

POLICY NOTE

THE SEED AND PROPAGATING MATERIAL (EU EXIT) (SCOTLAND) (AMENDMENT) REGULATIONS 2019

SSI 2019/59

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

Purpose of the Instrument

To amend the marketing regulations for the following seed and plant propagating materials–

- The Beet Seeds (Scotland) (No 2) Regulations 2010
- The Cereal Seed (Scotland) Regulations 2005
- The Fodder Plant Seed (Scotland) Regulations 2005
- The Oil and fibre Plant Seed (Scotland) Regulations 2004
- The Vegetable Seed Regulations 1993
- The Seed Potatoes (Scotland) Regulations 2015
- The Marketing of Vegetable Plant Material Regulations 1995
- The Marketing of Ornamental Plant Propagating Material Regulations 1999
- The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017
- The Seed (Licensing and Enforcement etc.) (Scotland) Regulations 2016.

This is to address deficiencies in those regulations (“the relevant regulations”) arising from the United Kingdom’s withdrawal from the European Union in a no deal scenario, to ensure that they continue to operate effectively following EU exit.

The instrument also contains amendments to update provisions in some of the relevant regulations before they all become retained EU law on exit day.

Policy Objectives

The Seed and Propagating Material (EU Exit) (Scotland) (Amendment) Regulations 2019 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 the relevant regulations will continue to be operable after EU exit. The changes are for provisions which are inappropriate or redundant on withdrawal and, where required, to ensure continuity of supply of seed and propagating material.

Explanation of the law being amended by the regulations

The marketing of seed and plant propagating material is regulated at European Union level by the directives listed below (“the relevant Directives”):

- 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 2002/54/EC of 13 June 2002 on the marketing of beet seed;
- v. Council Directive 2002/55/EC of 13 June 2002 on the marketing of vegetable seed;
- vi. Council Directive 2002/56/EC of 13 June 2002 on the marketing of seed potatoes;
- 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 and;
- 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.

The relevant directives, which are transposed by the relevant regulations being amended by this instrument, prescribe processes to ensure minimum quality standards and traceability for marketed seed and plant propagating material. They also set out administrative provisions, 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.

Reasons for and effect of the proposed change

This instrument amends provisions in the relevant 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 European Commission, the EU and Member States and to remove reporting obligations to the Commission which will no longer be appropriate:

- Part 2 (regulations 2 to 8), make amendments to the relevant regulations, to ensure that the legislation is up to date before those regulations become retained EU law on exit day. The amendments include:
 - Updating references to a number of EU instruments;
 - Updating references to EEA states and Switzerland where appropriate, to reflect the application of the relevant Directives respectively by virtue of the EEA Agreement (OJ L 1, 3.1.1994, p.3) and the Agreement between the European Community and the Swiss Confederation on trade in agricultural products (OJ L 114, 30.4.2002, p.132).
 - Making provision for the certification of seed intended for export and labelling requirements in relation to imports and exports of seed in relation to third countries. Material supplied to the EU will need to be marketed and labelled in

- compliance with the Organisation for Economic Cooperation and Development (OECD) seed and plant scheme.
- Making further provision, clarifying the rules for official labelling and documentation in relation to seed potatoes produced outside Scotland.
 - Updating a number of definitions.
 - Part 3 (regulations 9 to 18) makes amendments to the relevant regulations arising from, and in consequence of, the United Kingdom's withdrawal from the European Union. This is to ensure that the relevant regulations as retained EU law continue to function effectively on EU exit in a no deal scenario. This instrument makes minor technical amendments to ensure that industry can function and has no substantive impact on current processes or farming practices.

For climatic and economic reasons, the whole of the UK including Scotland is for many species dependent or semi-dependent on seed and plant propagating material produced in the EU. Therefore, similar to provision being made elsewhere in the UK¹, the instrument amends the relevant regulations to provide for a temporary two year period when it will still be possible to import the relevant seed and propagating material from the EU in respect of those species. This will ensure continuity of supplies of seed and plant propagating material to the UK as a whole. This transitional arrangement is not required for plant propagating material of ornamental plants, because the statutory requirements for marketing are simpler, and imports can continue indefinitely. Similarly, in relation to seed potatoes, no express transition period has been provided for. Whilst, theoretically, seed potatoes produced in the EU will continue to be marketable in Scotland after exit day, in practice, there is little or no demand from the Scottish industry for EU-produced seed potatoes, in contrast to the position elsewhere in the UK², which is heavily dependent on EU-produced seed potatoes. So, it is considered that making express provision for a transition period would serve no useful or practical purpose.

To avoid financial loss to Scottish businesses, this instrument also provides a temporary transition period to allow existing stocks of pre-printed official EU certification or supplier's labels to be used up. This is not required for labels for, ornamentals and vegetable plants where there are different arrangements for labelling.

¹ <http://www.legislation.gov.uk/uksi/2019/131/contents/made>

² See the draft of the UK SI which has been laid for sifting scrutiny in the UK Parliament: <https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-animal-health-plant-health-seeds-and-seed-potatoes-amendment-eu-exit-regulations-2019>

Statements required by European Union (Withdrawal) Act 2018

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 and Propagating Material (EU Exit) (Scotland) (Amendment) Regulations 2019 do no more than is appropriate. This is the case because the amendments are being made only to ensure, following a ‘no deal’ United Kingdom exit from the European Union, continued and effective functioning of the legislation being amended and do not introduce policy change and will not have a substantive impact on current marketing practices because the underlying processes and standards are unchanged.”

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 and effective regulation of seed and propagating material within Scotland in order to ensure continuity of supply of seed and propagating material for the agricultural / horticultural sector. The amendments made by the instrument are technical in nature to ensure legislative operability only.”.

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 and Propagating Material (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.”.

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 and Propagating Material (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

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 and Propagating Material (EU Exit) (Scotland) (Amendment) Regulations 2019 have had due regard to the need to 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.”.

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 and Propagating Material (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 and effective regulation of the marketing of seed and plant propagating material within Scotland in order to ensure that only seed and propagating material of a required standard is marketed providing high quality and healthy crops for the agricultural / horticultural sector. The amendments made by the instrument are technical in nature to ensure legislative operability only.”.

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.

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.

Further information

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 a number of formal public consultation regarding this instrument to cover all seed and propagating material.

Date	Type of Consultation	Audience	Comments
Autumn 2018	UK Technical Notices	Aimed at all industries in the UK with interest in seed and propagating material	Information notices were drawn up by Defra in conjunction with the DA's to provide information as to what a no deal scenario would mean for their business.
16 November 2018	UK Seed Panel Meeting	Seed potato stakeholders	Policy & SASA staff provide an up-date on Brexit at this event.
11 & 12 December 2018	APHA Workshops. 2 days, 3 presentations.	Aimed at all industries in Scotland with interest in seed and propagating material	APHA invited to provide presentation given in Cambridge to our industry Edinburgh.
w/c 11 February 2019	Industry letter/ Web Page Article	Aimed at all industries in Scotland with interest in seed and propagating material	Information letter / article providing guidance for day 1 readiness.
March 2019	Scottish Seed Potato Workshops	Seed potato industry	5 workshops to be held across Scotland.
On going	Meetings	Stakeholders from the various seed & propagating sectors	SG policy & SASA deliver hold regular meetings with the industry throughout the year. Updates provided.

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.

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

19 February 2019