

POLICY NOTE

THE SEED, PROPAGATING MATERIAL AND COMMON AGRICULTURAL POLICY (EU EXIT) (SCOTLAND) (AMENDMENT) REGULATIONS 2019

SSI 2019/289

1. The above instrument is made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 (“ECA”) and paragraph 1(1) and (3) of schedule 2 and paragraph 21(b) of schedule 7 of the European Union (Withdrawal) Act 2018 (“EUWA”). The instrument is subject to negative procedure.

Purpose of the Instrument

2. To amend the following regulations:

- The Marketing of Vegetable Plant Material Regulations 1995
- The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017
- The Seed and Propagating Material (EU Exit) (Scotland) (Amendment) Regulations 2019
- The Common Agricultural Policy (EU Exit) (Scotland) (Amendment) Regulations 2019
- The Marketing of Horticultural Produce and Bananas (EU Exit) (Scotland) (Amendment) Regulations 2019
- The Seed and Propagating Material (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2019
- The Common Agricultural Policy (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2019

2.1 The amendments ensure that relevant domestic legislation continues to operate effectively following the UK’s Exit from the EU in a no-deal scenario.

2.2 In addition, the Marketing of Vegetable Plant Material Regulations 1995 is amended to implement a derogation available to Members States in Council Directive 2008/72/EC (as amended by Commission Implementing Decision 2013/166) relating to plant material from third countries.

Policy Objectives

3. Where practical and appropriate, in the event of a no-deal exit from the EU, European Union legislation is being retained in UK law. The Seed, Propagating Material and Common Agricultural Policy (EU Exit) (Scotland) (Amendment) Regulations 2019 (“the 2019 Regulations”), so far as made in exercise of powers in EUWA, are necessary in order to correct deficiencies in retained EU law and thereby protect the interests of and provide continuity for producers, businesses and consumers.

4. Schedule 2, paragraph 4(a) of EUWA provides for Scottish Ministers to consult the Secretary of State before making regulations under Part 1 of schedule 2 which come into force before exit day. There was an oversight in relation to this consultation requirement in relation to provision in two SSIs made under Part 1 which revoked provision in earlier SSIs also made under that Part. The two SSIs are:

- The Seed and Propagating Material (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2019, which were made on 28 May 2019 and laid on 30 May 2019; and
- The Common Agricultural Policy (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2019, which were made on 12 June 2019 and laid on 14 June 2019.

5. The 2019 Regulations, which are made after having consulted the Secretary of State, therefore include amendments which revoke and re-introduce relevant provision in these two SSIs, the relevant provisions to come into force immediately before exit day. More specifically to the 2019 Regulations:

- i. revoke and reintroduce an amendment made by the Seed and Propagating Material (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2019 to the Seed and Propagating Material (EU Exit) (Scotland) (Amendment) Regulations 2019 with a view to ensuring the continued operability of legislation in relation to marketing of seeds and plant propagating material following EU Exit. These provisions fulfil a commitment made by the Scottish Ministers to the Scottish Parliament to correct drafting errors in the Seed and Propagating Material (EU Exit) (Scotland) (Amendment) Regulations 2019.
- ii. revoke and reintroduce an amendment made by the Common Agricultural Policy (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2019, to ensure that appropriate transitional provision is made in relation to fresh horticultural produce placed on the market after EU Exit. This transitional provision will tie in with similar provision being made to equivalent Regulations elsewhere in the UK and aims to maintain the efficient trade in horticultural produce and to allow conversion of EU produce to third country status.
- iii. revoke and reintroduce a revocation made by the Common Agricultural Policy (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2019, to ensure that the amendment under regulation 4(2) of those 2019 Regulations takes effect on exit day instead of regulation 7(4) of the Common Agricultural Policy (EU Exit) (Scotland) (Amendment) Regulations 2019. This is to ensure that as of exit day, determinations made under regulation 16(1)(d) of the Rural Development (Scotland) Regulations 2015 take into account monies whether their source is domestic or European Union funds.

6. Additionally, in exercise of powers in ECA, the 2019 Regulations implement Article 16 of Council Directive 2008/72/EC, providing a derogation that allows vegetable plant growers / breeders in Scotland to import vegetable plants from 3rd countries producing high quality plants and extends the period to which this derogation applies. (A transposition note showing how this Directive is transposed by the 2019 Regulations has been published.)

Explanation of the law being amended by the regulations

7. The Marketing of Vegetable Plant Material Regulations 1995

The marketing of vegetable plant material is regulated at European Union level by Council Directive 2008/72/EC of 15 July 2008 on the marketing of vegetable propagating and planting material, other than seed. The provisions from the Directive are enforced domestically by the Marketing of Vegetable Plant Material Regulations 1995 (SI 1995/2652, “the 1995 Regulations”). The 1995 Regulations also implement Commission Directive 93/61/EEC and set quality standards for the marketing of plant material. They require suppliers to retain records on the buying, selling or delivery of plant material and confer powers to inspectors to enter the premises of a supplier to ensure compliance in accordance with required standards and to issue compliance notices or prevent the marketing or movement of unsatisfactory plant material.

8. The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017

The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017 (SSI 2017/177, “the 2017 Regulations”) enforce provisions of Council Directive 2008/90/EC on the marketing of fruit plant propagating material and fruit plants intended for fruit production. The 2017 Regulations contain requirements for the marketing of fruit plant material. This includes requirements for certification and registration of fruit plant material, provisions for packaging, sealing and labelling and regulations surrounding suppliers. The 2017 Regulations also sets out inspectors’ powers, including a power to service notices and a power to prohibit movement of plant material.

9. The Seed and Propagating Material (EU Exit) (Scotland) (Amendment) Regulations 2019 and the Seed and Propagating Material (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2019

9.1 The Seeds and Propagating Material (EU Exit) (Scotland) (Amendment) Regulations 2019 amends provisions in -

- The Vegetable Seed Regulations 1993
- The Cereal Seed (Scotland) Regulations 2005
- The Fodder Plant Seed (Scotland) Regulations 2005
- The Oil and Fibre Plant Seed (Scotland) Regulations 2004
- The Beet Seed (Scotland) (No 2) Regulations 2010
- The Seed (Licensing and Enforcement) (Scotland) Regulations 2006
- The Marketing of Vegetable Plant Material Amendment (Scotland) Regulations 2007
- The Seed Potatoes (Scotland) Regulations 2015
- Marketing of Vegetable Plant Material Amendment (Scotland) Regulations 2014
- The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017
- The Marketing of Ornamental Plant Propagating Material Amendment (Scotland) Regulations 2018 (“the relevant regulations”)

which are inappropriate or redundant as a result of a no-deal withdrawal of the UK from the EU. The changes were minor and of a technical nature, and made to ensure that the law functions correctly after exit day. The Regulations also contain amendments to update

provisions in some of the relevant regulations before they all become retained EU law on exit day.

9.2. The Seeds and Propagating Material (EU Exit) (Scotland) (Amendment) (No 2) Regulations 2019 amends drafting errors in the Seed and Propagating Material (EU Exit) (Scotland) (Amendment) Regulations 2019 and fulfil a commitment made by the Scottish Ministers to the Scottish Parliament to correct these errors. The Regulations also provide for the implementation of Commission Implementing Decision (EU) 2019/120, which amends Article 12(2) of Council Directive 2008/90/EC, extending the date in a derogation for the marketing of fruit plants and propagating material to third countries for a further four year period (until 31 December 2022).

10. The Common Agricultural Policy (EU Exit) (Scotland) (Amendment) Regulations 2019 and the Common Agricultural Policy (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2019 (the “CAP Regulations”)

10.1 The Common Agricultural Policy (EU Exit) (Scotland) (Amendment) Regulations 2019 amends provisions in –

- The Common Agricultural Policy (Direct Payments etc.) (Scotland) Regulations 2015
- The Common Agricultural Policy (Cross-Compliance) (Scotland) Regulations 2014
- The Crofting Counties Agricultural Grants (Scotland) Scheme 2006
- The Less Favoured Area Support Scheme (Scotland) Regulations 2010
- The Rural Development (Scotland) Regulations 2015
- The Rural Payments (Appeals) (Scotland) Regulations 2015

10.2 The Common Agricultural Policy (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2019 amends provisions in –

- The Marketing of Horticultural Produce (Scotland) Regulations 2009
- The Rural Development (Scotland) Regulations 2015
- The Common Agricultural Policy (EU Exit) (Scotland) (Amendment) Regulations 2019
- The Marketing of Horticultural Produce and Bananas (EU Exit) (Scotland) (Amendment) Regulations 2019

10.3 The CAP Regulations amend the instruments listed above to update out of date references and to correct deficiencies arising as a result of the withdrawal of the UK from the EU. The changes are minor and of a technical nature and ensure that the law will function correctly after exit day.

10.4 The Rural Development (Scotland) Regulations 2015 referred to above make provision to implement Regulation (EU) No 1303/2013 (the Common Provisions Regulation) and Regulation (EU) No 1305/2013 (the Rural Development Regulation). Those EU instruments make provision for EU-funded support for measures in Member States through the framework of rural development programmes, being the Scottish Rural Development Programme in Scotland. These 2015 Regulations also make provision in relation to: applications, undertakings, claims and payments; LEADER grants; enforcement, offences and recovery of grant; and other miscellaneous provisions.

11. The Marketing of Horticultural Produce and Bananas (EU Exit) (Scotland) (Amendment) Regulations 2019

11.1 The Marketing of Horticultural Produce and Bananas (EU Exit) (Scotland) (Amendment) Regulations 2019 amends the Marketing of Horticultural Produce (Scotland) Regulations 2009 and the Marketing of Bananas (Scotland) Regulations 2012 to ensure that they continue to operate effectively following the UK's Exit from the EU in a no-deal scenario.

11.2 The Marketing of Horticultural Produce (Scotland) Regulations 2009 as they stand make provision for enforcement of Commission Implementing Regulation (EU) No 543/2011. They designate Scottish Ministers as the inspection body for Scotland and create offences and penalties for non-compliance with EU marketing standards. They confer powers to Scottish Government inspectors to issue compliance notices and stop notices to control the movement of horticultural produce that does not comply. They also give powers to inspectors to enter, inspect buildings, equipment and records and to obtain samples of horticultural produce.

Reasons for and effect of the proposed change

12. The Marketing of Vegetable Plant Material Regulations 1995

12.1 This instrument transposes a derogation in Council Directive 2008/72/EC to authorise the marketing of plant material from any country outside the European Union under certain conditions. It was not considered necessary previously to implement the derogation as all vegetable plant material currently comes from Europe. The purpose of the instrument is two-fold, firstly to implement the derogation to allow plant material from outside the European Union, and then, in the event of a no-deal exit, deficiency fix the derogation to allow plant material to enter Scotland from outside the United Kingdom.

12.2 Implementation of the derogation ensures Scotland's vegetable breeders will be able to import new varieties of a high quality, to be used in their own breeding programmes.

13. The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017

The 2019 Regulations makes a minor amendment to the marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017. It removes a reference to "European Union" and replaces it with "United Kingdom". This is an exercise of powers in the EUWA in order to address failures of retained EU law to operate effectively after the withdrawal of the United Kingdom from the European Union.

14. The Seed and Propagating Material (EU Exit) (Scotland) (Amendment) Regulations 2019 and the Seed and Propagating Material (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2019

The instrument also revokes and reintroduces revocations made by the Seed and Propagating Material (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2019 to the Seed and Propagating Material (EU Exit) (Scotland) (Amendment) Regulations 2019. The revocations were necessary in consequence of other amendments made by the Seed and Propagating Material (EU Exit) (Scotland) (Amendment) Regulations 2019.

15. The Common Agricultural Policy (EU Exit) (Scotland) (Amendment) Regulations 2019 and the Common Agricultural Policy (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2019

The instrument also revokes and reintroduces a revocation made by the Common Agricultural Policy (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2019 to the Common Agricultural Policy (EU Exit) (Scotland) (Amendment) Regulations 2019. This ensures that the amendment under regulation 4(2) of the Common Agricultural Policy (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2019 takes effect on exit day instead of regulation 7(4) of the Common Agricultural Policy (EU Exit) (Scotland) (Amendment) Regulations 2019. This is to ensure that as of exit day, determinations made under regulation 16(1)(d) of the Rural Development (Scotland) Regulations 2015 take into account monies whether their source is domestic or European Union funds.

16. The Marketing of Horticultural Produce and Bananas (EU Exit) (Scotland) (Amendment) Regulations 2019

The instrument also revokes and reintroduces revocations made by the Common Agricultural Policy (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2019 to the Marketing of Horticultural Produce and Bananas (EU Exit) (Scotland) (Amendment) Regulations 2019. This ensures that the amendment made by regulation 6 of the Common Agricultural Policy (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2019 takes effect on exit day instead of regulation 3(13) of the Marketing of Horticultural Produce and Bananas (EU Exit) (Scotland) (Amendment) Regulations 2019. This is to make transitional provision in relation to produce placed on the market for a period of 21 months beginning with exit day. The aim of the provision is to maintain the efficient trade in horticultural produce in a no-deal EU exit and allow the measured and organised conversion of EU produce to third country status.

Statements required by European Union (Withdrawal) Act 2018

17. Statement that in their opinion Scottish Ministers consider that the regulations do no more than is appropriate

The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, has made the following statement “In my view the Seed, Propagating Material and Common Agricultural Policy (EU Exit) (Scotland) (Amendment) Regulations 2019 do no more than is appropriate. This is the case because the amendments are being made to ensure, following a no-deal United Kingdom exit from the European Union, continued and effective functioning of legislation in relation to regulation of seed, vegetable plant material and fruit plant and propagating material; legislation in relation to marketing standards of fresh horticultural produce; and legislation in relation to Common Agricultural Policy schemes within Scotland and do not introduce a policy change .”.

18. Statement as to why the Scottish Ministers consider that there are good reasons for the regulations and that this is a reasonable course of action

The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, has made the following statement “In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action. These are to ensure, following a no-deal United Kingdom exit from the European Union, the continued regulation of seed, vegetable plant material, fruit plant and propagating material; continued operation of legislation relating to marketing standards of fresh horticultural produce and; continued administration of Common Agricultural Policy schemes within Scotland in order to protect and provide continuity for businesses and consumers. The amendments made by the instrument are technical in nature to ensure legislative operability only.”.

19. Statement as to whether the SSI amends, repeals or revokes any provision of equalities legislation, and, if it does, an explanation of that amendment, repeal or revocation

The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, has made the following statement “In my view the Seed, Propagating Material and Common Agricultural Policy (EU Exit) (Scotland) (Amendment) Regulations 2019 do 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.”.

20. Statement that Scottish Ministers have, in preparing the regulations, 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

The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, has made the following statement “In my view the Seed, Propagating Material and Common Agricultural Policy (EU Exit) (Scotland) (Amendment) Regulations 2019 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.”.

Additional information provided for EU Exit instruments in terms of the protocol agreed between the Scottish Government and the Scottish Parliament

21. Statement that Scottish Ministers have, in preparing the regulations, had due regard to the guidance principles on the environment and animal welfare

The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, has made the following statement “In my view the Seed, Propagating Material and Common Agricultural Policy (EU Exit) (Scotland) (Amendment) Regulations 2019 have had due regard to the need to follow the guiding principles on the environment and animal welfare as derived from the equivalent principles provided for in Articles 13 and 191(2) in Titles II and XX respectively of the Treaty on the Functioning of the European Union.”.

22. Statement explaining the effect (if any) of the regulations on rights and duties relating to employment and health and safety and matters relating to consumer protection (so far as is within devolved competence)

The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon has made the following statement “In my view the Seed, Propagating Material and Common Agricultural Policy (EU Exit) (Scotland) (Amendment) Regulations 2019 do not alter current policy on rights and duties relating to employment and health and safety and matters relating to consumer protection (so far as is within devolved competence). The instrument is made to ensure, following a no-deal United Kingdom exit from the European Union, the continued effective regulation of the marketing of plant propagating material; continued operation of legislation relating to marketing standards of fresh horticultural produce and; continued administration of Common Agricultural Policy schemes within Scotland in order to protect and provide continuity for businesses and consumers. The amendments made by the instrument are technical in nature to ensure legislative operability only.”.

23. An indication of how the regulations should be categorised in relation to the significance of the change proposed.

Low – The amendments are technical in nature to allow continuity of law and do not amount to a change in policy.

24. Statement setting out the Scottish Ministers’ reasons for their choice of procedure

Negative procedure is considered appropriate as these minor and technical amendments do no more than is necessary to ensure that the legislation continues to operate effectively following the UK’s exit from the EU. The regulations do not include provisions which fall within paragraph 1(2) of schedule 7 of the European Union (Withdrawal) Act 2018.

25. Consultation

This instrument does not amount to a change in policy and is being made to avoid deficiencies arising as a result of the UK’s withdrawal from the EU. There has been no formal public consultation regarding this instrument.

The 2019 Regulations contain provision coming into force before exit day and therefore under schedule 2, paragraph 4(a) of EUWA the Scottish Ministers have consulted the Secretary of State before making the 2019 Regulations.

26. Impact Assessments

Full impact assessments have not been prepared for this instrument, as it is aimed at preserving the effect of the current regulatory regimes once the UK leaves the EU. The current amendments do not alter the Scottish Government's current environmental policies and priorities and, therefore, do not have a significant impact of the environment. The impact on business, charities or voluntary bodies is expected to be minimal.

27. Financial Effects

The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Agriculture and Rural Economy Directorate

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