

EXPLANATORY MEMORANDUM TO
THE PLANT VARIETIES ACT (AMENDMENT) REGULATIONS 2026

2026 No. 160

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 His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

- 2.1 Baroness Hayman of Ullock, Parliamentary Under-Secretary of State at the Department for Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.
- 2.2 Nicola Spence, Deputy Director for Plant Health, Bee Health and Seeds, at the Department for Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

3. Contact

- 3.1 Alison Conder at the Department for Environment, Food and Rural Affairs can be contacted by email at the following address with any queries regarding the instrument: defra-plant-varieties-and-seeds@defra.gov.uk. Alternatively, the department can be contacted by telephone: 03459 33 5577.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

- 4.1 This instrument amends the definition of a small farmer in section 9(10) of the Plant Varieties Act 1997 (“the 1997 Act”) to provide a clearer definition in line with the current policy intent and to remove the potential for confusion and ambiguity in its interpretation.

Where does the legislation extend to, and apply?

- 4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland.
- 4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England, Wales, Scotland and Northern Ireland.

5. Policy Context

What is being done and why?

- 5.1 The 1991 Convention of the International Union for the Protection of New Varieties of Plants (UPOV Convention) provides the basis for intellectual property protection for plant varieties. The 1997 Act implements the UK’s obligations under the UPOV Convention and provides for plant breeders’ rights in the UK. Section 9 of the 1997

Act provides that plant breeders' rights shall not extend to a farmer's use of seed, on his own holding, of harvested material obtained from the holding i.e. farm saved seed. The exemption is limited to species and groups specified under the Plant Breeders' Rights (Farm Saved Seed) (Specification of Species and Groups) Order 1998.

- 5.2 Under section 9 (3) of the 1997 Act, the farmer, in using farm saved seed, is however liable to pay the holder(s) of the rights equitable remuneration. Section 9 (4) of the 1997 Act provides an exception from paying equitable remuneration to the holder(s) of the plant variety right for the use of farm saved seed material if, at the time of use, the farmer is considered to be a small farmer as defined in section 9 (10). The UK applies this definition to mean that, in relation to certain arable crops (excluding seed potatoes), the collective amount of harvest from farm saved seed from specified protected varieties grown by the farmer must have been grown on an area of land that is no larger than that of an area sufficient to produce up to 92 tonnes of cereals harvest. EU Council Regulation 2100/94 on Community plant variety rights uses a 92-tonne threshold in determining the definition of a small farmer and it has been the long-standing policy intention to align the UK's definition of a small farmer with that of the EU's. The UK definition of a small farmer is designed to ensure equitable remuneration for breeders while exempting genuinely small-scale operations. A production-based threshold is used rather than land area, in order to directly measure the commercial scale of the farm-saved seed activity rather than the overall size of the farming business.
- 5.3 The definition incorporates external influences, including climate change and its effects on agricultural productivity. By assessing actual production within a specified range rather than potential output under ideal conditions, it provides a more adaptable framework.
- 5.4 The purpose in amending the definition of a small farmer in section 9(10) of the 1997 Act is to provide a clearer definition in line with the policy intent and remove the potential for confusion and ambiguity in its interpretation. This will ensure that breeders continue to receive equitable payment on farm saved seed by eligible growers which, in turn, supports breeders to continue to invest in innovation and solutions in plant breeding which benefit farmers and improves resilience to climate change.

What was the previous policy, how is this different?

- 5.5 Existing policy has not changed, however the previously drafted definition of a small farmer was potentially open to interpretation that could have allowed the small farmer exemption to apply to farmers cultivating multiple varieties of farm-saved seed from specified protected species, provided each individual variety was grown on an area no larger than that required to produce 92 tonnes of cereals per harvest. This interpretation would have effectively increased the quantity of a given species that a farmer could grow and harvest before being required to pay remuneration to the holder(s) of the plant variety right. Such an outcome would not align with UK Government's policy intent and could potentially reduce the payments available to breeders, thereby limiting their ability to reinvest in further innovation.

6. Legislative and Legal Context

How has the law changed?

- 6.1 This instrument substitutes words within the text at section 9(10) of the 1997 Act in respect of the definition of a small farmer to make the meaning clearer and to remedy an unintended ambiguity.
- 6.2 Prior to the UK leaving the European Union, the provision under section 9(10) of the 1997 Act cross referenced to EU Council Regulation 2100/94 on Community plant variety rights (the “Council Regulation”) in its definition of a small farmer. That provision was classified as EU derived domestic legislation as defined under section 2(2)(d) of the European Union (Withdrawal) Act 2018 (“EUWA”).
- 6.3 Section 9(10) of the 1997 Act then continued to form part of domestic law by virtue of section 2(1) EUWA which provides that EU derived domestic legislation, as it has effect in domestic law on Implementation Period (“IP”) completion day, continues to have effect on and after IP completion day. It follows that section 9(10) as originally drafted, continued to have effect and continued to be EU derived domestic legislation on and after IP completion day.
- 6.4 After IP completion day, under powers in section 8 of the EUWA, section 9(10) of the 1997 Act was modified by the Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2019/204. The purpose of this was to ensure policy continuity and to provide legislative operability, since the Council Regulation and its implementing regulations were redundant and were revoked as they had no practical application in the UK after exit. It was therefore necessary to amend the definition of small farmers. There was no policy change. The aim was to preserve and maintain the same outcome as that which occurred from the cross reference to EU law in relation to farm saved seed and small farmers
- 6.5 Section 6(7) of the EUWA states that "assimilated law" means anything which, on or after IP completion day, continues to be, or forms part of, domestic law by virtue of section 2 or 3 or subsection (3) or (6) (as that body of law is added to or otherwise modified by or under this Act or by other domestic law from time to time).
- 6.6 Section 9(10) of the 1997 Act, as amended by the Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2019/204 can be classified as secondary assimilated law for the purposes of the REUL Act.
- 6.7 This instrument makes amendments to secondary assimilated law within the meaning of section 11(2) (as read with section 14(10)) of the REUL Act and is made in exercise of the powers contained in s14 (2) of that Act.

Why was this approach taken to change the law?

- 6.8 This approach was taken to maintain the definition of a small farmer as it stood before EU exit day and to provide greater clarity. There are currently no feasible alternatives available to achieve the policy outcome.

7. Consultation

Summary of consultation outcome and methodology

- 7.1 The REUL Act does not contain a statutory requirement to consult. The UK Government gave a commitment to consultation only in situations whereby the use of the powers in the REUL Act might represent a major policy change or significant reform. This is not the case in this instrument. The amendment being made to the

1997 Act does not change or amend the spirit and intention of the law as it pertains to the definition of a small farmer, rather it re-states the original position but more clearly. The UK Government has, however, committed to seeking consent from the devolved governments when exercising REUL Act powers in areas of devolved competence. The devolved governments in Wales, Scotland and Northern Ireland have therefore been consulted and have consented to the changes being made by this instrument.

8. Applicable Guidance

- 8.1 Existing guidance will continue to apply as no changes are being made to the policy.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

- 9.1 A full Impact Assessment has not been prepared for this instrument as it makes no change to policy and has no material impact on farming practices. It amends the definition of a small farmer within existing legislation in order to remove potential ambiguity in its interpretation. Due to no policy change, the amendment is not expected to affect approximately 1,981 UK farmers who currently qualify for the small farmer exemption.

Impact on businesses, charities and voluntary bodies

- 9.2 There is no, or no significant, impact on business, charities or voluntary bodies because this instrument makes no changes to existing policy.
- 9.3 The legislation does impact small or micro businesses.
- 9.4 To minimise the impact of the requirements on small or micro 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.
- 9.5 There is no, or no significant, impact on the public sector because this instrument makes no change to existing policy.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

- 10.1 The approach to monitoring of this legislation is through the course of normal departmental business, as no change is being made to existing policy.
- 10.2 As this instrument is only made under the relevant European Union Acts (as defined at 13.1), no review clause is required.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

- 11.1 On 24 February 2026 the Sifting Committees agreed with the Government that this instrument does not have to have a debate in parliament though one may still occur. The instrument will therefore remain subject to the negative resolution procedure.

12. European Convention on Human Rights

- 12.1 Baroness Hayman of Ullock, Parliamentary Under-Secretary of State at the Department for Environment, Food and Rural Affairs has made the following statement regarding Human Rights:
“In my view the provisions of the Plant Varieties Act (Amendment) Regulations 2026 are compatible with the Convention rights.”

13. The Relevant European Union Acts

- 13.1 This instrument is made under section 14(2) of the REUL Act and therefore relates to the reform of assimilated law. See part one, section 6 of the Explanatory Memorandum. The Minister has made any relevant statements, below, under the REUL Act.
- 13.2 Baroness Hayman of Ullock, Parliamentary Under-Secretary of State at the Department for Environment, Food and Rural Affairs has made the following statement regarding use of legislative powers in the REUL Act:
“In my view the Plant Varieties Act (Amendment) Regulations 2026 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.
- 13.3 This is the case because the instrument contains a technical change not affecting current processes and as such would normally not be expected to be debated in Parliament.