EXPLANATORY MEMORANDUM TO

THE SEED (EQUIVALENCE) (AMENDMENT) (ENGLAND) REGULATIONS 2022

2022 No. 1274

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs (Defra) and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument is to amend the expiry date of retained EU Council Decision 2003/17 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 ("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 countries whose systems of field inspections, production and certification of seed are regarded as affording the same assurances as the provisions applicable to seed harvested and controlled within GB. The Decision is due to expire on the 31 December 2022 and extending the expiry date will ensure that the specified countries currently recognised as equivalent in GB law through the Decision, will continue to be recognised as equivalent until 31 December 2029.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 This instrument amends the Decision so that it continues to have effect up to 31 December 2029. The Decision is "retained direct minor EU legislation" as defined by section 7(6) of the European Union (Withdrawal) Act 2018 (the "Withdrawal Act") and was incorporated into United Kingdom law by section 3 of the Withdrawal Act.

6.2 The powers in the Plant Varieties and Seeds Act 1964, when read with section 7(3) of, and paragraph 5(2) of Schedule 8 to, the Withdrawal Act, allow for modifications to be made to retained direct minor EU legislation.

7. Policy background

What is being done and why?

7.1 For most seed and other propagating material produced outside of the UK to be marketed in Great Britain (GB), 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.

7.2 For certain specified countries with equivalence recognition authorisations, on certain specified crop species, that pre-date EU Exit, their equivalence is granted legislatively by the Decision. The Decision, as it applies in GB, is due to expire on 31st December 2022. If the current equivalence arrangements were allowed to lapse, seed of species specified in this Decision, produced and certified outside GB, could not be lawfully marketed within GB. This could potentially leave GB farmers/growers short of the seed they need for agricultural production. A reduction in the choice of suitable varieties could compel farmers/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.

7.3 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.

7.4 Countries specified in the Decision produce seed in line with the OECD schemes for the varietal certification of seed moving in international trade which is considered of an equivalent standard to seed produced in GB. Regular monitoring of qualifying seed produced in these countries has not highlighted any inconsistencies with agreed OECD standards. To ensure therefore that such seed produced in these countries can continue to be marketed in GB beyond 31 December 2022, this instrument extends the expiry date of the Decision to 31 December 2029.

7.5 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. This review will consider if equivalence in future should be granted to those countries specified in the Decision through the powers provided for 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"). Part 5, regulation 26 of the 2020 Regulations provide for the recognition of the equivalence of plant material from countries outside of the British Islands on an administrative rather than legislative basis.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 No consolidation is being undertaken.

10. Consultation outcome

10.1 Defra's proposal to extend the expiry date of the Decision from 31 December 2022 to 31 December 2029 was developed in collaboration with the Devolved Administrations. Although this instrument has application in England only, the Decision is GB wide and the Devolved Administrations are intending to make corresponding legislation for Scotland and Wales.

10.2 Defra, on behalf of the authorities in GB, conducted a six-week informal consultation with agricultural and forest seed breeders, grower associations and organisations, located in the United Kingdom and internationally. 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.

11. Guidance

11.1 Current guidance will be retained without the need for further update as no changes in policy or procedures are being introduced. The decision to extend the current equivalence arrangements will be publicised online through Gov.UK and the UK's Plant Health Information Portal.

12. Impact

12.1 There is no, or no significant, impact on business, charities, or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because the SI relates to the extension of existing regulatory standards and no or no significant impact, on the private, voluntary, or public sector is foreseen.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The amendment to extend the expiry date of the Decision does not change current policy and will therefore have no additional impact on small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is through the course of normal departmental business.

14.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Lord Benyon has made the following statement:

"A statutory review would be undesirable for policy reasons. There is an exceptionally high need for businesses in GB to have certainty in the longer term that they will be able to continue to access supplies of seed which they are reliant upon from outside of GB. This amendment extends the Decision to 31 December 2029 and Defra officials, in collaboration with policy officials in the Devolved Administrations, are already proposing to undertake a policy review of how equivalence authorisations are granted beyond that date".

15. Contact

15.1 Helen Fasham and Christina Bradley at the Department for Environment, Food and Rural Affairs email: Fasham-Bradley.jobshare@defra.gov.uk can be contacted with any queries regarding the instrument.

15.2 Nicola Spence, Deputy Director for Plant Health, Bee Health and Seeds at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord Benyon, Minister of State (Minister for Rural Affairs and Biosecurity) at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.