

POLICY NOTE

THE GENETICALLY MODIFIED ORGANISMS AND PESTICIDES (EU EXIT) (SCOTLAND) (AMENDMENT ETC.) REGULATIONS 2020

S.S.I. 2020/381

The above instrument was made in exercise of the powers conferred by paragraphs 1(1) and (3) and 11M(1) 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

The Genetically Modified Organisms and Pesticides (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 (“the 2020 Regulations”) amend the Genetically Modified Organisms (EU Exit) (Scotland) (Amendment) Regulations 2019 and the Fertilisers and Pesticides (EU Exit) (Scotland) (Miscellaneous Amendments etc.) Regulations 2019 to ensure retained EU law relating to genetically modified organisms and pesticides operates effectively at the end of the implementation period and to implement the provisions of the Northern Ireland Protocol.

Specifically this will:

- Amend references to “exit day” to “IP completion day”, in accordance with the European Union (Withdrawal Agreement) Act 2020, including in relation to transitional arrangements for labelling;
- Amend references to “United Kingdom” to “Great Britain” as necessary in connection with implementation of the Northern Ireland Protocol;

Policy Objectives

The 2020 Regulations amend previous EU exit legislation to take into account the Northern Ireland Protocol and the implementation period.

Explanation of the law being amended by the regulations

The Genetically Modified Organisms (EU Exit) (Scotland) (Amendment) Regulations 2019

The Genetically Modified Organisms (EU Exit) (Scotland) (Amendment) Regulations 2019 (the “2019 Regulations”) ensured that two Scottish Statutory instruments continued to be operable after EU Exit. These two instruments are, the Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002 and the Genetically Modified Organisms (Transboundary Movements) (Scotland) Regulations 2005 (the “2005 Regulations”).

In the 2020 Regulations we are amending the 2019 Regulations by replacing “the United Kingdom” with “Great Britain” in provisions of the 2019 Regulations which amended the 2005 Regulations. The provisions of the 2005 Regulations will now provide that it is an offence to export genetically modified organisms subject to transboundary movements for direct use as

food or feed or processing except where its use is permitted in Great Britain or where the competent authority of the importing country has agreed to the import. The amendments in the 2020 Regulations are required to implement the Northern Ireland Protocol. The 2005 Regulations give effect to Regulation (EC) No 1946/2003 of the European Parliament and of the Council of 15 July 2003 on transboundary movements of genetically modified organisms. Regulation (EC) No 1946/2003 is listed in Annex 2 of the Northern Ireland Protocol. As such this provision is required to ensure that the Northern Ireland Protocol is given effect.

The Fertilisers and Pesticides (EU Exit) (Scotland) (Miscellaneous Amendments etc.) Regulations 2019

The Fertilisers and Pesticides (EU Exit) (Scotland) (Miscellaneous Amendments etc.) Regulations 2019 amended the EC Fertilisers (Scotland) Regulations 2006 and the Pesticides (Maximum Residue Levels) (Scotland) Regulations 2008 to ensure that they continue to operate effectively following the end of the implementation period. The 2020 Regulations further amend that instrument in relation to pesticides so that the maximum residue values savings provision refers to “IP completion day” rather than “exit day”. This is a technical amendment to reflect that “exit day” has passed.

Reasons for and effect of the proposed change or changes on retained EU law

The changes made in the 2020 Regulations are necessary to ensure the current domestic legislation continues to operate effectively after the end of the Implementation Period and to take into account the Northern Ireland Protocol.

Statements required by the European Union (Withdrawal) Act 2018 and Additional Information required by the Protocol between the Scottish Government and the Scottish Parliament

The 2020 Regulations are made in exercise of powers in the 2018 Act both to deal with deficiencies in retained EU law (paragraphs 1(1) and (3) of Part 1 of schedule 2) and to implement the Northern Ireland Protocol (paragraph 11M(1) of Part 1C of schedule 2). The Regulations also exercise the powers in paragraph 21(b) of schedule 7.

Regulation 2 is made in exercise of the power to implement the Northern Ireland Protocol.

Regulation 3 is made in exercise of the deficiencies powers (as expanded by paragraph 21(b) of schedule 7).

The Statements set out below relate to the exercise of the deficiencies powers.

The Additional Information set out below relates, except where indicated, to the deficiencies powers and the power to implement the Northern Ireland Protocol.

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 Genetically Modified Organisms and Pesticides (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 do no more than is appropriate”. This is the case because the amendments are being made only to ensure, following IP completion day, continued and effective functioning of the legislation being amended, and do not introduce policy changes.

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 IP completion day, the continued and effective regulation relating to GMOs and pesticides within Scotland. 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 Genetically Modified Organisms and Pesticides (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 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 Genetically Modified Organisms and Pesticides (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 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.”

Where the regulations create a criminal offence, an explanation of why there are good reasons for creating the offence and providing for penalty in respect of it

Not applicable.

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 Genetically Modified Organisms and Pesticides (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 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 stated this heading is not applicable for The Genetically Modified Organisms and Pesticides (EU Exit) (Scotland) (Amendment etc.) Regulations 2020.

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

In relation to the exercise of the Northern Irish Protocol powers, this instrument is subject to negative procedure under Schedule 7, paragraph 8F(6) of the European Union (Withdrawal) Act 2018.

In relation to the exercise of the deficiencies powers (paragraphs 1(1) and (3) of Part 1 of schedule 2 of the European Union (Withdrawal) Act 2018) where there is a choice of procedure in terms of paragraph 1(7) of schedule 7 of that Act, negative procedure is considered appropriate as the instrument contains minor and technical amendments and does no more than is necessary to ensure continuity of law and operability at the end of the implementation period.

Further information

Consultation

The amendments within the instrument serve primarily to address deficiencies in Scottish legislation arising as a result of the Northern Ireland Protocol. Consultation with stakeholders on the content was, therefore, not considered necessary.

The 2020 Regulations will amend existing EU Exit Regulations. The amendments will need to come into force before the Regulations being amended and therefore before IP completion day. The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, consulted with the Secretary of State, Victoria Prentis on 30 October regarding this instrument as per the requirement under paragraph 4(a), schedule 2 of EUWA for devolved administrations when an instrument is to come into force ahead of IP completion day.

Impact Assessments

The Minister for Natural Environment and Rural Affairs confirms that direct impacts arising from the 2002 Regulations are not expected to meet the minimum threshold for requiring an impact assessment.

Financial Effects

The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, confirms that no BRIA is necessary as the 2020 Regulations have no financial effects on the Scottish Government, local government or on business.

Scottish Government
Agriculture and Rural Economy Directorate

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