

Collated Comms Document

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Key Points

This guidance is being issued jointly on behalf of Defra, Scottish Government, Welsh Government and DAERA Northern Ireland.

Terminology:

- United Kingdom (UK) refers to England, Scotland, Wales and Northern Ireland (NI).
- Great Britain (GB) refers to England, Scotland and Wales.
- GB is used because the rules for marketing of seed and other propagating material and for variety listing will differ from NI after the transition period.

Summary of changes

- Varieties with EU plant variety rights on 31 December 2020 will continue to be protected in the UK for their remaining lifespan. They will be protected under UK legislation.
- **EU to GB:** Normal international rules will apply to EU seed and other propagating material marketed in GB. For most crops, this means the variety must be on the GB Variety List or Northern Ireland Variety List and where applicable, certified under Organisation for Economic Co-operation and Development (OECD) rules. EU seed potatoes will be marketable in England and Wales (but not Scotland) for six months from 31 December.
- For most seed and other propagating material, in order for GB exports to the EU to continue, the UK needs to gain third country equivalence.
- **NI to GB:** Seed will continue to move freely from Northern Ireland (NI) to Great Britain (GB) under Northern Ireland's existing rules and labelling.
- **GB to NI:** EU third country equivalence will be required to market seed from GB to NI. **The UK and the EU have agreed to add the three missing directives (Marketing of fodder plant seed**

(Council Directive 66/401/EEC), Marketing of propagating material of ornamental plants (Council Directive 98/56/EC), and Marketing of vegetables propagating and planting material (Council Directive 2008/72/EC) to Annex 2 of the Northern Ireland Protocol. This means that from 1 January 2021, the species covered by these directives can be marketed from GB to NI once the UK is granted third country equivalence by the EU.

- The UK will only accept EU Distinctness, Uniformity and Stability (DUS) reports for species where there is no UK testing capability, and providing they are of comparable quality to UK DUS reports.

You can find out more detail about these changes and how they might impact your business on the Government webpages that can be found at the end of this document.

Plant Variety Rights

How do Plant Variety Rights (PVR) work now?

Plant variety rights are a form of intellectual property right giving the holder exclusive control over commercialisation of propagating material and the ability to collect royalties. They are available for all genera and species of plants and help encourage investment in breeding new varieties.

EU legislation provides a framework for plant variety rights in all Member States, largely superseding the UK's longstanding national system. EU plant variety rights are managed by the Community Plant Variety Office (CPVO), an EU agency.

How will existing EU rights work after 31 December 2020?

There will be no change in protection in the 27 EU Member States. In the UK, varieties with EU rights granted by the end of the transition period will be given protection under UK legislation, without rights holders being required to do anything.

Is there a cost for UK businesses in bringing existing EU rights under UK legislation?

There will be no costs for businesses. The process is an administrative one being carried out by the Animal and Plant Health Agency (APHA) under Defra's guidance and the assistance of Scottish Government, Welsh Government and DAERA NI.

Will the duration of protection of the UK right be the same as for the EU right?

Yes. The remaining duration in the UK will be calculated from the date the EU right was granted. All the relevant information held on the CPVO database will be copied into the UK's database.

What about EU PVR applications made before the end of the transition period, but not granted by the CPVO?

For varieties with an application for EU PVR made by 31 December 2020, but not yet decided by CPVO, an application for UK rights made within six months of 31 December, will be given the same priority date as the EU application and the UK will take over the EU DUS report. The normal UK application and DUS takeover fees will apply. Applications can be made after this six month period, but the EU DUS report will not necessarily be taken over and the priority date will be the date of the UK application.

What happens if I want to apply for UK rights for a new variety after the transition period?

For new varieties after 31 December 2020, separate protection will be required in the UK and the EU to achieve the same geographic coverage:

- For protection in the UK, an application would need to be made to APHA, following the normal process and payment of fees for UK plant breeders' rights.
- For protection in the EU, the application would need to be made to CPVO.

What period will apply for first commercialisation and novelty?

Novelty will be retained if first commercialisation in the UK is no more than one year before an application for UK rights. Where first commercialisation is outside of the UK, it can be up to four years before an application for UK rights or six years for vines and trees. The exception is for varieties with an undecided EU application on 31 December 2020 and a subsequent UK application within six months. In this case, novelty is retained if first commercialisation in the EU or UK was no more than one year before the date of application for EU rights or the date of priority if earlier.

What will the fees be for UK PBR?

Fees for UK PBR can be found on GOV.UK [PBR](#). The UK operates a policy of full cost recovery. Anticipating an economy of scale from an increased number of applications, the administration fee will be reduced from 1 January 2021.

Who will make UK PBR decisions?

The protocols and procedures have been strengthened for UK PBR applications and a decision-making process is underway to take account of the increased volume and complexity expected after the transition period. Decisions and the process are the responsibility of the Controller of UK Plant Breeders' Rights.

What IT system will the UK use for applications for UK PBR?

APHA will continue to use its existing IT system for UK PBR. After 31 December 2020, all applications should be made using UPOV's online PRISMA system. Guidance for PRISMA can be found at <https://www.upov.int/upovprisma/en/index.html>.

For UK rights, will businesses outside the UK require a UK agent?

A UK address will be required for applications for UK PBR made after 31 December. For varieties with EU rights on 31 December and given a corresponding right under UK legislation, a UK address will not be required before 1 January 2024.

For EU rights, will UK businesses require a procedural representative based in the EU?

EU PVR legislation requires that an applicant is domiciled in the EU or has a procedural representative in the EU.

Common Catalogue and National List

How does National Listing work now?

For the main agricultural and vegetable crops, and amenity grasses, a variety must be registered on the National List of an EU Member State before seed can be marketed. Once on a National List, a variety is added to the EU Common Catalogue making it marketable across the EU.

National Listing requires two types of testing: Distinctness, Uniformity and Stability (DUS) for all crops and Value for Cultivation and Use (VCU, performance testing) for agricultural crops.

What happens to the UK National List and Common Catalogue after 31 December 2020?

The UK National List will be deleted from the Common Catalogue after 31 December 2020, so a variety must be listed in one of the 27 Member States to be marketable in the EU.

What effect does the Northern Ireland Protocol have on UK National Listing?

After 31 December 2020, there will be separate GB and Northern Ireland Variety Lists, initially containing all varieties on the UK National List at that point.

Will Common Catalogue varieties be marketable in the UK after 31 December 2020?

After 31 December 2020, varieties must be on the GB Variety List or the Northern Ireland Variety List to be marketable in GB. Common Catalogue varieties will continue to be marketable in Northern Ireland, but not GB.

Is there any mitigation for the GB Variety Listing requirement?

An administrative process was carried out in 2019, followed by a second process in autumn 2020, to add Common Catalogue varieties to the UK National List. Many businesses used these opportunities, to add a large number of varieties in total. This was possible under existing legislation but will not be possible after the transition period.

Will GB Variety Listing apply to all the same species as now and will this be reviewed?

The UK will be taking over or have transposed all EU legislation frozen at the point the transition period ended. The list of regulated species may be reviewed at some point in the future.

Does the maintainer of a listed variety have to be in the UK?

Following the transition period, UK legislation will require a maintainer in the UK.

How will the UK administrations monitor and enforce the marketing of varieties that are not listed?

The UK administrations will continue to enforce the marketing regulations as at present.

What will the fees be for GB and Northern Ireland variety listing?

Fees for variety listing can be found on GOV.UK [PBR](#). UK operates a policy of full cost recovery. Anticipating an economy of scale from an increased number of applications, the administration fee will be reduced from 1 January 2021.

Marketing in the UK

What changes for marketing of seed after the transition period?

GB seed production, certification and marketing will continue in England, Scotland and Wales under national legislation. Northern Ireland will continue to apply EU legislation under the Northern Ireland Protocol. The main species covered by this directive are fodder and amenity grasses, clovers, fodder beet, fodder brassicas, field beans and field peas.

Defra, Scottish Government, Welsh Government and DAERA have agreed an approach to accepting EU seed and other propagating material to ensure supply for farmers and growers. EU, Swiss and EEA country material will be marketable in GB for two years, except for seed potatoes, under the normal international rules for certification where they exist. Where there is a listing requirement, the variety must be on the GB or Northern Ireland Variety List, and where there is an OECD scheme, seed and forest reproductive material must be certified under OECD rules and for agricultural seed have an ISTA Orange International Certificate.

EU seed potatoes will be marketable in England and Wales until 30 June 2021, provided the variety is on the GB or Northern Ireland Variety List.

Defra will publish authorisations for equivalence on the plant health portal of EU member states, Switzerland and EEA countries after 1 January 2021.

Seed and other propagating material from the EU will continue to be marketable in Northern Ireland under current labelling, certification and variety listing rules.

Why the requirement for OECD certification and ISTA certificates?

After the transition period, GB will treat seed from the EU in the same way as seed from other countries. This means following the rules of OECD schemes, which are internationally recognised and facilitate equal treatment. The OECD labelling and certificate, together with the ISTA Orange International Certificate, will show that seed meets standards for variety identity, variety purity and seed quality equivalent to GB standards.

What about variety maintenance?

If a country is considered equivalent for maintenance of species concerned, then the maintainer for that variety can be in that country.

At what point can seed be marketed after applying for GB Variety Listing?

Seed cannot be marketed until the variety is on the GB Variety List (or Northern Ireland Variety List). The exception is test marketing under an authorisation for not yet listed varieties, where an application for listing has been made but testing has not been completed. After the transition period, these arrangements will continue, but will only apply to marketing in GB of varieties with an application for GB or NI listing.

Will vegetable seed of not yet listed varieties authorised in EU 27 Member States be marketable in the UK?

For test marketing in GB, there must be an application for GB or Northern Ireland listing and a corresponding authorisation. EU authorisations will continue to be recognised in Northern Ireland.

What changes for marketing of fruit propagating and planting material apply after the transition period?

For fruit, EU propagating and planting material will be marketable in GB through unilateral recognition of EU material as equivalent. EU labelling will be recognised.

Will a sample need to be provided for imports of EU seed greater than 2kg?

From 1 January, imports of seed from the EU will be treated in the same way as seed from the rest of the world. This means that a sample must be provided to the relevant seed certification authority for imports greater than 2kg.

Table of marketing requirements for EU seed and other propagating material in GB (plant health requirements also apply)

Crop Group	Marketing Requirements
Agricultural seed (except seed potatoes)	Agricultural seed must be OECD certified and have an ISTA Orange International Certificate. The variety must be on the GB or Northern Ireland Variety List.
Seed potatoes	EU seed potatoes will be marketable in England and Wales until June 2021. The variety must be on the GB or Northern Ireland Variety List.
Vegetable seed and propagating and planting material	Certified vegetable seed will be required to meet OECD seed scheme rules. Standard seed and propagating and planting material do not have an internationally recognised scheme, so in GB, can be marketed under existing EU labelling requirements, provided it can be traced to a UK address. The variety must be on the GB or Northern Ireland Variety List.
Fruit plant and propagating material and planting material	EU material can continue to be marketed in GB under existing EU labelling requirements, provided the material can be traced to a UK address. Fruit propagating material does not have an internationally recognised scheme.

Ornamental species	The UK will continue to apply its light touch approach to marketing of ornamental plant propagating material, with the requirements being met through plant health controls.
Forest Reproductive Material (FRM)	Forest Reproductive Material must meet OECD scheme requirements, with some minor exceptions where simpler conditions will apply.

Marketing seed in the EU

Will I be able to export seed and other propagating material to the EU after 31 December 2020?

As part of exit planning the UK submitted applications to the European Commission requesting third country equivalence for certification of seed and other propagating material, and requesting changes to plant health prohibitions on seed and ware potatoes. This would ensure exports continue as they do now.

The EU have formally confirmed that they will grant equivalence to the UK for fruit and vegetable propagating material and for agricultural species and forest reproductive material (FRM). The EU have approved a proposal for fruit and vegetable propagating material but at this stage have not given a timeline for the vote or for a Council decision on agricultural seed and FRM

Unfortunately, the EU have indicated that they will not accept our case for a permanent change to the prohibition on seed potatoes, which they have stated is on the grounds that there is no agreement for GB to dynamically align with the EU on plant health controls.

However, the EU have accepted a case to lift the prohibition on ware potatoes. This will mean that exports to the EU and NI can continue, provided that plant health requirements are met.

What if a sale is agreed before the end of the transition period, but the seed or other propagating material is not moved to the EU until after 31 December?

If seed or other propagating material is lawfully on the market in the UK or EU before the end of the transition period, it can continue to be marketed until it reaches the end user in either the UK or EU. It is the supplier's responsibility to have documentary evidence that material was on the market, which at the minimum means an offer for sale. It must also have been in a finished, marketable state, which for seed with specific labelling requirements we understand to mean first sealing date no later than

31 December. **This is without prejudice to any plant health requirements.** The European Commission's readiness notices for stakeholders give an explanation from the EU's perspective.

Crop Group	Marketing Requirements
Agricultural seed (except seed potatoes)	<p>Until the EU have formally granted equivalence to the UK you will not be able to market agricultural seed into the EU.</p> <p>Once equivalence is granted, agricultural seed must be OECD certified and have an ISTA Orange International Certificate. The variety must be on the EU Common Catalogue.</p>
Seed potatoes	<p>It will not be possible to market seed potatoes from 1 January 2021.</p> <p>Defra's understanding is that the 'goods on the market' provision for seed does not extend to plant health rules so we suggest that wherever possible you market seed potatoes prior to 31 December.</p>
Vegetable seed and propagating and planting material	<p>The EU have formally confirmed that they will grant equivalence for vegetable propagating material. The EU have proposed to grant equivalence for certified vegetable seed via a Council decision.</p> <p>It is Defra's understanding that businesses should still be able to market standard seed of veg in the EU provided the variety is traceable to an address in the EU and labelled as such. The seed label must give the name and address, or identification mark of a business in the EU and state 'EU rules and standards'</p>

Fruit plant and propagating material and planting material	The EU have formally confirmed that they will grant equivalence to the UK for fruit propagating material.
Ornamental species	<p>Ornamental seed and propagating material can continue to be marketed into the EU, provided that it meets plant health requirements.</p> <p>It is the responsibility of the exporter to ensure the labelling and quality assurance requirements are met for the receiving member state.</p> <p>The variety must have EU PVR, or be registered in any EU member state or be commonly known before September 2012.</p>
Forest Reproductive Material (FRM)	<p>Until the EU have formally granted equivalence to the UK you will not be able to market FRM seed into the EU.</p> <p>Forest Reproductive Material must meet OECD scheme requirements, with some minor exceptions where simpler conditions will apply.</p>

The Northern Ireland Protocol

Terminology:

- United Kingdom (UK) refers to England, Scotland, Wales and Northern Ireland (NI).
- Great Britain (GB) refers to England, Scotland and Wales.
- GB is used because the rules for marketing seed and other propagating material and for variety listing will differ from NI after the end of the transition period.

Can I market GB seed and other propagating material into NI after the end of the transition period?

The EU have formally confirmed that they will grant equivalence to the UK for fruit and vegetable propagating material and for agricultural species and forest reproductive material (FRM). The EU have

approved a proposal on fruit and vegetable propagating material, but at this stage they have not given a timeline for the vote or for a Council decision on agricultural seed and FRM

Unfortunately the EU have indicated that they will not accept our case for a permanent change to the prohibition on seed potatoes, which they have stated is on the grounds that there is no agreement for GB to dynamically align with the EU on plant health controls.

However, the EU have accepted a case to lift the prohibition on ware potatoes. This will mean that exports to the EU and NI can continue, provided that plant health requirements are met.

GB material lawfully on the market on or before 31 December (see above) can be marketed in NI until it reaches the final consumer. This is without prejudice to plant health requirements.

GB material first marketed after 31 December cannot be marketed in NI until the EU grants third country equivalence.

Our understanding of EU legislation is that GB standard seed of vegetables can be marketed in NI without third country equivalence, provided it can be traced to an address in NI or the EU, is labelled in compliance with EU legislation, and the variety is on the EU Common Catalogue or NI Variety List.

The EU directives for ornamental plant propagating material and for vegetable planting and propagating material have also been added to Annex 2 of the Northern Ireland Protocol. In this case, the impact is less significant because our understanding is that the EU's marketing requirements can be met without third country equivalence.

Why has the UK agreed to add the three missing directives to the Northern Ireland Protocol?

The EU proposed several changes to Annex 2 of the Northern Ireland Protocol to be addressed in the treaty under the powers provided by the Withdrawal Agreement, which includes a mechanism for correcting errors, omissions and deficiencies, including to the Northern Ireland Protocol. The UK and the EU have therefore agreed to add the three missing directives (Marketing of fodder plant seed (Council Directive 66/401/EEC), Marketing of propagating material of ornamental plants (Council Directive 98/56/EC), and Marketing of vegetables propagating and planting material (Council Directive 2008/72/EC)) to Annex 2 of the Northern Ireland Protocol. This ensures that we can fully protect Northern Ireland's place in the UK's internal market. The species covered by these directives can be marketed from GB to NI once the UK is granted third country equivalence by the EU.

Can I market NI seed and other propagating material into GB after the end of the transition period?

Yes, the Government has committed to unfettered market access for movement of goods from NI to GB, this includes seed and other propagating material. Material will be marketable under existing EU rules.

Can seed and other propagating material move freely from EU to NI, and onto the GB market?

EU material lawfully on the market on or before 31 December (see above) can move freely from the EU to NI and onward to GB until it reaches the final consumer.

Under the provisions for unfettered market access for Northern Ireland Qualifying Goods, material certified and labelled under the EU's rules for its single market can move onwards into GB. This does not apply to species covered by the three directives missing from the Northern Ireland Protocol, which must comply with the requirements for material entering GB directly from the EU.

There are concerns about backdoor access to the GB market for material moving from the EU via NI, including varieties not on the GB or Northern Ireland Variety Lists. The proposals for Northern Ireland Qualifying Goods are for simple rules for six months, to be replaced by more detailed requirements. Further information will be issued in due course.

DUS Testing

The EU stopped accepting UK DUS reports from the beginning of the transition period.

The UK is reliant on EU testing for a large number of species where we do not have DUS testing capability. The UK will continue to accept EU reports for these species, for variety listing and for plant breeders' rights, provided they are of comparable quality to UK testing. The UK will also accept EU DUS test reports for the agricultural, amenity and vegetable species where the UK does have testing capability, provided that for variety listing, the test was started before 31 January 2020, and for PBR where there was an undecided application for EU PVR on 31 December 2020 followed by an application for UK PBR by 30 June 2021.

For all other applications for UK variety listing or PBR for species where the UK has testing capability, a UK DUS test will be required.

See Annex 1 on the plant health portal for the full list of DUS species tested by NIAB, AFBI and SASA

How does DUS work now?

Through CPVO's quality assurance, the EU has harmonised DUS testing and facilitated mutual recognition and exchange of reports between Member States and CPVO.

Is the UK seeking an agreement for the UK and EU to mutually recognise DUS reports?

The UK has submitted a request to the CPVO requesting mutual recognition of DUS reports. The EU have confirmed that they will not consider the UK's request until Free Trade Agreement negotiations have progressed. Further information will be published in due course.

How will the UK maintain the quality of its DUS testing?

The UK will maintain its high level of participation in UPOV, the International Union for the Protection of New Varieties of Plants, the global treaty for PBR which as part of its function develops DUS test guidelines. APHA and the organisations carrying out UK DUS testing have developed a quality assurance process to replace CPVO's.

Seed and Ware Potatoes

The EU has stated that after the transition period, GB seed potatoes will not be marketable in the EU because certification is not recognised as equivalent. From a plant health perspective, the EU has stated that GB exports to the EU would be subject to EU import requirements, including prohibitions on seed and ware potatoes from third countries.

As part of exit planning, Defra, on behalf of the UK, has submitted applications to the European Commission to ensure exports continue as they do now. The applications are for third country

equivalence for certification of seed and other propagating material, and for plant health derogations for seed and ware potatoes. The EU has responded to the UK's recent application, requesting additional information on several technical points. The UK has replied and is waiting for a further response. The approval process for equivalence can take up to two years, during which time GB businesses will not be able to export most types of seed and propagating material to the EU. We are acutely aware of the issues this will cause the industry, so have asked the EU to expedite the process, however it is their decision to take.

Unfortunately, the EU have indicated that they will not accept our case for a permanent change to the prohibition on seed potatoes, which they have stated is on the grounds that there is no agreement for GB to dynamically align with the EU on plant health controls.

However, the EU have accepted a case to lift the prohibition on ware potatoes. This will mean that exports to the EU and NI can continue, provided that plant health requirements are met.

Seed and ware potato exports to the Canary Islands and countries outside of the EU

In relation to phytosanitary standards and trade with the EU, the Canary Islands are treated as a third country. As such, exports to the Canary Islands are not affected by the certification equivalence and plant health issues, with current export processes and requirements continuing as they do now. But it should be noted that the Canary Islands, and countries outside of the EU, have a sovereign right to change their import requirements whenever they feel appropriate and we cannot guarantee that exports will not be disrupted in this context.

Seed and ware potato imports into the UK from the EU

England and Wales will accept EU seed potatoes as equivalent for certification for six months after 31 December 2020. Imports of EU seed and ware potatoes will not be restricted on plant health grounds, although must meet the new requirements for pre-notification and phytosanitary certificates.

Plant Health Requirements

What are the plant health requirements for importing and exporting seed?

Please refer to gov.uk guidance [here](#)

RoW (rest of world)

Exports

Exports to third countries outside of formal trade agreements (FTAs) should be unaffected if the UK leaves without a deal.

Additional guidance on trade agreements is available [here](#).

Imports

Will there be any changes to marketing of seed from third countries?

All third countries currently recognised by the EU as equivalent for seed certification will continue to be recognised as equivalent by the UK (GB). There will be no change to seed import requirements for marketing purposes, other than the variety needing to be on the GB or NI Variety List. OECD certification and an ISTA Orange International Certificate or equivalent will continue to be required.

The UK will make its own, separate decisions for any new countries requesting equivalence.

Devolved Administration Guidance

If your business is based in Northern Ireland, Scotland or Wales you can find additional guidance below.

Scotland: <https://www.sasa.gov.uk/eu-exit-guidance>

Northern Ireland: <https://www.daera-ni.gov.uk/plant-health-plantstimber-brexite-qa>

Wales: <https://gov.wales/preparing-wales-brexite/environment-agriculture-and-food>