

**EXPLANATORY MEMORANDUM TO**  
**THE VEGETABLE AND ORNAMENTAL PLANT PROPAGATING MATERIAL**  
**AND FODDER PLANT SEED (AMENDMENT) REGULATIONS 2021**

**2021 No. 393**

**1. Introduction**

1.1 This Explanatory Memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 This instrument implements amendments to the Protocol on Ireland/Northern Ireland to the withdrawal agreement (“the Protocol”) in consequence of Article 1.6 of Decision 3/2020 of the Joint Committee established by that agreement. Article 1.6 adds three Council Directives on plant reproductive material to Annex 2 to the Protocol. These Directives are considered by the EU as essential for the application of the rules of the EU internal market for goods in respect of Northern Ireland and were omitted at the time of adoption of the Protocol.

2.2 This instrument is made in exercise of the powers conferred by Section 8C(1) of the European Union (Withdrawal) Act 2018 (the “Withdrawal Act”) to implement the Protocol. It makes operability amendments to relevant domestic legislation which transpose those Council Directives and to retained directly applicable EU legislation as it applies in Great Britain (“GB”).

2.3 In addition, this instrument makes a minor correction to Council Decision 2003/17/EC which arises from an amendment by the Marketing of Seeds and Plant Propagating Material (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/162).

***Explanations***

***What did any relevant EU law do before exit day?***

2.4 The marketing of fodder seed, ornamental plant propagating material and vegetable plants and plant propagating material is regulated at Union level by the following directives and relevant tertiary legislation:

- Council Directive 66/401/EEC on the marketing of fodder plant seed;
- Council Directive 1998/56/EC on the marketing of propagating material of ornamental plants;
- Council Directive 2008/72/EC on the marketing of vegetable propagating material and planting material, other than seed;
- Commission Regulation (EC) 217/2006: authorises Member States to permit temporarily the marketing of seed which does not meet the required germination standard;
- Commission Decision 80/512/EEC: permits the United Kingdom to relax certain fodder seed testing requirements;

- Council Decision 2003/17/EC: confers equivalence status to third countries whose processes for seed production and certification are considered comparable to those of the European Union;

2.5 The directives prescribe processes to ensure minimum quality standards and traceability for marketed seed and 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. Council Directives 1998/56/EC and 2008/72/EC are transposed for GB by the Marketing of Ornamental Plant Propagating Material Regulations 1999 and the Marketing of Vegetable Plant Material Regulations 1995 (“the Regulations”). Council Directive 66/401/EEC is transposed for England by the Seed Marketing Regulations 2011.

*Why is it being changed?*

2.6 The Regulations and the retained directly applicable EU legislation listed in section 2.4 were subject to operability amendments regarding the UK made on the basis that the EU legislation listed in section 2.4 was not applicable to Northern Ireland under the Protocol. Due to the amendment of Annex 2 to the Protocol, amendment of that legislation is now needed to recognise the change in application of that legislation.

*What will it now do?*

2.7 This instrument makes operability amendments to the Regulations for England and Wales to replace references to UK with GB and adjusts earlier amendments to retained directly applicable EU legislation, for GB, to reflect that such apply to GB rather than the UK.

### **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 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.

### **4. Extent and Territorial Application**

4.1 Regulations 1 and 4 to 7 extend and apply to GB.

4.2 Regulations 2 and 3 extend and apply to England and Wales.

### **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 European Union (Withdrawal) Act 2018 incorporates directly applicable EU law as it stands at the end of the Transition Period into UK law. Section 8C(1) of the

Withdrawal Act provides that a Minister of the Crown may, by regulations, make such provision as the Minister considers appropriate to implement the Protocol.

- 6.2 The directives listed at paragraph 2.4 are provisions of Union law which have now been added to point 42 of Annex 2 to the Protocol (for plant reproductive material) and will apply to Northern Ireland under the Protocol. This instrument is accordingly being made to amend relevant legislation to implement that amendment to the Protocol.

## **7. Policy background**

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

- 7.1 The changes made by this instrument are necessary for the purpose of implementing the Protocol following the inclusion of the directives, listed in section 2.4, to Annex 2 to the Protocol.
- 7.2 This instrument remedies deficiencies that arise in the Regulations, for example it amends references in labelling requirements from UK to GB, and that arise due to directly applicable EU law forming part of domestic law in GB (rather than the UK) as it pertains to fodder seed, and vegetable and ornamental plant propagating material. The amendments also allow seed from NI to be marketed in GB under specific conditions as set out in retained EU law. For example, Commission Regulation 217/2006/EC will permit the sourcing of suitable seed from Northern Ireland for marketing in GB in circumstances whereby there is a shortfall in GB of seed meeting the required germination standard.
- 7.3 This instrument includes amendments which correct an error in Annex 2, paragraph B, point 5 of Council Decision 2003/17/EC regarding maintainers of seed to reflect that preceding generations of seed categorised as basic seed, need to have been produced under the responsibility of the person listed as the maintainer on the GB or NI variety lists, or in a country granted equivalence or in a country with existing equivalence for maintenance through retained EU Council Decision 2005/834/EC.
- 7.4 The amendments do not amount to changes in policy and will not have a substantive impact on current marketing practices because the underlying processes and standards are unchanged.

## **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 8C(1) of the European Union (Withdrawal) Act 2018 to implement the Protocol.

## **9. Consolidation**

- 9.1 There are no plans to consolidate this legislation.

## **10. Consultation outcome**

- 10.1 The amendments in the legislation are technical in nature. There are no policy changes so no public consultation has been undertaken.
- 10.2 This instrument and the policy reflected in it has been developed in collaboration with Devolved Administration officials.

## **11. Guidance**

- 11.1 As no policy changes are included in this instrument no guidance specifically related to this instrument is required. However, the existing guidance on the marketing of seed and plant propagating material will be updated on [Gov.UK](https://www.gov.uk) to reflect the amendments being introduced.

## **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 instrument provides for technical amendments to existing legislation.

## **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 taken is for this instrument to largely maintain the status quo, therefore making no changes which would otherwise introduce duties or burdens on businesses.

## **14. Monitoring & review**

- 14.1 The approach to monitoring of this instrument is through the course of normal departmental business as no substantive changes to current practices are being introduced.
- 14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

## **15. Contact**

- 15.1 Alison Conder at the Department for Environment, Food and Rural Affairs or email: [alison.conder@defra.gov.uk](mailto:alison.conder@defra.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Nicola Spence, Deputy Director for Plant Health, Bee Health and Seeds at the Department for Environment, Food and Rural Affairs, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Gardiner of Kimble, The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.