EXPLANATORY MEMORANDUM TO

THE SEEDS (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2020

2020 No. 1294

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 is required to ensure that the UK has a functioning statute book at the end of the Implementation Period ("IP"). It uses the power under Section 8C of the European Union (Withdrawal) Act 2018 (the "Withdrawal Act") to implement the Protocol on Ireland / Northern Ireland to the withdrawal agreement ("the Protocol") to amend the Seeds (National Lists of Varieties) Regulations 2001 ("National Lists Regulations 2001") so that they apply to Great Britain ("GB") only and makes consequential changes to the Seeds (National Lists of Varieties) (Fees) Regulations 1994 ("the Fees Regulations").

Explanations

What did any relevant EU law do before exit day?

2.2 The registration of plant varieties is regulated at Union level by:

- Council Directive 2002/53/EC of 13 June 2002 on the common catalogue of varieties of agricultural plant species; and
- Council Directive 2002/55/EC of 13 June 2002 on the marketing of vegetable seed.

2.3 These directives prescribe the processes to register varieties of agricultural and vegetable species on a national basis via an assessment of their distinctness, uniformity and stability. The seed or propagating material of agricultural and vegetable species of those varieties can then be certified and marketed in that territory. The national registers are used to compile the EU's Common Catalogues of varieties, which in turn enables that agricultural or vegetable variety to be marketed across the EU. Variety registration provides consumer protection by ensuring the identity of the variety.

2.4 The variety registration requirements, as prescribed in these Directives, are transposed into domestic law via the National Lists Regulations 2001.

Why is it being changed?

2.5 This instrument makes changes to the National Lists Regulations 2001 arising from the application of the Protocol, and consequential changes to the Fees Regulations.

What will it do now?

2.6 This instrument makes operability amendments to domestic legislation to implement the Protocol by reducing the extent and application of the National Lists Regulations

2001 to GB and creating a GB variety list. It also amends the Marketing of Seeds and Plant Propagating Material (Amendment etc.) (EU Exit) Regulations 2019 to align those operability amendments to the National Lists Regulations 2001 with the Protocol.

2.7 This instrument makes consequential changes to the Fees Regulations to take account of the changes being made to the National Lists Regulations 2001 to implement the Protocol.

2.8 Regulations 2 and 4 amend the Fees Regulations and The Marketing of Seeds and Plant Propagating Material (Amendment etc.) (EU Exit) Regulations 2019, respectively, to take account of the changes being made to the National Lists Regulations 2001 to implement the Protocol. Regulation 3 amends the National Lists Regulations 2001 to implement the Protocol and Regulation 5 revokes the National Lists Regulations in so far as they extend to Northern Ireland.

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 The territorial extent and application of regulations 1, 2 and 4 is the United Kingdom.

4.2 The territorial extent and application of regulation 3 is Great Britain.

4.3 The territorial extent and application of regulation 5 is Northern Ireland.

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 Withdrawal Act saves EU-derived domestic law as it has effect immediately before IP completion day and enables a Minister of the Crown to make such provision as the Minister considers appropriate to implement the Protocol (section 8C).

6.2 The directives listed at paragraph 2.2 are provisions of Union law which are included at point 42 of Annex 2 to the Protocol (for plant reproductive material) and will apply to Northern Ireland after IP completion day.

6.3 Article 7.3 of the Protocol has the effect that technical approvals by the UK in respect of Northern Ireland (such as variety listing) will not be recognised in the EU. This instrument is accordingly being made to correct relevant legislation to ensure it implements the Protocol and operates effectively after the end of the IP.

7. Policy background

What is being done and why?

7.1 This instrument makes amendments for the purpose of implementing the Protocol and, in particular, Article 7(3), as a UK variety listing in respect of Northern Ireland will not be recognised by EU Member States or the Commission for the purposes of the Common Catalogue. This instrument therefore creates a GB variety list which will require listing requirements under GB regulations. Northern Ireland will continue to be able to market varieties that are listed on the EU's Common Catalogues of varieties and will create their own version of the National Lists Regulations 2001 to list varieties that they wish to market in Northern Ireland (the Northern Ireland variety list) but those varieties will not be added to the EU's Common Catalogues of varieties.

7.2 This instrument amends the Fees Regulations which provides that a fee be payable by those who wish to make a written representation or attend a hearing of an application to list a variety. That fee is not changing but will apply to an application relevant to the GB or Northern Ireland variety list.

7.3 This instrument makes only amendments which are legally necessary to achieve its objectives. It represents no changes in policy, nor will it produce any impact on businesses or the public.

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

8.1 This instrument is being made under 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 National Listing will be updated on 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 This instrument 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 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 Withdrawal Act no review clause is required.

15. Contact

15.1 Trine Andresen at the Department for Environment, Food and Rural Affairs email: trine.andresen@defra.gov.uk can be contacted with any queries regarding this 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.