

Rural Affairs, Islands and Natural Environment Committee

34th Meeting, 2022 (Session 6), Wednesday, 14 December

Subordinate legislation

1. This paper supports the Committee's consideration of the [Seed \(Equivalence of Countries\) \(Amendment\) \(Scotland\) Regulations 2022](#) (SSI 2022/328).
2. This Scottish statutory instrument (SSI) is subject to the negative parliamentary procedure. Further information relating to the procedure is set out in paragraphs 11 and 12.
3. The SSI was laid on 10 November 2022 and comes into force on 30 December 2022. The deadline for subject committee consideration is 12 December 2022. The regulations are made using powers conferred under the Plant Varieties and Seeds Act 1964.
4. The purpose of the instrument is to amend the expiry date of retained EU Council Decision 2003/17 so that it will continue to have effect for a further period of seven years. Decision 2003/17 permits the import of seed of certain agricultural species from specified 'third' (i.e. non-EU) countries whose systems of field inspections, production and certification of seed are regarded as equivalent to EU marketing standards.
5. Decision 2003/17 is due to expire on 31 December 2022 and extending the expiry date will ensure that all specified countries currently recognised as equivalent in GB law will continue to be recognised as equivalent until 31 December 2029.
6. The policy note explains that, if the current equivalence arrangements are allowed to lapse, GB farmers and growers could be left short of the seed they need for agricultural production. The policy note also states that a reduction in the choice of suitable seed varieties could compel farmers and growers dependent on them to use less favourable varieties with potentially lower yields and/or disease resistance, impacting on market availability and reducing choice for the final consumer. The policy note highlights that the EU has already extended Decision 2003/17/EC to 31 December 2029.
7. The policy note also explains that extending the expiry date of Decision 2003/17 would provide an opportunity for a GB-wide policy review of the equivalence process to consider alignment with provisions in the Aquatic Animal Health and Alien Species in Aquaculture, Animals, and Marketing of Seed, Plant and

Propagating Material (Legislative Functions and Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2020. The 2020 Regulations provides for the recognition of the equivalence of plant material from countries outside of the British Islands on an administrative rather than legislative basis.

8. The policy note refers to a six-week informal consultation with agricultural and forest seed breeders, grower associations and organisations, located in the United Kingdom and internationally. This exercise was undertaken jointly by the UK national authorities. Five responses were received, all supportive of the proposal.
9. More information on the instrument is set out in the policy note attached at Annexe A.

Consideration by the Delegated Powers and Law Reform Committee (DPLRC)

10. The DPLRC considered the instrument at its meeting on 22 November 2022 and agreed no points arose.

Parliamentary procedure – negative instruments

11. The negative parliamentary procedure is set out in Chapter 10 of the Parliament's Standing Orders. Instruments subject to the negative procedure come into force on a specified date and remain in force unless it is annulled by the Parliament. Thus, the Parliament does not need to agree to the instrument in order for it to come into force.
12. The Parliament may, however, and on the recommendation of the lead committee, recommend the instrument be annulled within 40 days of the instrument being laid. Any MSP may by motion propose to the lead committee that the committee recommends "that nothing further is to be done under the instrument". Any motion for annulment would be debated by the lead committee and a report made to Parliament.

For decision

13. The Committee is invited to note the instrument set out above.

**Rural Affairs, Islands and Natural Environment Committee clerks
December 2022**

Policy Note

The Seed (Equivalence of Countries) (Amendment) (Scotland) Regulations 2022 S.S.I. 2022/328

Introduction

1. The above instrument (“the SSI”) is made by Scottish Ministers in exercise of the powers conferred by sections 16(1) and (1A) of the Plant Varieties and Seeds Act 1964 (“the Act”) and all other powers enabling them to do so. The SSI is subject to negative procedure.

Purpose Of the Instrument

2. The purpose of this instrument is to amend the expiry date of retained EU Council Decision 2003/17 (“the Decision”) so that it will continue to have effect for a further period of 7 years. The Decision has application in GB and permits the import of seed of certain agricultural species from specified ‘third’ (i.e. non EU) countries whose systems of field inspections, production and certification of seed are regarded as equivalent to EU marketing standards. In Scotland, seed marketing standards are aligned to those of the EU, and this is the same across the UK. The Decision is due to expire on 31 December 2022 and extending the expiry date will ensure that all specified countries currently recognised as equivalent in GB law through the Decision, will continue to be recognised as equivalent until 31 December 2029.

Policy objectives

3. Scotland’s seed marketing regulations require that for most seed and other propagating material produced outside of the UK to be marketed in Scotland, the systems of field inspections, production and certification of seed and other propagating material in the country of production need to be recognised as equivalent to those in GB.
4. Prior to EU Exit, the European Commission carried out equivalence assessments for the whole of the EU, with equivalence being granted legislatively through Decision 2003/17/EC (EU law proper). The Decision, in its retained form, is due to expire on 31 December 2022. If the current equivalence arrangements are allowed to lapse, this could potentially leave GB farmers and growers short of the seed they need for agricultural production. A reduction in the choice of suitable varieties could compel farmers and growers who depend on them to use less favourable varieties with potentially lower yields and/or disease resistance, impacting on market availability and less choice for the final consumer. The EU has already extended the validity date of the EU law proper version of Decision 2003/17/EC to 31 December 2029.
5. Extending the expiry date will ensure that all specified countries currently recognised as equivalent in GB law through the Decision will continue to be recognised as equivalent until 31 December 2029.

Explanation of the law being amended by the regulations

6. The SSI amends the expiry date of retained EU Council Decision 2003/17 (“the Decision”) so that it will continue to have effect up to 31 December 2029. The Decision is retained direct minor EU legislation as defined by section 7 of the European Union (Withdrawal) Act 2018 (the “Withdrawal Act”) and was incorporated into United Kingdom law by section 3 of the Withdrawal Act.

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

7. The UK is not capable of being self-sufficient in the production of small agricultural seeds, relying heavily on importing seed lots from EU Member states, New Zealand, Canada and America and a number of other third countries. On leaving the EU, GB was granted equivalence for small seeds based on a reciprocal arrangement, which provided for continued trade between the EU and their trading partners.
8. Extending the expiry date of the Decision will also provide an opportunity for a GB wide policy review of the equivalence process to be undertaken to consider alignment with provisions in the Aquatic Animal Health and Alien Species in Aquaculture, Animals, and Marketing of Seed, Plant and Propagating Material (Legislative Functions and Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2020 (“the 2020 Regulations”). Regulation 26 of the 2020 Regulations provides for the recognition of the equivalence of plant material from countries outside of the British Islands on an administrative rather than legislative basis.

Consultation

9. A six-week informal consultation with agricultural and forest seed breeders, grower associations and organisations, located in the United Kingdom and internationally, was undertaken jointly by the UK National Authorities. The consultation did not attract a high response rate, possibly as the proposal does not seek to amend current policy. Five responses were received, all supportive of the proposal.

Impact Assessments

10. Full impact assessments have not been prepared for this instrument as it relates to the extension of existing regulatory standards and no, or no significant impact, on the private, voluntary, or public sector is foreseen.

Financial Effects

11. The current estimated annual value to GB businesses importing seed from countries granted equivalence legislatively by the Decision, based on 2019-2021 averages, is £20 million. Removing access to this seed by allowing current equivalence arrangements to lapse could result in adverse financial impacts on GB businesses who rely on seed imported from these countries.
12. The Minister for Environment and Land reform confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Timing

1. The SSI comes into force on 30 December 2022.

Scottish Government
Agriculture and Rural Economy Directorate
November 2022