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STATUTORY INSTRUMENTS

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**2019 No. 131**

**EXITING THE EUROPEAN  
UNION, ENGLAND AND WALES  
SEEDS, ENGLAND AND WALES**

**The Marketing of Seeds and Plant Propagating Material  
(Amendment) (England and Wales) (EU Exit) Regulations 2019**

*Sift requirements satisfied*                      *18th December 2018*  
*Made*       -       -       -       -                      *23rd January 2019*  
*Laid before Parliament*                      *30th January 2019*  
*Coming into force in accordance with regulation 1*

The Secretary of State makes these Regulations in exercise of the powers conferred—

- (a) in relation to Part 1, by the powers mentioned in paragraphs (b) and (c);
- (b) in relation to Part 2, by section 2(2) of the European Communities Act 1972<sup>(1)</sup>;
- (c) in relation to Part 3, by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018<sup>(2)</sup>.

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to the common agricultural policy<sup>(3)</sup>.

The requirements of paragraph 3(2) of Schedule 7 to the European Union (Withdrawal) Act 2018 (relating to the appropriate Parliamentary procedure for these Regulations) have been satisfied.

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(1) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51), and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7). It is prospectively repealed by the European Union (Withdrawal) Act 2018 (c. 16), section 1 from exit day (see section 20 of that Act). The function of the former Minister of Agriculture, Fisheries and Food of making regulations under section 2(2) was transferred to the Secretary of State by S.I. 2002/794.

(2) 2018 c. 16.

(3) S.I. 1972/1811, to which there are amendments not relevant to these Regulations.

## PART 1

### Introductory

#### Citation and commencement

1. These Regulations may be cited as the Marketing of Seeds and Plant Propagating Material (Amendment) (England and Wales) (EU Exit) Regulations 2019, and come into force as follows—

- (a) as regards this Part and Part 2, 21 days after the day on which these Regulations are laid;
- (b) as regards Part 3, on exit day.

#### Extent and application

- 2.—(1) These Regulations extend to England and Wales.
- (2) This Part and regulations 4 and 5 apply in relation to England and Wales.
- (3) Part 2 and (in Part 3) regulations 6 to 8 apply in relation to England only.

## PART 2

### Amendment of references in secondary legislation

#### The Seed Marketing Regulations 2011

- 3.—(1) The Seed Marketing Regulations 2011<sup>(4)</sup> are amended as follows.
- (2) In regulation 3(1), after sub-paragraph (b), insert—
  - “(c) “European Single Market State” means an EEA state or Switzerland.”.
- (3) In Schedules 3 and 4, for “member State”, in each place where it occurs, substitute “European Single Market State”.

## PART 3

### Amendment of secondary legislation relating to the withdrawal from the European Union

#### The Marketing of Vegetable Plant Material Regulations 1995

- 4.—(1) The Marketing of Vegetable Plant Material Regulations 1995<sup>(5)</sup> are amended as follows.
- (2) In regulation 3(2)(a), for “European Union” substitute “United Kingdom”.
- (3) In regulation 5(d)(ii), after “it” insert “is marketed before the end of the period of two years beginning with the day after the day on which exit day falls and”.
- (4) In regulation 8(2), for “Council [Directive 2000/29/EC](#)” substitute “, in England, the Plant Health (England) Order 2015<sup>(6)</sup>, or, in Wales, the Plant Health (Wales) Order 2018<sup>(7)</sup>”.

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(4) S.I. 2011/463, amended by S.I. 2011/2992, 2012/3035, 2016/613, 2017/288.

(5) S.I. 1995/2652, relevant amending instruments are S.I. 2007/1449, 2007/2190 (W. 174), 2011/1043, 2014/487, 2014/519 (W. 61), 2018/575, 2018/1216 (W. 249).

(6) S.I. 2015/610, amended by S.I. 2015/1827, 2016/104, 2017/8, 1220, 2018/71, 320 and 910.

(7) S.I. 2018/1064 (W. 223).

(5) In regulation 11(2), for “representatives of the European Commission and such other” substitute “such”.

(6) In Schedule 2—

(a) in Part A—

(i) in paragraph 1, for “EC” substitute “UK”;

(ii) omit paragraph 2;

(iii) in paragraph 3, at the end insert “and its abbreviated country code”;

(b) in Part B, in paragraph 1, for “EC” substitute “UK”.

### **The Marketing of Ornamental Plant Propagating Material Regulations 1999**

**5.—(1)** The Marketing of Ornamental Plant Propagating Material Regulations 1999<sup>(8)</sup> are amended as follows.

(2) In regulation 2(1)—

(a) omit the definitions of “[Directive 2000/29/EC](#)”, “Regulation 2100/94” and “third country”;

(b) in the definition of “supplier”, for “from third countries” substitute “into the United Kingdom”, and, after that definition, omit “and”.

(3) In regulation 3(2)(a), for “to third countries” substitute “from the United Kingdom”.

(4) In regulation 6A(4), for the definition of “responsible official body” substitute—

““responsible official body” has the meaning given, in relation to England, in the Plant Health (England) Order 2015, and, in relation to Wales, in the Plant Health (Wales) Order 2018.”.

(5) In regulation 9(2), for “[Directive 2002/29/EC](#)” substitute “, in England, the Plant Health (England) Order 2015, or, in Wales, the Plant Health (Wales) Order 2018”.

(6) In regulation 11(1)—

(a) in sub-paragraph (a), omit “Community plant variety rights pursuant to Regulation 2100/94 or ”;

(b) in sub-paragraph (c)(iii), for the words from “Community plant” to the end substitute “plant breeders’ right in respect of the variety under the Plant Varieties Act 1997<sup>(9)</sup>”.

(7) In regulation 12—

(a) in the heading, for “in third countries” substitute “outside the United Kingdom”;

(b) in paragraph (1)—

(i) for “from a third country” substitute “into the United Kingdom”;

(ii) for “[Directive 98/56/EC](#)” substitute “these Regulations”;

(c) in paragraphs (2) and (4)—

(i) at the beginning, insert “Subject to paragraph (5), ”;

(ii) omit “from a third country”;

(d) after paragraph (4) insert—

“(5) Paragraphs (2) and (4) do not apply to suppliers importing propagating material produced—

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<sup>(8)</sup> S.I. 1999/1801, amended by S.I. 2018/575, 974, 2018/1216 (W. 249).

<sup>(9)</sup> 1997 c. 66.

- (a) in the European Union before the end of the period of two years beginning with the day after the day on which exit day falls; or
  - (b) in the Channel Islands or the Isle of Man.”.
- (8) In the Schedule—
- (a) in paragraph 1, for “EC” substitute “UK”;
  - (b) omit paragraph 2;
  - (c) in paragraph 3, at the end insert “and its abbreviated country code”;
  - (d) in paragraph 10, for “from a third country” substitute “into the United Kingdom”.

### **The Forest Reproductive Material (Great Britain) Regulations 2002**

**6.—(1)** The Forest Reproductive Material (Great Britain) Regulations 2002<sup>(10)</sup> are amended as follows.

- (2) Regulation 2 is amended in accordance with paragraphs (3) and (4).
- (3) In paragraph (2)—
- (a) after the definition of “approved basic material” insert—
    - ““approved non-EU third country” means a country listed in Part 1A of Schedule 13;”
  - (b) omit the definition of “Council Decision 2008/971/EC”;
  - (c) after the definition of “crossing design” insert—
    - ““the Department” has the meaning given in the NI Regulations;”;
  - (d) omit the definition of “EC classification”;
  - (e) omit the definition of “EU-approved third countries”;
  - (f) in the definition of “genetically modified organism”, for the words from “Article 2(1)” to the end substitute “section 106 of the Environmental Protection Act 1990<sup>(11)</sup>”;
  - (g) in the definition of “Master Certificate”—
    - (i) in paragraph (b), for “official body for Northern Ireland” to the end substitute “Department in accordance with regulation 13 of the NI Regulations”;
    - (ii) in paragraph (d)—
      - (aa) for “EU-approved” substitute “approved non-EU”;
      - (bb) for the words from “a relevant” to the end substitute “the Department in accordance with the NI Regulations”;
    - (iii) in paragraph (e), for “an official body of a member State” substitute “the Department”;
  - (h) omit the definition of “the Mediterranean climatic region”;
  - (i) after the definition of “National Register” insert—
    - ““the NI Regulations” means the Forest Reproductive Material Regulations (Northern Ireland) 2002<sup>(12)</sup>”;
  - (j) in the definition of “official body”—

<sup>(10)</sup> S.I. 2002/3026, amended by S.I. 2006/2530, 2011/1043, 2013/755 (W.90), 2014/1833.

<sup>(11)</sup> 1990 c. 43; section 106 was amended in relation to England by the Human Fertilisation and Embryology Act 2008 (c. 22), section 60 and by S.I. 2002/2443, 2009/2232.

<sup>(12)</sup> S.R. 2002 No. 404.

- (i) omit paragraph (b);
- (ii) in paragraph (c), after “in relation to” insert “an approved non-EU third country or”;
- (k) omit the definition of “plant passport”;
- (l) in the definition of “region of provenance”, for “in accordance with Article 9 of the Directive by another official body” substitute “pursuant to regulation 5 of the NI Regulations by the Department”;
- (m) for the definition of “third countries” substitute—
  - ““third country” means a country or territory outside the United Kingdom;”.
- (4) Omit paragraphs (4A) to (6).
- (5) In regulation 4—
  - (a) in paragraph (1)(c), omit “subject to paragraph (1A)”;
  - (b) omit paragraph (1A).
- (6) In regulation 7(4)—
  - (a) omit sub-paragraph (b);
  - (b) at the end insert—
    - “(c) as regards England, consent to the marketing of the basic material has been given by the Secretary of State in accordance with the Genetically Modified Organisms (Deliberate Release) Regulations 2002(13)
- (7) In regulation 14(4)—
  - (a) in sub-paragraph (a)—
    - (i) in paragraph (ii)—
      - (aa) for “any other official body of a member State” substitute “the Department”;
      - (bb) for “the official body in accordance with Article 10 of the Directive” substitute “the Department in accordance with regulation 7 of the NI Regulations”;
    - (ii) in paragraph (iii), for “an EU-approved” substitute “a member State, an approved non-EU”;
  - (b) in sub-paragraph (b), after paragraph (i) insert—
    - “(ia) in the case of forest reproductive material derived from basic material approved by the Department, has the meaning given in regulation 7(5) of the NI Regulations;”.
- (8) In regulation 17—
  - (a) in paragraph (1)—
    - (i) in sub-paragraph (b)—
      - (aa) omit “or another member State”;
      - (bb) for “Article 14 of the Directive” substitute “regulation 19 of the NI Regulations”;
    - (ii) after sub-paragraph (b), insert—
      - “(ba) in the case of forest reproductive material produced in a member State and imported into England, it has met the requirements as to entry into England set out in regulation 25;”;

(iii) in sub-paragraph (c), for “EU-approved” substitute “approved non-EU”;

(iv) omit sub-paragraph (d);

(v) after sub-paragraph (e) insert—

“(ea) in the case of forest reproductive material imported into Northern Ireland, it met the requirements set out in the NI Regulations as to entry into Northern Ireland and was accompanied on its entry into England by the supplier’s label or document required by regulation 19 of the NI Regulations;”;

(vi) omit sub-paragraph (f);

(b) omit paragraph (12).

(9) In regulation 18(3), in sub-paragraph (c), for “the Directive” substitute “any provision made under retained EU law relating to forest reproductive material or under the Plant Varieties and Seeds Act 1964(14)”.

(10) In regulation 19—

(a) in paragraph (1)—

(i) in sub-paragraph (e), omit “, another member State”;

(ii) omit sub-paragraph (h) and the preceding “and”;

(iii) omit sub-paragraph (i);

(b) in paragraph (3), for “EU-approved” substitute “approved non-EU”.

(11) In the heading to Part 6, for “Between Great Britain and elsewhere in the European Union” substitute “within the United Kingdom”.

(12) In regulation 21 for “Northern Ireland”, in each place where it occurs (including the heading) substitute “another part of the United Kingdom”.

(13) Omit regulation 22.

(14) In regulation 23—

(a) in the heading, at the end, insert “or within Great Britain”;

(b) for “Northern Ireland” substitute “another part of the United Kingdom”;

(c) for “required by Article 14 of the Directive” substitute “setting out the particulars required under regulation 19 of these Regulations or regulation 19 of the NI Regulations”.

(15) Omit regulation 24.

(16) In regulation 25—

(a) in paragraphs (1) and (2), for “an EU-approved” substitute “a member State, an approved non-EU”;

(b) in paragraph (6), for “an EU-approved” substitute “a member State or an approved non-EU”.

(17) In regulation 26(3)(a)(vii), at the beginning insert “UK”.

(18) In regulation 27—

(a) in paragraph (2)—

(i) omit “, including representatives of the Commission of the European Union”;

(ii) omit “, or for facilitating the checks required under Article 16(6) of the Directive”;

(b) in paragraph (3), omit “the Commission of the European Union or”.

- (19) In regulation 34(2), omit “or European Community”.
- (20) In the model certificate in Schedule 6—
- (a) for “*ISSUED IN ACCORDANCE WITH DIRECTIVE 1999/105/EC*” substitute—  
“*ISSUED IN ACCORDANCE WITH THE OECD FOREST AND PLANT SCHEME AND THE FOREST REPRODUCTIVE MATERIAL (GREAT BRITAIN) REGULATIONS 2002*”;
  - (b) for “**MEMBER STATE:**” substitute “**UNITED KINGDOM**”;
  - (c) for “**No EC:/(MEMBER STATE CODE)/ (No)**” substitute “**UK (No.)**”;
  - (d) for “EC Directive” substitute “OECD Forest Seed and Plant Scheme moving in International Trade and the Forest Reproductive Material (Great Britain) Regulations 2002”;
  - (e) for “**EC Certificate**” substitute “**UK or OECD Certificate**”.
- (21) In the model certificate in Schedule 7—
- (a) for “*ISSUED IN ACCORDANCE WITH DIRECTIVE 1999/105/EC*” substitute—  
“*ISSUED IN ACCORDANCE WITH THE OECD FOREST AND PLANT SCHEME AND THE FOREST REPRODUCTIVE MATERIAL (GREAT BRITAIN) REGULATIONS 2002*”;
  - (b) for “**MEMBER STATE:**” substitute “**UNITED KINGDOM**”;
  - (c) for “**No EC:/(MEMBER STATE CODE)/ (No.)**” substitute “**UK (No.)**”;
  - (d) for “EC Directive” substitute “OECD Forest Seed and Plant Scheme and the Forest Reproductive Material (Great Britain) Regulations 2002”;
  - (e) for “**EC Certificate**” substitute “**UK or OECD Certificate**”.
- (22) In the model certificate in Schedule 8—
- (a) for “*ISSUED IN ACCORDANCE WITH DIRECTIVE 1999/105/EC*” substitute—  
“*ISSUED IN ACCORDANCE WITH THE OECD FOREST AND PLANT SCHEME AND THE FOREST REPRODUCTIVE MATERIAL (GREAT BRITAIN) REGULATIONS 2002*”;
  - (b) for “**MEMBER STATE:**” substitute “**UNITED KINGDOM**”;
  - (c) for “**No EC:/(MEMBER STATE CODE)/ (No)**” substitute “**UK (No.)**”;
  - (d) for “EC Directive” substitute “OECD Forest Seed and Plant Scheme and the Forest Reproductive Material (Great Britain) Regulations 2002”;
  - (e) for “**EC Certificate**” substitute “**UK or OECD Certificate**”.
- (23) In Schedule 9—
- (a) in paragraph 1(b), omit “EC”, in both places where it occurs;
  - (b) in the table in paragraph 2(b), omit the first row and the last three rows.
- (24) Omit Schedule 10.
- (25) In Schedule 13—
- (a) in paragraph 1, for “an EU-approved” substitute “a member State, an approved non-EU”;
  - (b) in paragraph 2—
    - (i) before the definition of “OECD Certificate of Provenance” insert—  
““OECD Certificate of Identity” means a certificate of identity issued in accordance with the rules of the OECD Scheme;”;

- (ii) in the definition of “permitted material”—
  - (aa) before paragraph (a) insert—
    - “(za) in the case of forest reproductive material produced in a member State, forest reproductive material which has been certified by the relevant official body in accordance with Article 12 of the Directive or the OECD Scheme;”;
  - (bb) in sub-paragraph (a), for “EU-approved” substitute “approved non-EU”;
- (c) after Part 1, insert—

## “PART 1A

### **Approved non-EU third countries**

1. Canada
2. Norway
3. Serbia
4. Switzerland
5. Turkey
6. United States

## PART 1B

### **Scope of Part 1B**

**2A.** This Part applies to consignments of permitted material produced in a member State.

### **General requirements**

- 2B.** A consignment of permitted material must be accompanied by—
- (a) a copy of the Master Certificate issued by the relevant official body under Article 12 of the Directive;
  - (b) a label or document which complies with the requirements in Article 14 of the Directive;
  - (c) an OECD Certificate of Provenance or OECD Certificate of Identity issued in relation to the permitted material; or
  - (d) a label or document completed by the supplier of the consignment containing—
    - (i) the supplier’s name;
    - (ii) all of the information contained in the OECD Certificate of Provenance or OECD Certificate of Identity; and
    - (iii) in relation to any seed lot which is accompanied by an OECD Certificate of Provenance or an OECD Certificate of Identity, the information specified in paragraph 2D.



**2C.** Where the permitted material is accompanied by an OECD Certificate of Provenance or OECD Certificate of Identity, or a label or document referred to in paragraph 2B(d), an OECD label must be attached to each seed lot and to each consignment of planting stock.

**2D.** The OECD label attached to the seed lot and any supplier's document accompanying the seed lot must contain the following additional information in relation to the seed lot assessed, so far as is practicable in all the circumstances, using internationally accepted techniques—

- (a) the percentage by weight of pure seed, other seed and inert matter;
- (b) the germination percentage of pure seed or, where it is impossible or impracticable to assess the germination percentage, the viability percentage assessed by reference to a method which must be described;
- (c) the weight of 1000 pure seeds;
- (d) the number of germinable seeds per kilogram of the seed, or where it is impossible or impracticable to assess the number of germinable seeds, the number of viable seeds per kilogram;
- (e) in the case of a seed lot of closely related species which does not reach a minimum species purity of 99%, the species purity.

**2E.** But the OECD label and supplier's document may omit the following information—

- (a) any information mentioned in paragraph 2D(a) to (e) which is yet to be ascertained by testing the seed using internationally accepted techniques;
- (b) in the case of a seed lot containing seed which has been harvested from the current season's crop, any information mentioned in paragraph 2D(b) or (d) which is not yet available;
- (c) in the case of seed which is to be marketed in quantities no greater than those specified for the species or artificial hybrid of the seed in Schedule 11, the information mentioned in paragraph 2D(b) or (d).

**2F.** All seed must be consigned in sealed packages.”

## **The Seed Marketing Regulations 2011**

7.—(1) The Seed Marketing Regulations 2011(15) are amended as follows.

(2) In regulation 3(1), after sub-paragraph(c), insert—

“(d) “country granted equivalence” means a country that has been granted equivalence under Council [Decision 2003/17/EC](#) on the equivalence of field inspections carried out in third countries on seed-producing crops and on the equivalence of seed produced in third countries;

(e) “Crown Dependency” means any of the Channel Islands or the Isle of Man.”

(3) In regulation 4(2), for “European Union” substitute “United Kingdom”.

(4) In regulation 7, for “the Common Catalogue” substitute “an equivalent list in a country referred to in the Annex to Council [Decision 2005/834/EC](#) on the equivalence of checks on practices for the maintenance of varieties carried out in certain third countries”.

(5) After regulation 8 insert—

**“Marketing of seed from a European Single Market State**

**8A.**—(1) No person may market seed to which these Regulations apply which has been produced in a European Single Market State.

(2) Paragraph (1) does not apply to seed which meets the conditions specified in paragraph (3).

(3) The conditions are that the seed —

- (a) is of a variety listed in the United Kingdom National List or the Common Catalogue;
- (b) has been produced in compliance with the requirements set out in EU law including the Council Directives referred to in regulation 3(2)(a) to (e) and (i), and
- (c) has been imported into England before the end of the period of two years beginning with the day after the day on which exit day falls.”

(6) In regulation 10, in paragraph (a), for the words from “variety” to the end substitute—  
“variety—

- (i) entered in the United Kingdom National List; or
- (ii) entered in the Common Catalogue at any time before the end of the period of two years beginning with the day after the day on which exit day falls;”

(7) For regulation 21A, substitute—

**“21A.**—(1) The Secretary of State may by licence exempt any person or class of person from compliance with any provision of these Regulations for the purposes of a temporary experiment seeking improved alternatives to provisions of these Regulations and organised in accordance with regulations made under section 16(5) of the Plant Varieties and Seeds Act 1964**(16)**.

(2) The duration of an experiment must not exceed 7 years.”

(8) In regulation 26, omit “outside the European Union”.

(9) In regulation 27—

- (a) in the heading and in paragraph (1), for “from outside the European Union” substitute “into the United Kingdom”;
- (b) in paragraph (3), for “from a third country” substitute “into the United Kingdom ”;
- (c) after paragraph (3) insert—

“**(4)** Paragraphs (1) and (3) do not apply to seed imported from a European Single Market State before the end of the period of two years beginning with the day after the day on which exit day falls.”

(10) In regulation 30, for “acts as the member State for the purposes of” substitute “may temporarily permit the marketing of seed not satisfying the requirements of minimum germination under conditions determined in accordance with”.

(11) After regulation 32, insert—

**“Certification in a Crown Dependency**

**32A.** Any seed certified and labelled in a Crown Dependency under legislation recognised by the Secretary of State to have equivalent effect to these Regulations may be marketed in England.

### **Transitional provision for official labels on exit day**

**32B.** For the purposes of regulation 17 and paragraphs 7(1)(a) and 8(1)(a) of Schedule 3, an official label pre-printed before exit day containing the statement “EU Rules and Standards” may be used as an official label before the end of the period of two years beginning with the day after the day on which exit day falls.”.

(12) In regulation 33A, omit paragraph (2).

(13) In Schedule 2—

(a) in paragraph 7—

(i) in sub-paragraph (1), after “Article 2(3)(A)”, insert “(a) to (d)”;

(ii) in sub-paragraph (3), for “Annex III to that Directive” substitute “Schedule 3”;

(iii) after sub-paragraph (5), insert—

“(6) For the purposes of this regulation, Council [Directive 2002/54/EC](#) is to be read as if—

(a) in Article 2(3)(A)(a)(iii), for “officially licensed by the seed certification authority of the Member State concerned” there were substituted “licensed by the Secretary of State”;

(b) in Annex 1—

(i) in point A—

(aa) in paragraph 3, for “certification authority” there were substituted “Secretary of State”;

(bb) in the last paragraph, for the words from “the common” to “that Directive” there were substituted “United Kingdom National List”;

(ii) in point B, in paragraph 3(c)—

(aa) the reference to “Member States” were a reference to “The Secretary of State”;

(bb) the reference to “Community” were omitted.”;

(b) in paragraph 15—

(i) in sub-paragraph (1), after “Article 2(3)(A)”, insert “(a) to (d)”;

(ii) in sub-paragraph (2), after “that Directive”, in the first place where it occurs, insert “(except paragraphs 1a(f) and 1b of Article 7)”;

(iii) after sub-paragraph (2), insert—

“(2A) For the purposes of sub-paragraphs (1) and (2), Council [Directive 66/402/EEC](#) is to be read as if—

(a) in Article 2(3)(A)(a)(iii), for “officially licensed by the seed certification authority of the Member State concerned” there were substituted “licensed by the Secretary of State”;

(b) in Article 7—

(i) the reference to “Member States” were a reference to “The Secretary of State”;

(ii) in paragraph 1a(a), for “seed certification authority of the Member State concerned” there were substituted “Secretary of State”.”;

(c) in paragraph 28—

(i) in sub-paragraph (1), after “Article 2(3)(A)”, insert “(a) to (d)”;

- (ii) after sub-paragraph (1), insert—
    - “(1A) For the purposes of sub-paragraph (1), Council [Directive 66/401/EEC](#) is to be read as if—
      - (a) in Article 2(3)(A)(a)(iii), for “officially licensed by the seed certification authority of the Member State concerned” there were substituted “licensed by the Secretary of State”;
      - (b) in Annex 1, in paragraph 4, in the second sub-paragraph, the words from “Upon” to the end were omitted.”;
  - (d) in paragraph 42—
    - (i) in sub-paragraph (1), after “Article 2(5)(A)”, insert “(a) to (d)”;
    - (ii) after sub-paragraph (1), insert—
      - “(1A) For the purposes of sub-paragraph (1), Council [Directive 2002/57/EC](#) is to be read as if—
        - (a) in Article 2(5)(A)(a)(iii), for “officially licensed by the seed certification authority of the Member State concerned” there were substituted “licensed by the Secretary of State”;
        - (b) in Annex 2, in Part 1, in paragraph 5C, the last sub-paragraph were omitted.”;
  - (e) in paragraph 43(2), omit “ or the Common Catalogue”;
  - (f) in paragraph 50—
    - (i) in sub-paragraph (1), after “Article 2(4)(A)” insert “(a) to (d)”;
    - (ii) in sub-paragraph (2), after “Article 25”, insert “ (except paragraphs 1a(f) and 1b)”;
    - (iii) after sub-paragraph (2), insert—
      - “(2A) For the purposes of sub-paragraphs (1) and (2), Council [Directive 2002/55/EC](#) is to be read as if—
        - (a) in Article 2(4)(A)(a)(iii), for “officially licensed by the seed certification authority of the Member State concerned” there were substituted “licensed by the Secretary of State”;
        - (b) in Article 25—
          - (i) references to “Member States” were references to “the Secretary of State”;
          - (ii) in paragraph 1a(a), for “seed certification authority of the Member State concerned” there were substituted “Secretary of State”.”.
- (14) In Schedule 3—
- (a) in paragraph 5(5), for the words from “one of” to the end substitute “English, but may also be in other languages”;
  - (b) in paragraph 6(1)—
    - (i) in paragraph (a), after “the name”, insert “ and country or country initials”;
    - (ii) omit paragraph (b);
  - (c) in paragraphs 7(1) and 8(1)—
    - (i) in paragraph (a), for “EU” substitute “UK”;
    - (ii) in paragraph (b), after “the name”, insert “and country or country initials”;
    - (iii) omit paragraph (c);

- (d) in paragraph 9(1)—
    - (i) in paragraph (a), at the beginning, insert “the name and country or country initials of”;
    - (ii) omit paragraph (b);
  - (e) in paragraphs 12(2)(a) and 14(1)(a), for “or the Common Catalogue” substitute “, or has been accepted onto the Common Catalogue and the seed is marketed before the end of the period of two years beginning with the day after the day on which exit day falls”;
  - (f) in paragraph 19—
    - (i) in sub-paragraph (2), omit “EC”;
    - (ii) in sub-paragraph (4)—
      - (aa) in paragraph (a), omit “EC”;
      - (bb) in paragraph (e), for “European Single Market State” substitute “country of production”;
  - (g) in paragraph 20(4)(a), for “EU” substitute “UK”;
  - (h) in paragraphs 21 and 22, omit “EC” in each place where it occurs;
  - (i) in paragraph 23—
    - (i) omit “EC” in each place where it occurs;
    - (ii) in sub-paragraphs (2)(c)(ii) and (d)(iii), for “European Single Market State” substitute “country of production”;
  - (j) in paragraphs 24 and 25, for “EU”, in each place where it occurs, substitute “UK”.
- (15) In Schedule 4—
- (a) in paragraph 4(1), for “the Directive” substitute “these Regulations”;
  - (b) in paragraph 5(2), for “from a third country” substitute “into the United Kingdom”;
  - (c) in paragraph 6, for “Council [Directive 66/402/EEC](#)” substitute “these Regulations”;
  - (d) in paragraph 7—
    - (i) after sub-paragraph 5, insert—
      - “(5A) For the purposes of sub-paragraph (5)—
      - (a) Article 14 of Commission [Directive 2008/62/EC](#) is to be read as if—
        - (i) in the first paragraph—
          - (aa) the words “Each Member State shall ensure that, ” were omitted;
          - (bb) for the reference to “that Member State” there were substituted “the United Kingdom”;
        - (ii) in the second paragraph—
          - (aa) the words “in each Member State” were omitted;
          - (bb) for the references to “the Member State”, in both places where it occurs, there were substituted “the United Kingdom”;
      - (b) Article 15 of Commission [Directive 2009/145/EC](#) is to be read as if—
        - (i) the words “Each Member State shall ensure that” were omitted;
        - (ii) for “does” there were substituted “must”.”;

- (ii) in sub-paragraph (7), for the words from “Council [Directive 2002/54/EC](#)” to “(as the case may be)” substitute “these Regulations”;
- (iii) in sub-paragraph (8)—
  - (aa) in paragraph (a), for the words from “Council [Directive 2002/55/EC](#)” to “seed” substitute “Schedule 2”;
  - (bb) in paragraph (b), for “that Directive” substitute “these Regulations”;
- (e) in paragraph 8—
  - (i) in sub-paragraph (3)(b), for the words from “in accordance” to the end substitute “having taken account of any available information from plant genetic resource organisations”;
  - (ii) in sub-paragraph (5)(a), for “EU” substitute “UK”;
  - (iii) in sub-paragraph (7), after “have”, in the first place where it occurs, insert “subject to sub-paragraph (8)”;
  - (iv) after sub-paragraph (7) insert—
 

“(8) For the purposes of this paragraph, Article 1(a) of Commission [Directive 2010/60/EU](#) is to be read as if the definition of “source area” contained in that Article defined it to mean an area designated as a special area of conservation or an area contributing to the conservation of plant genetic resources in accordance with retained EU law.”;
- (f) in paragraph 10(1), omit the words from “of at least” to the end;
- (g) in paragraph 11(2), omit “or the Common Catalogue”;
- (h) in paragraph 12—
  - (i) the existing text becomes sub-paragraph (1);
  - (ii) in sub-paragraph (1)—
    - (aa) in the words before paragraph (a), omit “been authorised for cultivation under either”;
    - (bb) in paragraph (a), at the beginning, insert “before the day on which exit day falls, been authorised under”, and, at the end, omit “or”;
    - (cc) in paragraph (b), at the beginning, insert “been authorised under”, and, at the end, insert “, or”;
    - (dd) after paragraph (b), insert—
 

been authorised under the GMO Regulations.
- (2) For the purpose of paragraph (1), “the GMO Regulations” means—
  - (a) in relation to England, the Genetically Modified Organisms (Deliberate Release) Regulations 2002<sup>(17)</sup>;
  - (b) in relation to Wales, the Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002<sup>(18)</sup>;
  - (c) in relation to Scotland, the Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002<sup>(19)</sup>;

<sup>(17)</sup> S.I. 2002/2443, as amended by S.I. 2004/2411, 2005/2759, 2009/1892, 2018/575.

<sup>(18)</sup> S.I. 2002/3188 (W. 304), amended by S.I. 2005/2759, 2013/755 (W. 90).

<sup>(19)</sup> S.S. I. 2002/541, amended by S.I. 2005/2759 and 2011/1043; and by S.S.I 2004/439, 2015/100.

- (d) in relation to Northern Ireland, the Genetically Modified Organisms (Deliberate Release) Regulations (Northern Ireland) 2003(20).”;
- (i) in paragraph 13—
  - (i) in sub-paragraph (1), for “another European Single Market State or third country” substitute “a country granted equivalence”;
  - (ii) in sub-paragraph (3)—
    - (aa) omit paragraph (a);
    - (bb) in paragraph (b), omit “if the seed is from a third country”;
    - (cc) in the words after paragraph (b), omit “in both cases ”;
- (j) omit paragraph 14 and its heading;
- (k) in paragraph 15(3), for “Council [Directive 2002/55/EC](#) on the marketing of vegetable seed” substitute “these Regulations”;
- (l) in paragraph 16—
  - (i) in the heading, for “another” substitute “a”;
  - (ii) in sub-paragraph (1)—
    - (aa) for “Seed” substitute “Before the end of the period of two years beginning with the day on which exit day falls, seed”;
    - (bb) in paragraph (a)(i), for the words from “either” to the end substitute “in a European Single Market State or a country granted equivalence”;
    - (cc) in paragraph (a)(ii), for “such a third country” substitute “a country granted equivalence”;
    - (dd) in paragraph (b), for “another” substitute “a”;
  - (iii) in sub-paragraph (3)(a), for “European Single Market State” substitute “country”;
- (m) in paragraph 17—
  - (i) in the heading and, in sub-paragraph (1), in the words before paragraph (a), for “third country” substitute “country granted equivalence”;
  - (ii) in sub-paragraph (1)(a)(i), for the words from “a European Single Market State” to the end, substitute “the United Kingdom, a Crown Dependency (provided such seed has been produced under legislation recognised by the Secretary of State to have equivalent effect to these Regulations) or a country granted equivalence”;
  - (iii) for sub-paragraph (1)(a)(ii), substitute—
    - “(ii) the crossing of basic seed officially certified in the United Kingdom or a Crown Dependency (provided such seed has been produced under legislation recognised by the Secretary of State to have equivalent effect to these Regulations) with basic seed certified in a country granted equivalence.”;
- (n) in paragraph 18, omit “ or the Common Catalogue”.

### **The Marketing of Fruit Plant and Propagating Material (England) Regulations 2017**

**8.—(1)** The Marketing of Fruit Plant and Propagating Material (England) Regulations 2017(21) are amended as follows.

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(20) S. R. 2003 No. 167.

(21) S.I. 2017/595.

## (2) In regulation 2—

- (a) in the definition of “basic material”, in paragraph (b), for “ Article 15 of
- [Directive 2014/98/EU](#)
- ,” substitute—

“—

- (i) in the case of material produced in the United Kingdom, the relevant fruit marketing regulations;
- (ii) in the case of material produced in a Crown Dependency, legislation recognised by the Secretary of State as having equivalent effect to regulation 9(1) and (2);
- (iii) in the case of material produced in a member State, Article 15 of [Directive 2014/98/EU](#);;

- (b) in the definition of “CAC material”, in paragraph (b), for “ Article 23 of
- [Directive 2014/98/EU](#)
- ,” substitute—

“—

- (i) in the case of material and plants produced in the United Kingdom, the relevant fruit marketing regulations;
- (ii) in the case of material and plants produced in a Crown Dependency, legislation recognised by the Secretary of State as having equivalent effect to Schedule 1;
- (iii) in the case of material and plants produced in a member State, Article 23 of [Directive 2014/98/EU](#);;

- (c) in the definition of “certified material”, in paragraph (b), for “ Article 20 of
- [Directive 2014/98/EU](#)
- ,” substitute—

“—

- (i) in the case of material and plants produced in the United Kingdom, the relevant fruit marketing regulations;
- (ii) in the case of material and plants produced in a Crown Dependency, legislation recognised by the Secretary of State as having equivalent effect to regulation 9(1) and (2);
- (iii) in the case of material and plants produced in a member State, Article 20 of [Directive 2014/98/EU](#);;

- (d) after the definition of “certified plant material” insert—

““Crown Dependency” means the Isle of Man or any of the Channel Islands;”;

- (e) after the definition of “defects” insert—

““the fruit marketing regulations” means—

- (a) as regards Wales, the Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017([22](#));
- (b) as regards Scotland, the Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017([23](#));
- (c) as regards Northern Ireland, the Marketing of Fruit Plant and Propagating Material Regulations (Northern Ireland) 2017([24](#));”;

[\(22\) S.I. 2017/691 \(W. 163\).](#)[\(23\) S.S.I. 2017/177.](#)[\(24\) S.R. 2017 No. 119.](#)



- (f) in the definition of “official label”, in paragraph (b), for the words “ Article 2 of [Directive 2014/96/EU](#),” substitute—
- “—
- (i) in the case of material produced in the United Kingdom, the relevant fruit marketing regulations;
  - (ii) in the case of plant material produced in a Crown Dependency, legislation recognised by the Secretary of State as having equivalent effect to Part 1 of Schedule 2;
  - (iii) in the case of plant material produced in a member State, Article 2 of [Directive 2014/96/EU](#),”;
- (g) in the definition of “outside England”, for the words from “ or any member” to the end, substitute “, any member State or any Crown Dependency”;
- (h) in the definition of “plant variety rights”—
- (i) in paragraph (a), at the end insert “or”;
  - (ii) omit paragraph (b);
- (i) in the definition of “pre-basic material”, in paragraph (b), for “ Articles 3 or 4 of [Directive 2014/98/EU](#),” substitute—
- “—
- (i) in the case of material produced in the United Kingdom, the relevant fruit marketing regulations;
  - (ii) in the case of material produced in a Crown Dependency, legislation recognised by the Secretary of State as having equivalent effect to regulation 9(1) and (2);
  - (iii) in the case of material produced in a member State, Articles 3 or 4 of [Directive 2014/98/EU](#),”.
- (3) In regulation 4(3), for “European Union” substitute “United Kingdom”.
- (4) After regulation 5(4) insert—
- “(5) No person may market in England plant material produced in a member State.
- (6) Paragraph (5) does not apply to plant material which meets the conditions set out in paragraph (7).
- (7) The conditions are that the plant material—
- (a) is of a variety that may be marketed under regulation 7 or has been registered as a variety by the responsible authority in a member State in accordance with Article 4 of [Directive 2014/97/EU](#);
  - (b) has been produced in compliance with the requirements set out in Directives [2008/90/EC](#), [2014/98/EU](#) and [2014/96/EU](#); and
  - (c) has been imported into England before the end of the period of two years beginning with the day after the day on which exit day falls.”.

(5) In regulation 7—

    - (a) in paragraph (3), for the words from “the second” to the end substitute “that paragraph”;
    - (b) in paragraph (4), for sub-paragraph (b) substitute—

“(b) registration as a variety by the responsible authority in any part of the United Kingdom outside England in accordance with—

- (i) in relation to Wales, Schedule 4 to the Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017;
  - (ii) in relation to Scotland, Schedule 4 to the Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017;
  - (iii) in relation to Northern Ireland, Schedule 3 to the Marketing of Fruit Plant and Propagating Material (Northern Ireland) Regulations 2017.”.
- (6) In regulation 10(6), for “[Directive 2000/29/EC](#)” substitute “the Plant Health (England) Order 2015”.
- (7) In regulation 15(1)(g)(iii), for “Annexes to [Directive 2000/29/EC](#)” substitute “Plant Health (England) Order 2015”.
- (8) After regulation 28 insert—

**“Transitional provision for official labels on exit day**

**28A.** For the purposes of regulation 10 and paragraph 4(b) of Schedule 2, an official label pre-printed before exit day containing the statement “EU Rules and Standards” may be used as an official label for plant material before the end of the period of two years beginning with the day after the day on which exit day falls.”.

- (9) In regulation 31—
- (a) omit paragraph (4);
  - (b) in paragraph (6), omit the definition of “the Directives”.
- (10) In Schedule 2—
- (a) in paragraph 4(b), for “EU” substitute “UK”;
  - (b) in paragraph 5, for “indelibly printed” to the end substitute—
- “—
- (a) easily visible and legible, and
  - (b) indelibly printed in English (but may also be printed in other languages)”;
- (c) in paragraph 8—
- (i) in sub-paragraph (a), for “EU” substitute “UK”;
  - (ii) in sub-paragraphs (b)(i) and (x), for “member State” substitute “country”;
- (d) in paragraph 9, for “indelibly printed” to the end substitute—
- “—
- (a) easily visible and legible, and
  - (b) indelibly printed in English (but may also be printed in other languages)”.
- (11) Schedule 4 is amended in accordance with paragraphs 12 to 17.
- (12) In paragraph 1—
- (a) in the definition of “appropriate protocol”—
- (i) omit paragraph (a);
  - (ii) in paragraph (b)—
- (aa) omit the words from “where” to “species,”;
  - (bb) after the word “stability” insert “ for the particular genus or species concerned;

- (iii) in paragraph (c)—
  - (aa) omit “protocols mentioned at (a) or ”;
  - (bb) after the word “established” insert “or recognised”;
- (b) after the definition of “distinct”, insert—
  - ““the GMO regulations” means—
  - (a) in relation to England, the Genetically Modified Organisms (Deliberate Release) Regulations 2002(25);
  - (b) in relation to Wales, the Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002(26);
  - (c) in relation to Scotland, the Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002(27);
  - (d) in relation to Northern Ireland, the Genetically Modified Organisms (Deliberate Release) Regulations (Northern Ireland) 2003(28);”.
- (13) In paragraph 2—
  - (i) in sub-paragraph (2)(b), omit “or in another member State, ”;
  - (ii) in sub-paragraph (3), for “member state” substitute “country which is a member of UPOV”.
- (14) In paragraph 3—
  - (a) in sub-paragraph (1)(c), for the words from “ is authorised” to the end substitute—
    - “\_\_
    - (i) is authorised for cultivation pursuant to Regulation (EC) No 1829/2003 or the GMO regulations, or
    - (ii) before the day on which exit day falls has been authorised for cultivation pursuant to Directive 2001/18/EC.”;
  - (b) in sub-paragraph (3), for “outside England” substitute “elsewhere in the United Kingdom or in another country which is a member of UPOV”.
- (15) In paragraph 6(1)—
  - (a) in paragraph (c), for “ or in another member State” substitute “; or”;
  - (b) after paragraph (c) insert—
    - “(d) by a competent authority outside the United Kingdom if the Secretary of State is satisfied that those growing trials are of equivalent standards to those carried out by or on behalf of the Secretary of State.”.
- (16) In paragraph 7—
  - (a) in sub-paragraph (1)(a), for the words “consists is” to the end substitute—
    - “consists—
    - (i) is authorised for cultivation pursuant to Regulation 1829/2003(29) or the GMO regulations, or
    - (ii) has, before the day on which exit day falls, been authorised for cultivation pursuant to Directive 2001/18/EC; or”;

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(25) S.I. 2002/2443, as amended by S.I. 2004/2411, 2005/2759, 2009/1892, 2018/575.

(26) S.I. 2002/3188 (W. 304), amended by S.I. 2005/2759, 2013/755 (W. 90).

(27) S.S.I. 2002/541, amended by S.I. 2004/439, 2015/100.

(28) S.R. 2003 No. 167.

(29) Defined in paragraph 1 of Schedule 4 to S.I. 2017/595.

(b) in sub-paragraph (4)(a), omit “[Directive 2001/18/EC](#) or”.

(17) In paragraph 8(1)(d), for the words from “ ceases” to the end substitute—

“—

(i) ceases to be authorised pursuant to Regulation 1829/2003 or the GMO regulations; or

(ii) has, before the day on which exit day falls, been authorised for cultivation pursuant to [Directive 2001/18/EC](#) and ceases to be authorised”.

(18) In Schedule 5—

(a) in paragraph 5—

(i) in sub-paragraph (4)(a), for “outside England” substitute “in any part of the United Kingdom other than England or in another country which is a member of UPOV”;

(ii) in sub-paragraph (7), for the definition of “register of varieties” substitute—

““register of varieties” means, in relation to the registration of varieties, the register maintained—

(a) in England, under paragraph 4(1) of Schedule 4;

(b) in Wales, under paragraph 4(1) of Schedule 4 to the Marketing of Fruit Plant and Propagating Material (Wales) 2017<sup>(30)</sup>;

(c) in Scotland, under paragraph 2(1) of Schedule 4 to the Marketing of Fruit Plant and Propagating Material (Scotland) 2017<sup>(31)</sup>;

(d) in Northern Ireland, for the purposes of paragraph 1 of Schedule 3 to the Marketing of Fruit Plant and Propagating Material Regulations (Northern Ireland) 2017<sup>(32)</sup>”;

(b) omit paragraph 8(2)(a).

*Gardiner of Kimble*

Parliamentary Under Secretary of State  
Department for Environment, Food and Rural  
Affairs

23rd January 2019

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<sup>(30)</sup> S.I.2017/691 (W. 163).

<sup>(31)</sup> S.S.I. 2017/177.

<sup>(32)</sup> S.R. 2017 No. 119.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are made in part in exercise of the powers conferred by the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular section 8(2) (c), (d) and (g)) arising from the withdrawal of the UK from the European Union.

Regulation 3 (made in exercise of the powers conferred by the European Communities Act 1972 (c. 68)) makes amendments to the Seed Marketing Regulations 2011 to include references to EEA states and Switzerland where appropriate.

Part 3 make amendments to secondary legislation consequential on the United Kingdom's withdrawal from the European Union. The changes are to legislation regulating the marketing of agricultural seed, forestry and vegetative propagating material.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.