PROPOSED REPLACEMENT EU ACT
INITIAL ASSESSMENT OF IMPACT

DSC REF: DSC/19a/2025

Proposed Replacement EU Act

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the production and marketing of forest reproductive material, amending Regulations (EU) 2016/2031 and 2017/625 of the European Parliament and of the Council and repealing Council Directive 1999/105/EC (Regulation on forest reproductive material)

EU Summary of the Act

The proposed Regulation aims to restructure, update and modernise existing legislation governing the production and marketing of Forest Reproductive Material (FRM) by taking into account technological developments and addressing challenges posed by climate change. The proposal would also amend Regulation (EU) 2016/2031 where rules concerning pests will also apply to FRM and introduce the possibility of a single format for the official label for FRM with the plant passport. It also proposes to amend Regulation (EU) 2017/625 (the EU Official Controls Regulation) to include FRM rules under the scope of EU legislation on Official Controls.

The proposed Regulation would revoke and replace Council Directive 1999/105/EU (Regulation on forest reproductive material).

The proposed regulation takes into account the new policy priorities of the EU in relation to sustainability, climate change adaption and biodiversity. The proposal aims to expand the definition of FRM by listing a wider range of uses compared to the current FRM legislation. The current legislation defines FRM in relation to forestry purposes, but is vague in definition, which has led to situations where low quality or unsuitable FRM has been planted, and such cases could lead to significant economic losses or in extreme cases, failure of forest ecosystems. The new definition would contain uses for afforestation, reforestation and other types of tree planting for the purposes of wood and biomaterial production, conservation, restoration, climate mitigation and conservation and sustainable use of forest genetics and would allow member states to decide on the selection criteria that would be applied to the basic material in view of the intended purpose of the FRM.

The six current types of FRM basic material in EU legislation will remain, however under this proposal, Competent Authorities will assess the sustainability characteristics of basic materials during the approval process – these characteristics concern the adaption of the basic material to the local climatic and ecological conditions, as well as the freedom from pests, giving more clarity on their viability. The procedure for approving basic material would also include the use of bio-molecular techniques and innovative clonal FRM production techniques.

The proposed Regulation would allow that professional operators may be authorised to print official labels for certain species and categories of FRM. This would be under the supervision of Competent Authorities but would simplify processes for professional operators.

Each member state would be required to establish and publish a register of basic material on its territory and a national list of each approved unit in its territory. Each member state would also be required to devise a contingency plan to ensure sufficient supply of FRM to reforest areas destroyed by natural disasters.

The proposal also aims to improve consistency between FRM legislation and plant health legislation, in relation to control of Regulated Non-Quarantine Pests (RNQPs), streamlining documentary requirements, powers of authorities, delegation of tasks and certification.

The Commission suggests that the new rules will maintain the principles of registration and certification, while reducing paperwork and increasing the diversity and quality of materials, along with improving the adaption to climate change and food safety.

Department(s) Responsible

The Department of Agriculture, Environment and Rural Affairs (DAERA)

Initial Assessment of Impact

The proposal appears to be an update aimed at making the existing system a better fit for the modern world, rather than a significant overhaul of legislative provisions**.** It appears likely that applying these amendments would not have a significant impact specific to everyday life of communities in Northern Ireland (NI), as the amendments being introduced are primarily to improve the quality and variety of FRM to address challenges posed by climate change, and to establish a common and simplified framework across the EU.

It appears likely that not applying the amendments would not have a significant impact on the everyday life of communities in NI. However, it should be noted that non-application would mean that NI would not benefit from the advantages introduced by the amendments. It should also be noted that the specific nature of impact will only be clear once EU have provided the necessary implementing and delegated acts.

UK Government Explanatory Memorandum

The UKG EM (EM_COM_23_414_and_415.pdf) provides a high-level summary of the perceived impact of the proposed regulation and noted that a fuller assessment will be completed once the EU has made a series of implementing and delegated acts, which will contain the detail of how the regulation should be implemented in practice. UKG's initial review suggests that the proposal does not seek to significantly overhaul FRM legislative provisions, but to update the current system to suit the modern world.

UKG has indicated that without the EU's implementing and delegated acts, it is unable to state with certainty the level of regulatory divergence between NI and GB. However, the existing EU directive for FRM, which the proposal aims to replace, was transposed and retained in GB law prior to EU exit. The UKG also stated that it is unlikely there will be divergence between certification standards as these are largely based on international standards.

UKG concluded that the FRM proposal is not expected to affect the current equivalence decision of the EU, as the proposal states that for countries to be equivalent, they must participate in the OECD Scheme for the Certification of FRM Moving in International Trade, of which the UK is a member.

Analysis by the European Commission on its Impact Assessment

The proposal is based on an impact assessment (Annex A) which received a "positive opinion with reservations" from the Regulatory Scrutiny Board in February 2023.

A number of issues with the current FRM legislation were identified, which the proposed regulations aim to address. The EU impact assessment concluded that the proposed regulations would:

- Bring efficiency gains for operators and Competent Authorities, through simplified processes, digital solutions and harmonisation with plant health legislation
- Deliver environmental benefits, through delivering FRM with improved sustainability characteristics, contributing to the adaption and mitigation of the impact of climate change
- Reduce the risk of the planting of low quality FRM, necessary to ensure the most suitable FRM is used to avoid economic and environmental losses.

A full, detailed impact assessment is currently being undertaken by the EU, which should allow for a better analysis of the potential impact of the proposal.

Departmental Engagement

No consultations or impact assessments have been undertaken by DAERA for this proposal. Defra has indicated that as the proposal develops and proceeds through the EU legislative procedure, it will continue to engage with industry, including through regular meetings with key stakeholders. DAERA will remain engaged with Defra as the proposal progresses.

Annex A – EU Impact assessment

EUR-Lex - 52023PC0415 - EN - EUR-Lex

This proposal is based on an impact assessment which received a 'positive opinion with reservations' from the Regulatory Scrutiny Board on 17 February 2023.

There are two main problems identified with the current FRM legal framework:

1. There is a non-harmonised internal market characterised by divergent conditions for operators and marketed FRM across Member States. The implementation of various aspects of the legislation differs between Member States because (i) the legislation leaves room for interpretation, (ii) Member States tried to find practical solutions to overcome rigid provisions and (iii) the legislation has not followed new developments in science and technology in good time.

2. The legislation is not aligned with the objectives of the European Green Deal and the related strategies. There are restrictions in relation to the genetic diversity of FRM, a lack of sustainability characteristics and the incomplete scope of the FRM legislation. There is an insufficient supply of high-quality certified FRM due to the increasing demand for FRM for reaching the EU target of planting 3 billion additional trees by 2030 aiming to double the number of trees planted per year and having in mind the purposes of wood and biomaterials production, biodiversity conservation and restoration of forest ecosystems. The increasing occurrence of extreme weather and disasters, in combination with an insufficient assessment of sustainability characteristics for the lower FRM categories, has put pressure on the supply of suitable FRM and thus on the resilience of forest ecosystems.

The general objective of this initiative is to ensure, for all types of users, the availability of FRM of high quality and diversity of choice, adapted to current and projected future climatic conditions. At a next level, this will in turn help protect biodiversity and restore forest ecosystems.

The impact assessment compiled all possible measures for analysis, based on (i) an external data gathering study supporting a Commission study on the EU's options to update the legislation on PRM, (ii) a study in support of the impact assessment conducted by an external consultant and (iii) the aforementioned stakeholder consultation activities.

The diverse, complex and often interrelated measures were grouped under three policy options, all of which are compared to a 'no policy change' scenario. Three options were assessed. Option 1 offered the most flexibility while option 3 offered the most harmonisation, so as to minimise differences in how the legislation is implemented. Option 2 balanced the need for flexibility with a higher degree of harmonisation to overcome the problems stemming from differences in interpretation.

All options contained a number of common elements: (i) simplified administrative procedures and a more flexible decision-making process and (ii) harmonisation with the plant health legislation.

1.Option 1 - Highest level of flexibility: Option 1 would lay down minimum requirements for FRM official controls, but without linking those to the Official Controls Regulation. It would adopt guidelines on the use of innovative production processes, bio-molecular techniques and digital solutions. The FRM legislation would only cover production for 'forestry purposes' to ensure the availability of high-quality FRM for afforestation/reforestation. Sustainability requirements would be extended to the lower FRM categories. Guidelines would be introduced on contingency planning for major FRM shortages, in the event of extreme weather and disasters.

2.Option 2 - Balancing flexibility and harmonisation (preferred option): Option 2 would bring the official controls on FRM under the scope of the Official Controls Regulation, but with simplified import controls at appropriate places within the EU, to ensure a more targeted and efficient enforcement of the existing rules. Basic principles would be included in the legislation for the use of innovative production processes, bio-molecular techniques and digital solutions. The FRM legislation would cover production for 'forestry' and 'non-forestry' purposes, to increase FRM availability and quality beyond afforestation/reforestation uses. Sustainability requirements would be extended to the lower FRM categories. General legal requirements would be introduced for contingency planning for major FRM shortages in the event of extreme weather and disasters.

3.Option 3 – Highest level of harmonisation: Option 3 would bring the official controls on FRM under the scope of the Official Controls Regulation, with stricter import controls at border control posts, requiring special import documentation to strengthen and fully harmonise enforcement. Detailed and binding rules would be included in the legislation for the use of innovative production processes, bio-molecular techniques and digital solutions. The FRM legislation would cover production for 'forestry' and 'non-forestry' purposes to increase FRM availability and quality beyond afforestation/reforestation uses. Sustainability requirements would be extended to the lower FRM categories and be subject to harmonised rules. Common rules would be introduced for contingency planning to prepare for major FRM shortages in the event of extreme weather and disasters.

Based on the outcome of the impact assessment, the Commission concluded that policy option 2 is the best option to effectively address all the objectives of the revision of FRM legislation in efficiently and consistently.

The preferred option will bring efficiency gains for operators and competent authorities through (i) the possibility for operators to print the official label under official supervision, (ii) harmonisation with the plant health legislation, (iii) the introduction of

risk-based official controls and the possibility to use bio-molecular techniques and (iv) digital solutions in the registration and certification systems.

FRM with improved sustainability characteristics will contribute to the adaptation and mitigation of the already visible impact of climate change on forests, therefore delivering important environmental benefits. National contingency plans will ensure a sufficient supply of FRM to reforest areas affected by extreme weather events, wildfires, disease and pest outbreaks, or other disasters. The risk of planting low-quality FRM will thus be reduced. Finally, benefits are expected for the conservation and sustainable use of forest genetic resources through a specific derogation.

The proposed Regulation clarifies that FRM is used for afforestation, reforestation and other types of tree planting for various purposes. As regards the scope of the Regulation, it was considered most appropriate that it explicitly covers the purposes for which it is deemed important to use high-quality FRM. This is necessary in order to ensure that only the most suitable FRM for those purposes is used and to avoid economic losses and environmental damages caused by the use of low-quality FRM.