# POLICY NOTE

# THE SEED AND PLANT MATERIAL (MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2020

## SSI 2020/165

1. The Scottish Ministers make these Regulations in exercise of the powers conferred by sections 16(1), (1A), (3) and (4) and 36 of the Plant Varieties and Seeds Act 1964 ("the 1964 Act"), section 2(2) of the European Communities Act 1972, and all other powers enabling them to do so. The instrument is subject to negative procedure.

**Purpose of this instrument**

The purpose of this instrument ("the SSI") is to transpose Commission Implementing Directive (EU) 2020/432 of 23 March 2020 amending Council Directive 2002/55/EC with regard to the definition of vegetables and the list of genera and species in Article 2(1)(b) (the "Nomenclature Directive"), and Commission Implementing Directive (EU) 2020/177 of 11 February 2020 amending Council Directives 66/401/EEC, 66/402/EEC, 68/193/EEC, 2002/55/EC, 2002/56/EC and 2002/57/EC, Commission Directives 93/49/EEC and 93/61/EEC and Implementing Directives 2014/21/EU and 2014/98/EU as regards pests of plants on seeds and other plant reproductive material (the "RNQPs Directive"), to ensure that Scottish Government continues to comply with current European obligations in relation to plant naming and control of pests within the context of seed marketing. In addition, it maintains Scotland's alignment in this area with the rest of the UK, allowing continued harmonisation in the marketing of a number of agricultural and horticultural seeds and plant species.

## Policy Objectives

2. The RNQPs Directive amends a number of EU Directives[1] that make provision in relation to the marketing of agricultural and horticultural seeds and plant species ("the Marketing Directives"), including provision regarding the health standards for crops, seeds and plants that must be met in order for them to be marketed. The RNQPs Directive updates the Marketing Directives in light of recent changes to the EU plant health regime by Regulation (EU) 2016/2031 of the European Parliament of the Council of 26 October 2016 on protective measures against pests of plants, amending Regulations (EU) No 228/2013, (EU) No 652/2014 and (EU) No 1143/2014 of the European Parliament and of the Council and repealing Council Directives 69/464/EEC, 74/647/EEC, 93/85/EEC, 98/57/EC, 2000/29/EC, 2006/91/EC and 2007/33/EC[2] ("the Plant Health Regulation"), in particular in relation to risk presented by the pests and diseases known as Union regulated non-quarantine pests ("RNQPs").

[1] Council Directives 66/401/EEC (fodder plant seed), 66/402/EEC (cereal seed), 2002/55/EC (vegetable seed), 2002/56/EC (seed potatoes) and 2002/57/EC (seed of oil and fibre plants); Commission Directives 93/49/EEC (propagating material of ornamental plants) and 93/61/EEC (vegetable propagating and planting material); Implementing Directives 2014/21/EU (pre-basic seed potatoes) and 2014/98/EU (fruit plants).

[2] Regulation (EU) 2016/2031 of the European Parliament and of the Council of 26 October 2016 on protective measures against pests of plants, amending Regulations (EU) No 228/2013, (EU) No 652/2014 and (EU) No 1143/2014 of the European Parliament and of the Council and repealing Council Directives 69/464/EEC, 74/647/EEC, 93/85/EEC, 98/57/EC, 2000/29/EC, 2006/91/EC and 2007/33/EC (OJ L 317, 23.11.2016, p. 4).

3. The Marketing Directives are given effect to in Scotland by:

- The Vegetable Seed Regulations 1993;
- The Marketing of Vegetable Plant Material Regulations 1995;
- The Marketing of Ornamental Plant Propagating Material Regulations 1999;
- The Oil and Fibre Plant Seed (Scotland) Regulations 2004;
- The Cereal Seed (Scotland) Regulations 2005;
- The Fodder Plant Seed (Scotland) Regulations 2005;
- The Seed Potato (Scotland) Regulations 2015; and
- The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017,

collectively "the Marketing Regulations". The SSI amends the Marketing Regulations to reflect the amendments that the RNQPs Directive makes to the Marketing Directives.

4. The Nomenclature Directive amends the list of vegetable species and their associated common names in Directive 2002/55/EC on the marketing of vegetable seed ("the Vegetable Seed Directive") to which the Vegetable Seed Regulations 1993 give effect. The SSI amends the Vegetable Seed Regulations 1993 to reflect the amendments that the Nomenclature Directive makes to the Vegetable Seed Directive.

5. The Nomenclature Directive and the RNQPs Directive are being transposed after the United Kingdom's exit from the European Union. This is because EU law will continue to apply during the Implementation Period, meaning that Scottish Government is legally obliged to transpose such legislation. A transposition note has been produced.

Legislative Background and the effects on the marketing legislation

*RNQPs*

6. The Plant Health Regulation took effect on 14th December 2019.

7. In order for the provisions of the Plant Health Regulation to be fully effective, further implementing rules were required at an EU level, including rules to regulate pests, seeds, plants, plant products and other objects, and to make further provision about protecting the Union territory from phytosanitary risks.

8. The European Food Safety Authority and the European and Mediterranean Plant Protection Organisation, in preparation for the coming into force of the Plant Health Regulation, reassessed known pests to ensure that their phytosanitary status reflected the most recent technical and scientific developments.

9. Following that reassessment, Commission Implementing Regulation (EU) 2019/2072 ("the Phytosanitary Regulation") of 28 November 2019 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and the Council, as regards protective measures against pests of plants, and repealing Commission Regulation (EC) No 690/2008 and amending Commission Implementing Regulation (EU) 2018/2019 was made under the Plant Health Regulation, listing pests as well as measures to prevent their presence in the respective territories of the Union or on

seeds and plants for planting. That includes in particular pests that are now categorised as RNQPs and measures to prevent their presence on relevant seeds and plants for planting.

10. RNQPs are pests that already exist in the Union territory, and are regulated because they have an economically unacceptable impact. This new categorisation means that some pests that were previously only regulated in the context of marketing now form part of the wider plant health regime.

11. The RNQPs Directive amends the Marketing Directives to ensure that pest-related content in those Directives, in particular in relation to RNQPs, is consistent with the new EU plant health regime under the Plant Health Regulation, including in particular the provisions of the Phytosanitary Regulation.

*Nomenclature Changes for Vegetables*

12. The Nomenclature Directive amends the list of vegetable species and their associated common names in Vegetable Seed Directive (Directive 2002/55/EC). It brings into the scope of the Vegetable Seed Directive hybrids between the species and Groups listed.

13. The Nomenclature Directive rectifies an error in a previous Directive, Commission Implementing Directive (EU) 2019/990 ("Directive 2019/990") which sought to make the amendment to the Vegetable Seed Directive which the Nomenclature Directive now makes but which contained an error in that it mistakenly deleted the definition of "vegetables" which is key to that Directive.

14. The Nomenclature Directive is transposed by making amendments to the Vegetable Seed Regulations 1993, which provide for the vegetable species they cover by way of a table listing both the scientific names and associated common names. Certain varieties of vegetable species belong to species listed under their scientific names, but not to the types of varieties described by their common names, risking confusion as to whether a variety is covered by the scope of the Regulations. Reflecting the changes made by the Nomenclature Directive to the Vegetable Seed Directive, the SSI makes changes to the Regulations to update the list of common names in order to more clearly define which types of vegetable varieties are regulated.

15. For completeness, whilst the elements of Directive 2019/990 which relate to Directive 2002/55/EC have been corrected and superseded by the Nomenclature Directive, Directive 2019/990 also makes nomenclature changes to the following Directives relevant to marketing vegetable planting and propagating material:

    - Commission Directive 93/61/EEC; and
    - Council Directive 2008/72/EC.

    These two Directives are given effect to in Scotland by the Marketing of Vegetable Plant Material Regulations 1995 ("the 1995 Regulations"). References in the 1995 Regulations to the provisions of the two Directives which are being amended are ambulatory. This means that changes made to the Directives by Directive 2019/990 do not require to be transposed as the ambulatory references ensure that the 1995 Regulations reflect those Directives as amended by Directive 2019/990.

16. By way of more general background and wider context, as detailed above the marketing of vegetable seed, plant and propagating material is regulated at EU level by Council Directives 2002/55/EC (vegetable seed) and 2008/72/EC and 93/61/EEC (vegetable plant and propagating material). These Directives ensure that purchasers throughout the EU receive vegetable seed, plant and propagating material which is healthy and of good quality. They set quality standards to be met by certain genera and species of vegetable seed, plant and propagating material when marketed and prescribe conditions to be satisfied by suppliers of propagating material. In addition, Directive 2002/55/EC provides for a national catalogue to be established listing the vegetable varieties officially accepted for certification and marketing in a Member State's territory.

17. The legislation for listing of new agricultural and horticultural varieties is provided by a UK statutory instrument, the Seeds (National Listing of Varieties) Regulations 2001 ("the 2001 Regulations"). Provision on the nomenclature of vegetable species in the 2001 Regulations also requires to be updated. The UK Government (Defra), in collaboration with Scottish Government, intend to bring forward a UK statutory instrument to amend the 2001 Regulations which is to be laid in Westminster once Ministerial consent is give jointly across the UK.

**Consultation**

18. Section 16(1) of the 1964 Act requires Scottish Ministers to consult with representatives of such interests as appear to them to be concerned before making regulations under that power. We have undertaken a range of engagement activities with key Scottish stakeholders and the various seed and plant industries in person, by letter / e-mail and via articles on the Scottish Government website. We have also engaged with Defra and the other devolved administrations. Examples of engagement activities include:

- In 2017, as part of the EU's review of regulated pests, the European Food Safety Authority and the European and Mediterranean Plant Protection Organization were tasked with undertaking an assessment to provide technical evidence in support of a review of pests' regulatory status. This was to recommend whether they should retain their existing, 'quarantine pest' status, become an RNQP or be deregulated. As part of this exercise, having already submitted their recommendations to the EU Plant Health Standing Committee, the UK Plant Health Service, which includes Scottish Government, took the action to consult with stakeholders to give them the opportunity to feed in views.

- Over the last 18 months there has also been various engagement with seeds (and plant health) stakeholders to provide guidance on the operational delivery of the new requirements. At an engagement event in November 2019, plant health colleagues in Scottish Government provided a PowerPoint presentation to Scottish stakeholders which explained what RNQPs are and how they may now impact on the seeds industry.

- On the 13 December 2019, individuals concerned with the marketing of seeds or plant material were contacted directly by e-mail/letter by SASA, Scottish Government's Official Certifying Authority to advise them of the need to register

in order to apply the Plant passports needed when marketing seed or material susceptible to RNQPs.

- Policy and delivery teams have also placed a number of guidance articles on the SASA, Scottish Government website.

19. The nomenclature changes to vegetable seed are of a technical nature, requiring consistency in the correct use of the botanical / scientific name by Member States when being applied for marketing purposes. With no vegetable seeds marketed in Scotland for multiplication use and without any Key Stakeholders in Scotland, we have placed an information note on the Scottish Government website and our normal agricultural Key Stakeholder organisations were informed directly in November 2019, during a Stakeholder meeting.

**Impact Assessment**

20. No impact assessment has been prepared for the SSI as there is likely to be little or no impact on the Scottish agricultural sector.

21. For the agricultural sector involved with seed potatoes, fruit plants and fruit propagating material, vegetable and ornamental plants and propagating material, there has been very little impact as they are already subject to plant health regulation.

22. In addition to the above, in Scotland there are only three seed crops – oil seed rape, swede rape and turnip rape – that might be affected by the new RNQP requirements in the SSI. This is because more than 95% of the seed crops being certified and grown in Scotland are cereals, which, with the exception of rice, are not affected by RNQPs. Of the 5% of non-cereal seed crops grown in Scotland that are susceptible to RNQPs, almost all will have been certified in England or Europe and delivered directly to the farmer with the original Plant passport attached. As a result, the industry in Scotland will be largely unaffected by the RNQPs provisions of the SSI.

23. We will keep this under review and the impact will be reviewed within 12 months based on evidence gathered from stakeholders and businesses.

Scottish Government
SASA
Agriculture and Rural Economy Directorate

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