regard to uniformity. Varieties for organic production should also undergo examination for Value for Sustainable Cultivation and Use under organic conditions.

**23. Value for Sustainable Cultivation and Use** - The proposal changes the current “Value for Cultivation and Use” testing (VCU) to “Value for Sustainable Cultivation and Use” (VCSU). Currently VCU testing is only required for new varieties of agricultural species, but this proposal extends this requirement to fruit and vegetable varieties. To be listed, current VCU tests for agricultural varieties require that they demonstrate that they are an improvement compared to other varieties of the same species in respect to at least one growing trait such as yield, susceptibility to damage, quality, or susceptibility to pests and diseases. The introduction of VCSU means that new varieties will have a wider number of categories, related to sustainability, where they may demonstrate they are superior to other currently available categories in order to be listed. New categories under VCSU include more efficient use of natural resources and reduced need for external inputs.

**24. The FRM proposal** expands the definition of FRM by listing a wider range of uses compared to the current legislation. This is to address a lack of clarity in the

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<sup>4</sup> **Variety Listing (VL)** - new plant varieties of agricultural and vegetable crops must undergo 2 to 3 years of trialling to ensure they are ‘Distinct, Uniform and Stable (DUS)’ and have Value for Cultivation and Use (VCU)’ before they can be added to the Variety List and marketed in the UK. This ensures that no new variety can be marketed unless it is genuinely new and an improvement on varieties already being marketed.

legislation which meant low quality FRM was being used in some cases. The new definition of FRM encompasses uses for wood and biomaterial production, as well as conservation, restoration, and climate mitigation. It also includes a new requirement for member states to ensure sufficient supply of FRM to reforest areas destroyed by natural disasters.

25. The FRM proposal requires all FRM be derived from approved Basic material with a derogation for Basic material intended for the purpose of conserving forest genetic resources.
26. As the EU have not yet published the implementing and delegated acts that will contain details of how these regulations will be implemented, the future level of regulatory divergence between NI and GB is uncertain. It is unlikely that there will be divergence between certification standards that different grades of PRM or FRM must meet, as these are largely based on international standards. For example, both the UK and most EU member states are members of the OECD Seed Schemes and trade agricultural seed under OECD certification. This means that we are implementing the same certification standards, e.g., varietal purity, as they have been set by the OECD.
27. As stated above, the EU is introducing new requirements for listing of varieties of vegetables and fruit, namely that they undergo VSCU testing, which do not apply in GB. Further analysis is required to ascertain what effect this regulatory divergence may have once the relevant delegated acts are published by the EU with the details of the requirements and methodologies for VSCU testing.
28. At EU-exit, the EU granted Great Britain equivalence for most relevant products under this legislation, meaning that the EU recognises GB legislation as equivalent to theirs in effect and relevant products can be exported from GB into the EU. This includes agricultural seed (excluding vegetable seed), fruit and vegetable propagating material and FRM. Equivalence was not granted for seed potatoes, though seed potatoes can be moved between professional operators in GB and NI under The Windsor Framework.
29. The decision regarding equivalence for agricultural seed, which applies not only to the UK but several third countries, is not due to expire until 31<sup>st</sup> December 2029. This is based upon our membership of the OECD seed schemes, and so the new PRM proposal is not expected to affect this decision.
30. This legislative proposal appears unlikely to change our equivalence recognition, but reassurances to that effect will be sought from the Commission.
31. The FRM proposal is not expected to affect the current equivalence decision of the EU in regard to FRM. The proposal outlines that for countries to be equivalent they

must participate in the OECD Scheme for the Certification of Forest Reproductive Material Moving in International Trade and the UK is a member of this scheme.

32. Defra and the Devolved Administrations are currently working together to produce a UK Strategy on Plant Varieties and Seeds. As the strategy is developed and finalised, the proposed EU changes will be considered, including their impact in Northern Ireland and any possible divergence. Stakeholders will be extensively consulted to assess what impacts there might be in the GB as a result, and what action is optimal for the UK to take, including potential changes to our own PRM/FRM legislation and the timeline for these.

33. We will continue to keep the committee informed and updated regarding the EU legislative process regarding this regulation, and on our assessment of potential resulting GB-NI divergence.

## **CONSULTATION**

34. Defra and the Devolved Administrations already plan to jointly consult external stakeholders widely and extensively as part of the development of a new UK Strategy for the Plant Varieties and Seeds policy area. Stakeholder views on these EU proposals and their development as they evolve through the ordinary legislative procedure will form part of that consultation.

## **FINANCIAL IMPLICATIONS**

35. No financial implications are identified at this early stage. This will be kept under review.



**THE RT HON LORD BENYON  
MINISTER FOR BIOSECURITY, MARINE AND RURAL AFFAIRS  
DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS**



**PARLIAMENTARY SCRUTINY HISTORY RELEVANT TO A:**

**PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE PRODUCTION AND MARKETING OF PLANT REPRODUCTIVE MATERIAL IN THE UNION, AMENDING REGULATIONS (EU) 2016/2031, 2017/625 AND 2018/848 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL, AND REPEALING COUNCIL DIRECTIVES 66/401/EEC, 66/402/EEC, 68/193/EEC, 2002/53/EC, 2002/54/EC, 2002/55/EC, 2002/56/EC, 2002/57/EC, 2008/72/EC AND 2008/90/EC (REGULATION ON PLANT REPRODUCTIVE MATERIAL)**

**PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE PRODUCTION AND MARKETING OF FOREST REPRODUCTIVE MATERIAL, AMENDING REGULATIONS (EU) 2016/2031 AND 2017/625 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AND REPEALING COUNCIL DIRECTIVE 1999/105/EC (REGULATION ON FOREST REPRODUCTIVE MATERIAL)**

**REGULATORY SCRUTINY BOARD OPINION**

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**IMPACT ASSESSMENT**

**IMPACT ASSESSMENT EXECUTIVE SUMMARY**

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**CONSOLIDATED EM ON REGULATION (EU) 2018/848 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 30 MAY 2018 ON ORGANIC PRODUCTION AND LABELLING OF ORGANIC PRODUCTS AND REPEALING COUNCIL REGULATION (EC) NO 834/2007**

**DATE DEFRA EM SIGNED: 17/3/2022**

**SCRUTINY COMMITTEES' RECOMMENDATIONS:**

<b>COMMONS</b>	<b>LORDS</b>
<b>SCRUTINY COMPLETED (OUTCOME AGENDA NO 1 11/5/22)</b>	<b>CLEARED BY HOL LETTER 2/7/22. SIFTED FOR SCRUTINY TO THE PROTOCOL ON IRELAND/NORTHERN IRELAND SUB-COMMITTEE (AT CHAIR'S SIFT NO 17; 1/4/22)</b>