

**EXPLANATORY MEMORANDUM TO**  
**THE PLANT BREEDERS' RIGHTS (AMENDMENT) (EU EXIT) REGULATIONS**  
**2020**

**2020 No. 769**

**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.

**2. Purpose of the instrument**

- 2.1 This instrument amends the Plant Breeders’ Rights (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/204) (“the 2019 Regulations”) and the Animal Health, Invasive Alien Species, Plant Breeders’ Rights and Seeds (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/1220). Together with the 2019 Regulations, this instrument implements the UK’s obligation under the Withdrawal Agreement (“WA”) relating to Community plant variety rights (“CPVR”). Relatively few amendments are made by this instrument because the 2019 Regulations anticipated most of the provisions of the WA.

*Explanations*

What did any relevant EU law do before exit day?

- 2.2 Council Regulation EC No 2100/94 on Community Plant Variety Rights implements the EU’s obligations under the 1991 Convention of the International Union for the Protection of New Varieties of Plants (“UPOV Convention”). It establishes a unitary system for CPVR enforceable in all member states, while preventing any national right granted before a Community right from being invoked.

Why is it being changed?

- 2.3 The 2019 Regulations amend existing UK plant variety rights legislation to address deficiencies from the UK’s withdrawal from the EU and give effect to CPVR in the UK after the implementation period. This instrument amends the 2019 Regulations to implement the requirements of the WA relating to plant variety rights.

What will it now do?

- 2.4 The main purpose of this instrument is to give effect to CPVR in the United Kingdom provided they were granted before implementation period (“IP”) completion day and to provide beneficial conditions for a limited time period for unresolved CPVR applications at IP completion day. It also makes some other provisions required by the WA.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*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 this 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.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is the United Kingdom.  
4.2 The territorial application of this instrument is the United Kingdom.

**5. European Convention on Human Rights**

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

**6. Legislative Context**

- 6.1 The EU and UK are both signatories to the UPOV Convention in their own right, implementing their obligations through Council Regulation EC No 2100/94 and the Plant Varieties Act 1997 respectively.
- 6.2 The 2019 Regulations were made under section 8 of the European Union (Withdrawal) Act 2018 to address deficiencies resulting from the UK's withdrawal from the EU. These give effect to CPVR in the UK provided they are granted at least two months before exit day (now referred to as IP completion day). The 2019 Regulations make provision for unresolved applications where an application has been made for a CPVR but has not been decided by exit day. This ensures UK applications for the same plant variety made within six months of exit day benefit from certain beneficial provisions. The 2019 Regulations also amend existing UK plant variety rights legislation to: address deficiencies resulting from the UK's withdrawal from the EU; revoke the principal EU Regulation (Council Regulation EC No 2100/94) and implementing EU legislation; and where appropriate amend domestic legislation to save EU provisions. The 2019 Regulations were made before the UK and EU concluded the WA.
- 6.3 Part 3 of the WA addresses separation provisions, in particular Articles 54 to 61 making provision for intellectual property including the continued protection of CPVRs. Although the 2019 Regulations give effect to CPVRs in the UK after exit day, some areas require alignment for the purposes of the WA.
- 6.4 This instrument makes those alignments amending the 2019 Regulations as follows:
- Regulation 2(3) of this instrument amends regulation 3(2) of the 2019 Regulations to provide that an existing EU right (a granted CPVR given effect in the UK) is treated in the UK as if the date of publication of its application and its date of priority were the date of filing or date of priority of the corresponding CPVR (Article 54(6)(b) of the WA);
  - Regulation 2(4) of this instrument amends regulation 4 of the 2019 Regulations and the definition of the remaining period for the duration of the right in the UK. It also provides that the decision relating to an outstanding administrative or judicial procedure in the EU at IP completion day is applied in the UK when finally determined (Article 54(3) of the WA);

- Regulation 2(5) of this instrument amends regulation 6 of the 2019 Regulations so that a UK correspondence address is not requested in the 3 years after IP completion day (Article 55(2) of the WA);
  - Regulation 2(6) of this instrument inserts regulation 8A into the 2019 Regulations providing for exhaustion of rights (Article 61 of the WA);
  - Regulation 2(7) of this instrument amends regulation 9 of the 2019 Regulations to give effect to all CPVR granted before IP completion day (Article 54(1)(c) of the WA);
  - Regulations 2(8), (9) and (10) of this instrument amend regulations 10, 11 and 12 of the 2019 Regulations to provide an ad-hoc period of 6 months after IP completion day for a person who has filed an application for a CPVR before IP completion day (an unresolved application), to be able to file a UK application and benefit from the application date of the CPVR for the purposes of priority, novelty and entitlement (Article 59(2) of the WA); and
  - Regulation 2(11) of this instrument omits defunct provisions.
- 6.5 Regulation 3 of this instrument amends the Animal Health, Invasive Alien Species, Plant Breeders' Rights and Seeds (Amendment etc.) (EU Exit) Regulations 2019 to omit regulations 8(3) and (5) due to the impact of regulations 2(8) and (11) of this instrument.

## **7. Policy background**

### *What is being done and why?*

- 7.1 As a form of intellectual property protection, plant breeders' rights (alternatively known as plant variety rights) allow businesses to control seed and other propagating material of new varieties, allowing them to recoup the long term investment in their development. Because the EU has a system of unitary plant variety rights, most plant breeders within the EU and UK rely on CPVR to protect their breeding investment. After IP completion day, without this instrument and the 2019 Regulations, plant varieties with CPVR would lose intellectual property protection in the UK.
- 7.2 This instrument amends the 2019 Regulations to implement the Withdrawal Agreement, in particular Articles 54 to 61 relating to intellectual property including CPVR, which must be implemented by IP completion day. As the 2019 Regulations provide similar provisions to some of the Articles in the WA, this instrument amends those regulations to implement the WA Articles relating to CPVR in full.
- 7.3 The most significant impact arises from the amendment to the 2019 Regulations which will give effect to all CPVR granted before IP completion day rather than those granted prior to two months before IP completion day. Consequently, about 30,000 CPVRs are expected to be given effect under this instrument and the 2019 Regulations, allowing rights holders to maintain their intellectual property protection in the UK without any administration or financial investment themselves. This will provide certainty for businesses and give confidence for continued investment in the breeding of plant varieties for UK conditions and markets, to the benefit of the entire plants sector and consumers.
- 7.4 Another significant impact may result from the amendments to the provisions relating to unresolved applications. This instrument provides for an ad-hoc right of priority within six months of IP completion day to all UK applications for the same plant

variety which has not yet been granted CPVR. Providing the right of priority in this instrument means the date of a UK application is given the date of the earlier CPVR application. This increases the likelihood of the plant variety remaining eligible for plant breeders' rights, thus helping to recoup the breeder's investment and encouraging the continued introduction of novel plant varieties onto the UK market.

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

8.1 This instrument amends the 2019 Regulations which were made using the powers in section 8 of the European Union (Withdrawal) Act 2018 to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the UK from the EU.

8.2 This instrument is being made under section 8B of the European Union (Withdrawal) Act 2018 to address separation issues under part 3 of the Withdrawal Agreement.

8.3 Alongside the EU (Withdrawal) Act 2018 powers, this instrument is also being made under section 41(1) European Union (Withdrawal Agreement) Act 2020 to amend references to "exit day" to "IP completion day".

## **9. Consolidation**

9.1 There are no plans to consolidate this legislation.

## **10. Consultation outcome**

10.1 The amendments have been discussed and agreed with the Devolved Administrations of Northern Ireland, Scotland, and Wales. There has been no formal public consultation because this instrument amends the 2019 Regulations to implement part of the WA. Defra has engaged with the relevant industry representative organisations.

## **11. Guidance**

11.1 No formal guidance material has been produced for this instrument as the changes to industry practice, and action required by businesses particularly for existing EU rights, are minimal. Application processes for UK plant breeders' rights for unresolved applications will be similar to those while a member of the EU. Existing guidance will be updated before IP completion day.

## **12. Impact**

12.1 There is no, or no significant, impact on business, charities or voluntary bodies. This is because protection in the UK for varieties with existing EU rights will be maintained without any action being required by rights holders. Without this continued protection, there would be a potential loss in income for plant breeding businesses and further indirect impacts to the wider sectors reliant on the production of plants. These wider sectors cover a diverse range of interests, including production of food and feed, food manufacturing and retail, forestry, production and use of ornamental plants, sports turf, and industrial production.

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 no significant impact on business or the voluntary sector is foreseen.

### **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach is to bring existing EU rights into the UK framework. This process will not require businesses to take any action.

### **14. Monitoring & review**

- 14.1 The approach to monitoring of this legislation will follow the course of normal departmental business. There are no substantive changes to current procedures or standards.
- 14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

### **15. Contact**

- 15.1 Andrew Mitchell at the Department for Environment, Food and Rural Affairs  
Telephone: 07827 983417 or email: andy.mitchell@defra.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Nicola Spence, Deputy Director and Chief Plant Health Officer at the Department for Environment, Food and Rural Affairs can confirm that this explanatory memorandum meets the required standard.
- 15.3 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble, at the Department for Environment, Food and Rural Affairs can confirm that this explanatory memorandum meets the required standard.