EXPLANATORY MEMORANDUM TO

THE SEED MARKETING (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2020

2020 No. 301

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department of Agriculture, Environment and Rural Affairs to accompany the Statutory Rule (details above) which is to be laid before the Northern Ireland Assembly.

1.2 The Statutory Rule is made under powers conferred on it by section 2(2) of the European Communities Act 1972 and is subject to the negative resolution procedure.

1.3 The Rule will come into operation on XXXX.

2. Purpose

2.1 The main objective of the proposed Regulations is to amend the Seed Marketing Regulations (Northern Ireland) 2016 (S.R. 2016 No. 244) ("the 2016 Regulations") to ensure that the Department fulfils its obligations to transpose EU law into domestic legislation

2.2 Regulation 2(2) corrects an accidental omission from the 2016 Regulations, providing for the Department to act as the Member State, to temporarily permit the marketing of seed not satisfying the requirements in respect of the minimum germination laid down in the 2016 Regulations, for the purposes of Commission Regulation (EC) No 217/2006 as regards the authorisation of member States to permit temporarily the marketing of seed not satisfying the requirements in respect of the minimum germination.

2.3 Regulation 2(3) transposes the requirements of Commission Implementing Directive (EU) 2019/990 amending the list of genera and species in Article 2(1)(b) of Council Directive 2002/55/EC, in Annex II to Council Directive 2008/72/EC and in the Annex to Commission Directive 93/61/EEC ("the 2019 Directive"). It also transposes Commission Implementing Directive (EU) 2020/432 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 2020 Directive"). The 2020 Directive rectifies an error made by the 2019 Directive, by reinstating the definition of vegetables in Directive 2002/55/EC on the marketing of vegetable seed.

2.4 Regulation 2(4) transposes Commission Implementing Directive (EU) 2020/177, aligning the pest requirements as regards regulatory non-quarantine pests (RNQPs) to those in Commission Implementing Regulation (EU) 2019/2072 establishing uniform conditions as regards protective measures

against pests of plants ("the Phytosanitary Conditions Regulation") which implements Regulation (EU) 2016/2031 as regards protective measures against pests of plants ("the Plant Health Regulation"). These EU Regulations have applied in the UK since December 2019 and introduce a revised plant health import and movement regime including a new category of pests known as RNQPs. The amendments introduced by Commission Implementing Directive (EU) 2020/177 compliment the wider EU Smarter Rules for Safer Food package of regulations which modernises the existing health and safety standards of the agri-food chain.

3. Background

3.1 The marketing of agricultural seed is regulated at EU level by Council Directives 66/401/EEC on the marketing of fodder plant seed, 66/402/EEC on the marketing of cereal seed, 2002/54/EC on the marketing of beet seed, 2002/55/EC on the marketing of vegetable seed and 2002/57/EC on the marketing of seed of oil and fibre plants ("the Marketing Directives"). The Marketing Directives establish a regime to ensure that purchasers throughout the European Union receive seed which is healthy and of good quality. They set quality standards to be met by certain species when marketed and prescribe conditions to be satisfied by suppliers. These Directives are given effect in Northern Ireland through the 2016 Regulations.

3.2 The Phytosanitary Conditions Regulation establishes uniform conditions for the implementation of the Plant Health Regulation (Regulation (EU) 2016/2031). This includes an update to the phytosanitary status of pests found in the Marketing Directives following a review of pests carried out by the European and Mediterranean Plant Protection Organisation (EPPO). Certain pests, some of which are listed in the Marketing Directives, fulfil the conditions provided for in the Plant Health Regulation to be included in the list of RNQPs.

3.3 The Phytosanitary Conditions Regulation lists the RNQPs and specific plants for planting with categories and thresholds. It also provides the measures to be taken to prevent the presence of RNQPs on those specific plants for planting.

3.4 Commission Implementing Directive (EU) 2020/177 makes consequential amendments to the Marketing Directives to take account of the updated pest status of the pests listed in those directives. The Marketing Directives have been updated to adapt or remove provisions concerning those pests that qualify as RNQPs. It also introduces pests that were quarantine pests but are now assessed, following the review carried out by EPPO, as RNQPs or are included as a new pest for regulation as an RNQP. The amendments align with the directly applicable Phytosanitary Conditions Regulation.

3.5 The Regulations amend the 2016 Regulations to update and amend the pest requirements on plant material intended for marketing in Northern Ireland so that that plant material is practically free from RNQPs at the place of production and the presence of such pests on plant material does not exceed specified thresholds. This SR transposes the requirement for the crop and seed

produced by the crop to comply with the conditions of the Phytosanitary Conditions Regulation as a condition of certification in the 2016 Regulations.

3.6 Council Directive 2002/55/EC on the marketing of vegetable seed provides definitions of the varieties that are allowed to be marketed in the EU. Commission Implementing Directive (EU) 2020/432 updates 2002/55/EC to correct a previous error in the definition of 'vegetables' and also presents the list of vegetables in a hierarchical order, eliminating any possible ambiguity with respect to the scope of the varieties of the species concerned. The Regulations transpose these changes.

3.7 Council Directives 66/401/EEC (Article 17), 66/402/EEC (Article 17), 2002/54/EC (Article 24), 2002/55/EC (Article 38), 2002/57/EC (Article 21) permit temporary derogations from minimum germination requirements to remove any difficulties in the general supply of seed. These provisions were accidentally omitted from the 2016 Regulations. This SR corrects this omission and gives power to the Department to make such derogations.

4. Consultation

4.1 These Regulations are made under the power contained in section 2(2) of the European Communities Act 1972 to ensure that the Department fulfils its obligations to transpose EU law into domestic legislation As such there is no statutory obligation to carry out a consultation. The amendments made by these Regulations do not amount to changes in domestic policy and will not have a substantive impact on current practices.

5. Equality Impact

5.1 In accordance with the Department's obligations under Section 75 of the Northern Ireland Act 1998, the equality implications of the proposed Regulations have been assessed. No adverse equality impacts have been identified under the Equality and Human Rights screening procedures. The Department considers the Regulations will not result in any equality differentials amongst Section 75 groups.

6. Regulatory Impact

6.1 No impact is foreseen for business, charities or voluntary bodies and there is no impact on the public sector. Therefore, an Impact Assessment has not been prepared for these Regulations.

7. Financial Implications

7.1 The proposed amendments are minor and technical in nature with no change to current procedures. No additional costs to the seed industry are anticipated.

8. Section 24 of the Northern Ireland Act 1998

8.1 This Statutory Rule will ensure the Department complies fully with its obligations under European law. The Regulations do not have any human rights implications, nor are they incompatible with EU law. It is therefore deemed to comply with the requirements of section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1 This Statutory Rule transposes Commission Implementing Directive 2020/177, which amends the Seed Marketing Directives and also Commission Implementing Directives 2019/990 and 2020/432 which amend Directive 2002/55/EC on the marketing of vegetable seed. It also corrects an accidental omission from the 2016 Regulations to ensure that the Seed Marketing Directives have full effect in Northern Ireland.

10. Parity or Replicatory Measure

10.1. Similar legislation will implement the relevant EU Directives in the Great Britain and the Republic of Ireland

11. Additional Information

11.1 Not applicable.