POLICY NOTE

THE VEGETABLE PLANT MATERIAL AND FRUIT PLANT AND PROPAGATING MATERIAL (EU EXIT) (SCOTLAND) (AMENDMENT) REGULATIONS 2022

SSI 2022/203

The above instrument was made in exercise of the powers conferred by paragraph 1(1) and (3) of schedule 2 to the European Union (Withdrawal) Act 2018. The instrument is subject to negative procedure.

Purpose of the instrument.

The Vegetable Plant Material and Fruit Plant and Propagating Material (EU Exit) (Scotland) (Amendment) Regulations 2022 ("the 2022 Regulations") amend –

- the Marketing of Vegetable Plant Material Regulations 1995; and
- the Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017 (together the "Fruit and Vegetable Plant Material Marketing Regulations")

to allow Scottish fruit and vegetable plant breeders to access fruit and vegetable plant material from outside the UK after 31 December 2022.

Policy Objectives

The Fruit and Vegetable Plant Material Marketing Regulations only permit vegetable plants and fruit plant propagating material from outside the UK to be marketed for commercial purposes in Scotland where such material is from a country which the Scottish Ministers have granted "equivalent" status in respect of its production standards for plant material.

The provisions in the Fruit and Vegetable Plant Material Marketing Regulations which provide for the grant of equivalence are time limited and are due to expire on 31 December 2022. To ensure Scotland's fruit and vegetable breeders are still able to access new varieties of a high quality to be used in their own breeding programmes, it is necessary to remove the current end date prescribed in the Fruit and Vegetable Plant Material Marketing Regulations. This will permit the Scottish Ministers to grant equivalence beyond that end date.

Explanation of the law being amended by the regulations

The Fruit and Vegetable Plant Material Marketing Regulations prescribe minimum quality standards and traceability for plants and propagating material. They transpose the retained EU directives listed below ("the relevant Directives"):

- Council Directive 2008/72/EC of 15 July 2008 on the marketing of vegetable propagating and planting material, other than seed and;

- Council Directive 2008/90/EC of 29 September 2008 on the marketing of fruit plant propagating material and fruit plants intended for fruit production.

Reasons for and effect of the proposed change or changes on retained EU law

The changes made by these regulations are necessary to enable the Scottish Ministers to grant equivalent status to countries in respect of their production standards for vegetable plants and fruit plants and propagating material after 31st December 2022.

The amendments continue the existing provision for the Scottish Minsters to grant equivalence but without limit of time. That will bring the position in Scotland into line with the position for the rest of GB (in England and Wales the equivalent powers for the Secretary of State and Welsh Ministers to grant equivalence are already available without limit of time). Under the relevant Directives the Commission also has powers under EU law proper - exercisable without limit of time – to recognise third countries material as equivalent.

Going forward, this will enable the industry in Scotland to access fruit and vegetable plants and propagating material from countries whose production standards are of a commensurate standard to plants and propagating material produced in Scotland.

Statements required by European Union (Withdrawal) Act 2018

Statement that in their opinion Scottish Ministers consider that the regulations do no more than is appropriate

The Minister for Environment and Land Reform, Mairi McAllan has made the following statement "In my view the Vegetable Plant Material and Fruit Plant and Propagating Material (EU Exit) (Miscellaneous Amendments) (Scotland) Regulations 2022 do no more than is appropriate". This is the case because the proposed action ensures, in line with the current position, that Scottish Ministers will be able after 31 December 2022 to grant equivalence in relation to fruit and vegetable plants and propagating material from outside UK, allowing this material to be marketed in Scotland for commercial purposes and ensuring that industry in Scotland will continue to be able to access this material.

Statement as to why the Scottish Ministers consider that there are good reasons for the regulations and that this is a reasonable course of action

The Minister for Environment and Land Reform, Mairi McAllan has made the following statement "In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action. These are to ensure that plant breeders of fruit and vegetable plants/propagating material in Scotland continue to be able to be supplied with new varieties of a high quality, for use in their own breeding programmes. An amendment to the current legislation to remove the time limit on the exercise of this power will bring the position in Scotland into line with the position in the rest of GB, with the Secretary of State (for England) and Welsh Ministers (for Wales) already having a power exercisable without limit of time to grant equivalence in relation to fruit and vegetable plants and propagating material from outside UK allowing this material to be marketed.

Statement as to whether the SSI amends, repeals or revokes any provision of equalities legislation, and, if it does, an explanation of that amendment, repeal or revocation

The Minister for Environment and Land Reform, Mairi McAllan has made the following statement "In my view the Vegetable Plant Material and Fruit Plant and Propagating Material (EU Exit) (Miscellaneous Amendments) (Scotland) Regulations 2022 do not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts."

Statement that Scottish Ministers have, in preparing the regulations, had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010

The Minister for Environment and Land Reform, Mairi McAllan has made the following statement "In my view the Vegetable Plant Material and Fruit Plant and Propagating Material (EU Exit) (Miscellaneous Amendments) (Scotland) Regulations 2022 have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.".

Additional information provided for EU Exit instruments in terms of the protocol agreed between the Scottish Government and the Scottish Parliament

Statement that Scottish Ministers have, in preparing the regulations, had due regard to the guidance principles on the environment and animal welfare

The Minister for Environment and Land Reform, Mairi McAllan has made the following statement "In my view the Vegetable Plant Material and Fruit Plant and Propagating Material (EU Exit) (Miscellaneous Amendments) (Scotland) Regulations 2022 have had due regard to the guiding principles on the environment and animal welfare as derived from the equivalent principles provided for in Articles 13 and 191(2) in Titles II and XX respectively of the Treaty on the Functioning of the European Union.".

Statement explaining the effect (if any) of the regulations on rights and duties relating to employment and health and safety and matters relating to consumer protection (so far as is within devolved competence)

The above statement is not applicable.

An indication of how the regulations should be categorised in relation to the significance of the change proposed

Categorisation: Low. The instrument makes a minor change to remove the time limit on Scottish Ministers' existing power to grant equivalence in relation to fruit and vegetable plants and propagating material from outside the UK allowing this material to be marketed in Scotland. It therefore makes no policy change but rather provides for continuity of law, maintaining Scottish Ministers' power to grant equivalence going forward. That will bring the position in Scotland into line with the position for the rest of GB (in England and Wales the equivalent powers for the Secretary of State and Welsh Ministers to grant equivalence are already available without limit of time). In these circumstances it is considered that negative procedure is appropriate for the instrument.

Statement setting out the Scottish Ministers' reasons for their choice of procedure

These are minor amendments which do no more than is necessary to ensure that the legislation continues to operate effectively following the UK's exit from the EU. The instrument makes a minor change to remove the time limit on Scottish Ministers' existing power to grant equivalence in relation to fruit and vegetable plants and propagating material from outside UK allowing this material to be marketed in Scotland. It therefore makes no policy change but rather provides for continuity of law, maintaining Scottish Ministers' power to grant equivalence going forward. The Regulations do not include provisions which fall within paragraph 1(2) of schedule 7 of the European Union (Withdrawal) Act 2018 and which would attract the affirmative procedure. On this basis it is considered the negative procedure is appropriate.

Further information

Consultation

This instrument does not amount to a change in policy and is being made to ensure that the legislation continues to operate effectively following the UK's exit from the EU, allowing Scottish Ministers' existing power to grant equivalence in relation to fruit and vegetable plants and propagating material from outside UK, allowing this material to be marketed in Scotland, to continue. Therefore, no consultation has been carried out.

It is intended that an information letter will be sent to Scottish breeders informing about the continuation of the ability to grant equivalent status once the instrument is made.

Impact Assessments

Full impact assessments have not been prepared for this instrument as it is aimed at preserving the effect of the current regulatory regimes. The current amendments do not alter the Scottish Government's current environmental policies and priorities and, therefore, do not have a significant impact of the environment. There will be no impact on business, charities or voluntary bodies.

Financial Effects

The Minister for Environment and Land Reform, Mairi McAllan confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Agriculture and Rural Economy Directorate
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