

EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION

COM (2020) 852 FINAL +ANNEX

PROPOSAL FOR A DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING COUNCIL DECISION 2008/971/EC AS REGARDS THE EQUIVALENCE OF FOREST REPRODUCTIVE MATERIAL PRODUCED IN THE UNITED KINGDOM TO SUCH MATERIAL PRODUCED IN THE UNION

Submitted by the Department for Environment, Food and Rural Affairs

12 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 Decision 2008/971/EC to recognise forest reproductive material (“FRM”) produced in the United Kingdom as equivalent to such material produced in the European Union.
2. The marketing of FRM is regulated in the EU through Council Directive 1999/105/EC and is one of a number of EU Directives under the EU acquis regulating the marketing of seed, plants and plant propagating material. The UK will be continuing to apply the EU acquis at the point of exit for marketing of plant reproductive material. The powers of the European Union (Withdrawal) Act 2018 are being used to make operability changes to UK legislation 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 seed, plants and plant propagating material (including FRM) to be recognised as equivalent to such material produced in the EU in order to allow material produced in the UK to be exported to the EU, continuing the long standing trading patterns.
4. The Commission has examined the UK’s legislation on FRM and concluded that material produced in the UK is equivalent to FRM produced in the Union in that the legislation of the UK which regulates the production of FRM is considered to offer the same assurances as that of the Union, in particular Council Directive 1999/105/EC and Council Decision 2008/971/EC. Consequently, the Commission proposes to recognise UK FRM, and in particular the categories “source identified”, “selected” and “qualified”, produced in the UK, as equivalent to the respective material

produced in the EU through an amendment to Council Decision 2008/971/EC. The category of “tested” material however is not included in the amendment to Council Decision 2008/971/EC as this category was subsequently added to the categories eligible for equivalence. Defra will be exploring with the Commission if this category can be included in the future as it will impact on British nurseries exporting to the EU and Northern Ireland. 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 plant reproductive material, will continue to apply in Northern Ireland. Northern Ireland will therefore continue to apply the requirements of Directive 1999/105/EC and related tertiary legislation such as Council Decision 2008/971/EC.

SCRUTINY HISTORY

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

MINISTERIAL RESPONSIBILITY

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

INTEREST OF THE DEVOLVED ADMINISTRATIONS

7. The proposal covers the marketing of FRM, a devolved policy area, which may interact with the Common Frameworks being developed with the Devolved Administrations.
8. Other areas of devolved responsibility which relate to the subject matter of the Explanatory Memorandum include the marketing of seeds and other plants and plant propagating material.
9. 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

10.

i. Legal Base

This proposal for a Decision of the European Parliament and of the Council to recognise FRM in the United Kingdom as equivalent to such material produced in the European Union is based on Article 43(2) TFEU and, more specifically on Article 19(1) and (2) of Council Directive 1999/105/EC on the marketing of forest reproductive material.

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 marketing directives under the EU acquis relating to seeds, plants and plant propagating material will continue to apply to Northern Ireland. It includes Council Directive 1999/105/EC on the marketing of forest reproductive material. That Directive will continue to apply in Northern Ireland as will existing and new Union acts made under powers within that Directive. Northern Ireland will therefore continue to apply Council Decision 2008/971 as directly applicable EU law including amendments to that Decision. This proposed decision will amend Council Decision 2008/971 and will enable FRM produced in GB to be exported to NI in compliance of the Protocol.

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

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

POLICY IMPLICATIONS

11. 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 forest reproductive material under Decision 2008/971 to Great Britain. The Protocol provides that limited areas of EU law, including that for plant reproductive material, will continue to apply in Northern Ireland. Northern Ireland will therefore continue to apply the requirements of Council Directive 1999/105/EC and Council Decision 2008/971/EC.
12. The Commission has already 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.
13. A further proposal by the European Parliament and of the Council on the equivalence of seed of the main agricultural species is expected in due course. However, the UK's initial application for equivalence for seed potatoes has not been accepted as the EU has rejected 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.
14. 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 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 for a reciprocal agreement with the EU in time for the 2022 growing season, allowing longstanding trading patterns to resume.

CONSULTATION

15. 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

16. The proposal has no new financial implications.

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THE RT HON THE LORD GOLDSMITH OF RICHMOND PARK

MINISTER OF STATE

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 DECISION 2008/971/EC AS REGARDS THE EQUIVALENCE OF FOREST REPRODUCTIVE MATERIAL PRODUCED IN THE UNITED KINGDOM TO SUCH MATERIAL PRODUCED IN THE UNION

EM 12256/12: PROPOSAL FOR A DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING COUNCIL DECISION 2008/971/EC AS REGARDS THE INCLUSION OF FOREST REPRODUCTIVE MATERIAL OF THE 'QUALIFIED' CATEGORY WITHIN THE SCOPE OF THAT DECISION AND THE UPDATING OF THE NAME OF THE AUTHORITIES RESPONSIBLE FOR THE APPROVAL AND CONTROL OF THE PRODUCTION

DATE EM SIGNED: 17/07/2012

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
NOT LEGALLY OR POLITICALLY IMPORTANT - CLEARED - COMMONS' REPORT 06/09/2012	SIFTED TO SUB-COMMITTEE D AT THE CHAIRMAN'S SIFT - 24/7/12 CLEARED BY LETTER 11/10/2012

EM 8990/99: PROPOSAL FOR A COUNCIL DIRECTIVE ON THE MARKETING OF FOREST REPRODUCTIVE MATERIAL.

EM DATED 25/06/1999

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
CLEARED IT ON 14/07/1999, REPORT 26-98/99	CLEARED IT ON 13/07/1999