

EXPLANATORY MEMORANDUM TO

THE MARKETING OF SEEDS AND PLANT PROPAGATING MATERIAL (AMENDMENT) (NORTHERN IRELAND) (EU EXIT) REGULATIONS 2019

2019 No. 211

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

2. Purpose of the instrument

- 2.1 This instrument makes minor, technical amendments to Northern Ireland European Union derived legislation relating to seed and propagating material, addressing deficiencies arising from the withdrawal of the United Kingdom (“UK”) from the European Union (“EU”).

Explanations

What did any relevant EU law do before exit day?

- 2.2 The marketing of seed, propagating material and forest reproductive material in Northern Ireland is regulated through a number of Statutory Rules which lay down standards in respect of certification (quality), packaging, sealing and labelling to ensure that the material can be freely traded throughout the EU. The Statutory Rules also provide for derogations in respect of certain landraces and varieties which have been traditionally grown in particular localities in Northern Ireland, which are threatened by genetic erosion.

Why is it being changed?

- 2.3 After exit, without amendment, the EU derived Northern Ireland legislation would not operate properly and it would disrupt the trade in seed, propagating material and forest reproductive material. Changes must be made to maintain the current high standards in Northern Ireland law and provide continuity to the various sectors through security of supply of seed, propagating material and forest reproductive material.

What will it now do?

- 2.4 This instrument will ensure the Northern Ireland legislation will continue to operate after EU exit as it does now. It will also allow a two year transitional period for seed and forest and fruit plant and reproductive material, during which material from the EU can still be sold in the UK without a requirement to be relabelled, to ensure continued supply and reduce burdens on businesses.
- 2.5 The instrument will also allow a two year transitional period during which vegetable plant, and ornamental propagating, material from the EU can continue to be marketed in Northern Ireland, without any additional checks, after being relabelled.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Marketing of Seeds and Plant Propagating Material (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 were presented to the Sifting Committees for consideration on 6 December 2018. On 8 January 2019 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.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.
- 3.3 The Department has reached this view because the SI is made under powers in section 8(1) of the European Union (Withdrawal) Act 2018 and makes only minor, technical amendments to Northern Ireland Statutory Rules to ensure operability after the United Kingdom leaves the EU.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is Northern Ireland only.
- 4.2 The territorial application of this instrument is Northern Ireland only.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The SI makes minor, technical amendments to Northern Ireland EU derived legislation, relating to seed, propagating material and forest reproductive material to ensure operability after EU exit. The SI does not introduce any new policies but simply ensures that the legislation continues to operate in the same way on exit day as it does now.
- 6.2 The amendments to the various Statutory Rules include changing existing references to “EU” to read “UK” and ensuring that cross references to EU Directives will continue to operate as they do now. The amendments will also allow a two year transitional period for seed and forest and fruit plant and reproductive material, during which material from the EU can still be marketed in Northern Ireland without additional checks and, in the case of seed and forest and fruit plant and reproductive material, without any requirement to be relabelled, in line with the overall UK market policy.

7. Policy background

What is being done and why?

- 7.1 Rules and requirements around the marketing of seed, propagating material and forest reproductive material in Northern Ireland are currently harmonised with the EU.
- 7.2 This instrument makes amendments to the relevant pieces of Northern Ireland legislation to allow them to operate properly after exit. For example, changing existing references to “EU” to read “UK” and removal of reference to the “Commission”.
- 7.3 In addition, the instrument allows seed, propagating material and forest reproductive material, from the EU, to continue to be marketed in Northern Ireland for a time-limited (2-year) transitional period, without the need for additional checks and, in the case of seed and forest and fruit plant and reproductive material, without any re-labelling, in line with the overall UK market policy. This is to ensure business continuity and predictability for industry.
- 7.4 This instrument applies to the marketing of seed, propagating material and forest reproductive material, which are transferred matters for Northern Ireland under the Northern Ireland Act 1998. The UK Government remains committed to restoring devolution in Northern Ireland. This is particularly important in the context of EU exit where we want devolved Ministers to take the necessary actions to prepare Northern Ireland for EU exit. The UK Government has been considering how to ensure a functioning statute book across the UK including in Northern Ireland for EU exit day in the absence of a Northern Ireland Executive. With the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for EU exit is narrowing. UK Government Ministers have therefore decided that in the interest of legal certainty in Northern Ireland, the UK Government will take through the necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments. This is one such instrument.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address deficiencies arising from the withdrawal of the UK from the EU. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this explanatory memorandum.

9. Consolidation

- 9.1 This instrument is not consolidating any provisions.

10. Consultation outcome

- 10.1 This instrument was not subject to formal consultation. However, there were discussions with key stakeholders by Defra on behalf of the UK as a whole, including the British Society of Plant Breeders and the farmers’ representative body (the National Farmers’ Union) about their concerns regarding exit in relation to policy, in respect of seed, propagating material and forest reproductive material. Their main concerns were that there should be uninterrupted supply of seed, propagating material and forest reproductive material with no added cost burdens to industry. This has been

addressed through allowing for a time limited adjustment period for the marketing of EU material without the need for any additional checks.

11. Guidance

- 11.1 A Technical Notice has been published on the gov.uk website. The notice can be accessed at <https://www.gov.uk/government/publications/plant-variety-rights-and-marketing-of-seed-and-propagating-material-if-theres-no-brexite-deal/plant-variety-rights-and-marketing-of-seed-and-propagating-material-if-theres-no-brexite-deal>.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because the proposed amendments are minor and technical in nature, relating to the maintenance of existing regulatory standards and will have no, or no significant, impact on the private, voluntary or public sector. There will be a suitable time-limited period during which seed, propagating material and forest reproductive material from the EU can be placed on the UK market as now, to ensure continued supply and minimise disruption.
- 12.4 In a scenario where an agreement with the EU is not reached, it will no longer be possible to export seed, propagating material or forest reproductive material to the EU. This change is a result of EU exit, not because of changes made by this instrument.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 The proposed amendments are minor and technical in nature and no disproportionate impacts are expected to affect small and micro businesses. No specific action is proposed to minimise regulatory burdens on small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that the Department of Agriculture, Environment and Rural Affairs in Northern Ireland will monitor and review the impact of the instrument as part of its standard policy-making procedures, and will ensure that the provisions are adhered to.
- 14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

- 15.1 Tommy McNamara at Department of Agriculture, Environment and Rural Affairs, Northern Ireland. Telephone: 028 9052 5583 or email: tommy.mcnamara@daera-ni.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 David Small, Head of Environment, Marine and Fisheries Group at the Department of Agriculture, Environment and Rural Affairs can confirm that this explanatory memorandum meets the required standard.

15.3 Lord Gardiner of Kimble Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs (Defra) can confirm that this explanatory memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

| Statement | Where the requirement sits | To whom it applies | What it requires |
|-------------------|---|--|--|
| Sifting | Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7 | Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI | Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees |
| Appropriate-ness | Sub-paragraph (2) of paragraph 28, Schedule 7 | Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 | A statement that the SI does no more than is appropriate. |
| Good Reasons | Sub-paragraph (3) of paragraph 28, Schedule 7 | Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 | Explain the good reasons for making the instrument and that what is being done is a reasonable course of action. |
| Equalities | Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7 | Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 | Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010. |
| Explanations | Sub-paragraph (6) of paragraph 28, Schedule 7 | Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs | Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law. |
| Criminal offences | Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7 | Ministers of the Crown exercising sections 8(1), 9, and | Set out the 'good reasons' for creating a criminal offence, and the penalty attached. |

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| | | 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence | |
| Sub-delegation | Paragraph 30, Schedule 7 | Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument. | State why it is appropriate to create such a sub-delegated power. |
| Urgency | Paragraph 34, Schedule 7 | Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7. | Statement of the reasons for the Minister's opinion that the SI is urgent. |
| Explanations where amending regulations under 2(2) ECA 1972 | Paragraph 13, Schedule 8 | Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA | Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law. |
| Scrutiny statement where amending regulations under 2(2) ECA 1972 | Paragraph 16, Schedule 8 | Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA | Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid. |

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

- 1.1 The Parliamentary Under Secretary of State for Agriculture, Fisheries and Food, Lord Gardiner of Kimble, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- 1.2 “In my view the Marketing of Seeds and Plant Propagating Material (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.
- 1.3 This is the case because: the contents of the instrument are not of such significance that Parliament would expect to debate it. The amendments address deficiencies arising from the withdrawal of the UK from the EU to ensure that Northern Ireland EU derived legislation continues to operate effectively. The amendments do not implement any new policies and are not significant in that they maintain current regulatory standards.

2. Appropriateness statement

- 2.1 The Parliamentary Under Secretary of State for Agriculture, Fisheries and Food, Lord Gardiner of Kimble, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- 2.2 “In my view the Marketing of Seeds and Plant Propagating Material (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 does no more than is appropriate”.
- 2.3 This is the case because: the amendments to Northern Ireland domestic legislation are the minimum required to make the legislation operable and are not significant in that they maintain current regulatory standards.

3. Good reasons

- 3.1 The Parliamentary Under Secretary of State for Agriculture, Fisheries and Food, Lord Gardiner of Kimble, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- 3.2 “In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.
- 3.3 These are: the amendments to Northern Ireland domestic legislation are the minimum required to make the legislation operable. They maintain current regulatory standards and ensure the continued supply of seed, propagating material and forest reproductive material for a time-limited 2-year transitional period, providing continuity to the sector and security of supply for farmers.

4. Equalities

- 4.1 The Parliamentary Under Secretary of State for Agriculture, Fisheries and Food, Lord Gardiner of Kimble, has made the following statement:

“The instrument does 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.”

- 4.2 The Parliamentary Under Secretary of State for Agriculture, Fisheries and Food, Lord Gardiner of Kimble, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- 4.3 “In relation to the instrument, I, Lord Gardiner of Kimble, 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.”