

EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION

5004/21 + ADD 1

COM (2020) 853 FINAL + ANNEX

PROPOSAL FOR A DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING COUNCIL DECISIONS 2003/17/EC AND 2005/834/EC AS REGARDS THE EQUIVALENCE OF FIELD INSPECTIONS AND THE EQUIVALENCE OF CHECKS ON PRACTICES FOR THE MAINTENANCE OF VARIETIES OF AGRICULTURAL PLANT SPECIES CARRIED OUT IN THE UNITED KINGDOM

Submitted by the Department for Environment, Food and Rural Affairs

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January 2021

SUBJECT MATTER

1. The Commission document sets out a Proposal for a Decision of the European Parliament and of the Council to amend Council Decisions 2003/17/EC and 2005/834/EC to recognise seed of the main agricultural plant species (fodder plant seed, cereal seed, beet seed, vegetable seed and oil and fibre plant seed) produced and varieties of those agricultural plant species maintained in the United Kingdom as equivalent to such material produced and maintained in the European Union.
2. The maintenance of varieties and the marketing of seeds, plants and plant propagating material is regulated in the EU by EU Directives under the EU marketing acquis. The UK has continued to apply the regulatory requirements of this acquis at the point of exit. The powers of the European Union (Withdrawal) Act 2018 have been used to make operability changes to domestic legislation which transposed those EU Directives but without changes in policy or to the detailed provisions for the assurance of marketed material.
3. In advance of the UK's withdrawal from the European Union on 31 January 2020 the UK submitted a request to the Commission for fodder plant seed, cereal seed, beet seed, vegetable seed, seed potatoes and oil and fibre plant seed produced and maintained in the UK to be recognised as equivalent to such material produced and for the varieties of that material maintained in the EU. Once granted equivalence, such material can be exported to the EU and Northern Ireland.
4. The Commission has since confirmed it will not accept the UK's application for equivalence for either production or maintenance of varieties of seed potatoes having refused the UK's request to lift plant health prohibitions which currently

prevent seed potatoes being imported into the EU from non-EU countries. Defra is now considering other options for securing equivalence arrangements.

5. However, the Commission has examined the UK's legislation in respect of fodder plant seed, cereal seed, beet seed and oil and fibre plant seed, and concluded that such material both produced and the varieties of that material maintained in the UK can be regarded as equivalent to the material produced and maintained in the Union. As such the material is considered to offer the same assurances as that of the Union, in particular as regards Council Directives 66/401/EEC, 66/402/EEC, 2002/53/EC, 2002/54/EC, 2002/57/EC ("the Directives").
6. The Commission has also concluded that equivalence for the maintenance of vegetable plant species can be provided but has not addressed the UK's request for equivalence of vegetable seed produced (either as certified seed or standard seed) in the UK and Defra will be exploring the reasons for this with the Commission.
7. The Commission proposes to recognise seed produced and varieties of plant species maintained in the UK which it regards as equivalent to the respective material produced and maintained in the EU through an amendment to Decision 2003/17/EC and 2005/834/EC ("the Decisions"). This is without prejudice to the obligations under the Protocol on Ireland/Northern Ireland to the Withdrawal Agreement ("the Protocol"). The Protocol provides that limited areas of EU law, including that for seed, plants and plant propagating material, will continue to apply in Northern Ireland. Northern Ireland will therefore continue to apply the requirements of the Directives and related tertiary legislation such as the Decisions.

SCRUTINY HISTORY

8. The Parliamentary scrutiny history relevant to this proposal is contained in the attached Annex A.

MINISTERIAL RESPONSIBILITY

9. Responsibility lies with the Secretary of State for the Environment, Food and Rural Affairs, Scottish Ministers and Welsh Ministers. Northern Ireland has an interest.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

10. The proposal, which covers the marketing of seed of the main agricultural plant species, is a devolved policy area, which may interact with the Common Frameworks being developed with the Devolved Administrations.

11. Other areas of devolved responsibility which relate to the subject matter of the Explanatory Memorandum include the marketing of fruit and vegetable plants and plant propagating material and forest reproductive material ("FRM").
12. The Devolved Administrations have been consulted throughout the process of applying to the EU for third country equivalence and in the preparation of this Explanatory Memorandum.

LEGAL AND PROCEDURAL ISSUES

13.

i. Legal Base

This proposal for a Decision of the European Parliament and of the Council to recognise seed of agricultural plant species in the United Kingdom as equivalent to such material produced and varieties of that material maintained in the European Union is based on Article 43(2) TFEU and, more specifically on:

For production:

Article 16(1) of Council Directive 66/401/EEC on the marketing of fodder plant seed

Article 16(1) of Council Directive 66/402/EEC on the marketing of cereal seed

Article 23(1) of Council Directive 2002/54/EC on the marketing of beet seed

Article 20(1) of Council Directive 2002/57/EC on the marketing of seed of oil and fibre plants

For maintenance:

Article 22(1) of Council Directive 2002/53/EC on the common catalogue of varieties of agricultural plant species

Article 37(1) of Council Directive 2002/55/EC on the marketing of vegetable seed.

ii. Voting Procedure

Qualified majority.

iii. Timetable for adoption and implementation (or expected next steps for non-legislative documents)

It is not yet known when this proposal will be adopted, although it seems likely it will be early 2021.

- iv. Does the proposal affect the substance of EU law that will remain in effect under the Northern Ireland Protocol or is it likely to be the subject of a request by the EU to be added to the Protocol under Article 13(4) thereof?**

The Protocol, at paragraph 42 of Annex 2, provides that a number of directives under the EU acquis relating to the marketing of seeds, plants and plant propagating material will continue to apply to Northern Ireland. It includes the Directives on the marketing of seed and registration of varieties of agricultural plant species. Those Directives will continue to apply in Northern Ireland as will existing and new Union acts made under powers within those Directives. Northern Ireland will therefore continue to apply the Decisions as directly applicable EU law including amendments to the Decisions. This proposal will amend the Decisions and will enable seed of agricultural plant species, other than seed potatoes and vegetable seed, produced in GB to be exported to NI in compliance of the Protocol and recognises the maintenance of varieties of agricultural plant species, other than for varieties of seed potatoes, in GB.

- v. Do JHA opt-in, Schengen opt-out issues arise?**

JHA opt-in and Schengen opt-out issues are not a consideration.

POLICY IMPLICATIONS

14. This proposal arises as a result of the UK's application to the EU to recognise UK processes and controls for seed, FRM and fruit and vegetable planting and propagating material as being equivalent to those of the EU. The proposal introduces no new policy or legislative changes and simply extends third country equivalence arrangements for the marketing of seed of agricultural plant species under the Decisions to Great Britain. The Protocol provides that limited areas of EU law, including that for seed, plants and plant propagating material, will continue to apply in Northern Ireland. Northern Ireland will therefore continue to apply the requirements of the Directives and the Decisions.
15. The Commission has already published its proposal to recognise FRM as equivalent through COM(2020)852 Final and has granted the UK equivalence for fruit and vegetable plants and plant propagating material through its more expedient Comitology procedure by means of Commission Implementing Decision (EU) 2020/2219.
16. The UK has, in parallel, taken steps to recognise EU processes and controls for seed, FRM and fruit and vegetable plants and plant propagating material as

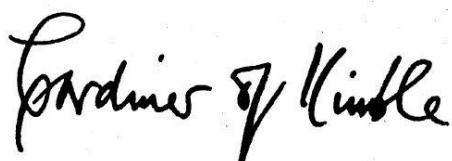
equivalent to GB processes for a period of 2 years. This is except for seed potatoes for which England and Wales are granting the EU equivalence for a 6-month period. Although the UK is broadly self-sufficient in the total quantity of seed potato production, it does not currently produce the range of varieties required by the UK market. Permitting the import of EU seed potatoes into England and Wales for six months allows for planting in spring 2021 and affords businesses a further period of adaptation. Defra is continuing to work on behalf of the National Authorities of GB for a reciprocal agreement with the EU in time for the 2022 growing season, allowing longstanding trading patterns to resume.

CONSULTATION

17. The proposal concerns only the technical implementation of existing rules with no cost implications for business and as such no separate consultation or an impact assessment is required.

FINANCIAL IMPLICATIONS

18. The proposal has no new financial implications.

A handwritten signature in black ink that reads "Gardiner of Kimble". The signature is written in a cursive, flowing style.

**LORD GARDINER OF KIMBLE
PARLIAMENTARY UNDER SECRETARY OF STATE (MINISTER FOR RURAL
AFFAIRS AND BIOSECURITY)
DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS**

PARLIAMENTARY SCRUTINY HISTORY RELEVANT TO A:

PROPOSAL FOR A DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING COUNCIL DECISIONS 2003/17/EC AND 2005/834/EC AS REGARDS THE EQUIVALENCE OF FIELD INSPECTIONS AND THE EQUIVALENCE OF CHECKS ON PRACTICES FOR THE MAINTENANCE OF VARIETIES OF AGRICULTURAL PLANT SPECIES CARRIED OUT IN THE UNITED KINGDOM (AND ANNEX)

EM 7238/20: PROPOSAL FOR A DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING COUNCIL DECISION 2003/17/EC AS REGARDS THE EQUIVALENCE OF FIELD INSPECTIONS CARRIED OUT IN UKRAINE ON CEREAL SEED-PRODUCING CROPS AND ON THE EQUIVALENCE OF CEREAL SEED PRODUCED IN UKRAINE

DATE EM SIGNED: 22/04/2020

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
SCRUTINY COMPLETE (ESC OUTCOME AGENDA 25/06/2020)	NOT SIFTED FOR SCRUTINY (EU ENVIRONMENT SUB COMMITTEE) AT CHAIR'S SIFT NO 10 30/04/2020

EM 14720/17: PROPOSAL FOR A DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING COUNCIL DECISION 2003/17/EC AS REGARDS THE EQUIVALENCE OF FIELD INSPECTIONS CARRIED OUT IN BRAZIL ON FODDER PLANT SEED-PRODUCING CROPS AND CEREAL SEED-PRODUCING CROPS AND ON THE EQUIVALENCE OF FODDER PLANT SEED AND CEREAL SEED PRODUCED IN BRAZIL, AND AS REGARDS THE EQUIVALENCE OF FIELD INSPECTIONS CARRIED OUT IN MOLDOVA ON CEREAL SEED-PRODUCING CROPS, VEGETABLE SEED-PRODUCING CROPS AND OIL AND FIBRE PLANT SEED- PRODUCING CROPS AND ON THE EQUIVALENCE OF CEREAL SEED, VEGETABLE SEED AND OIL AND FIBRE PLANT SEED PRODUCED IN MOLDOVA

14720/17 ADD 1: ANNEX TO THE PROPOSAL FOR A DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING COUNCIL DECISION 2003/17/EC AS REGARDS THE EQUIVALENCE OF FIELD INSPECTIONS CARRIED OUT IN BRAZIL ON FODDER PLANT SEED-PRODUCING CROPS AND CEREAL SEED-PRODUCING CROPS AND ON THE EQUIVALENCE OF FODDER PLANT SEED AND CEREAL SEED PRODUCED IN BRAZIL, AND AS REGARDS THE EQUIVALENCE OF FIELD INSPECTIONS CARRIED OUT IN MOLDOVA ON CEREAL SEED-PRODUCING CROPS, VEGETABLE SEED-PRODUCING CROPS AND OIL AND FIBRE PLANT SEED-PRODUCING CROPS AND ON THE EQUIVALENCE OF CEREAL SEED, VEGETABLE SEED AND OIL AND FIBRE PLANT SEED PRODUCED IN MOLDOVA

DATE EM SIGNED: 30/11/2017

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
NOT IMPORTANT CLEARED ,(AGENDA FOR REPORT NO 5;13/12/2017)	CLEARED (ENERGY AND ENVIRONMENT) AT CHAIRMAN'S SIFT 1675 - 12/12/2017

EM 9699/05, COM(05)226: PROPOSAL FOR A COUNCIL DECISION THE EQUIVALENCE OF CHECKS ON PRACTICES FOR THE MAINTENANCE OF VARIETIES CARRIED OUT IN CERTAIN THIRD COUNTRIES

DEFRA EM DATED: 16/06/2005

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
CLEARED ON 04/07/2005 IN REPORT 1, 05/06 AS NOT RAISING SUBSTANTIVE ISSUES TO WARRANT A REPORT TO THE HOUSE	CLEARED AT SIFT 1219 ON 28/06/2005

EM 13489/02, COM(102)576, PROPOSAL FOR A COUNCIL DECISION 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

DATE EM SIGNED: 11/11/2002

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
CLEARED AS NOT RAISING ISSUES OF LEGAL OR POLITICAL IMPORTANCE IN REPORT 01, 02/03	CLEARED AT SIFT 1112 WITHOUT FOLLOW UP