EXPLANATORY MEMORANDUM TO

THE SEED MARKETING (AMENDMENT) REGULATIONS 2012

2012 No. 3035

1. This explanatory memorandum has been prepared by the Food and Environment Research Agency ("Fera"), an Executive Agency of the Department for Environment, Food and Rural Affairs ("Defra"), and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument is to make the following important non-contentious amendments to the Seed Marketing Regulations 2011 (S.I. 2011/463) ("the principal Regulations"):

(1) to enable trade with specified third countries to continue beyond the end of 2012;

(2) to allow the Secretary of State to license exemptions for temporary experiments under five EU seed marketing Directives; and

(3) to make two other minor amendments relating to the certification requirements for fodder plant seed and the content requirements on official labels of seed.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument introduces new amending provisions (regulations 3 and 4). In addition, Defra has taken this opportunity to make two minor corrections (regulations 5 and 6) to the principal Regulations.

4. Legislative Context

4.1 The principal Regulations continue to implement long-standing Council Directives on the marketing of beet, fodder, cereals, oil and fibre plants and vegetables and prescribe minimum quality standards to ensure that purchasers receive seeds of a reasonable and uniform quality. The Directives set out conditions covering all aspects of production and marketing including checks on varietal and analytical purity, germination and conditions and procedures for the official examination of crops and the testing of seeds.

4.2 Regulation 3 introduces an ambulatory reference into the principal Regulations in respect of Council Decision 2003/17/EC 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[1] ("the 2003 Decision") so that future

[1] OJ No L 8, 14.1.2003, p.10.

minor amendments to the 2003 Decision (e.g. renewal dates) can be effected without the need to make new legislation.

4.3 Regulation 4 reinstates the provision allowing for the organisation of temporary experiments as set out in the following seed marketing Directives ("the Seed Marketing Directives"):

(1) Council Directive 66/401/EEC on the marketing of fodder plant seed;
(2) Council Directive 66/402/EEC on the marketing of cereal seed;
(3) Council Directive 2002/54/EC on the marketing of beet seed;
(4) Council Directive 2002/55/EC on the marketing of vegetable seed; and
(5) Council Directive 2002/57/EC on the marketing of seed of oil and fibre plants.

When the five sets of seed marketing Regulations[2] ("the pre-consolidation seed marketing Regulations"), and one other set of Regulations[3] were consolidated by the Seed Marketing Regulations 2010 (S.I. 2010/2605) ("the 2010 Regulations"), the provision allowing for the organisation of temporary experiments was inadvertently omitted. This deficiency was carried over into the principal Regulations which revoked and replaced the 2010 Regulations. It has only recently come to light and needs to be rectified because the UK has agreed to participate in a temporary experiment under Commission Implementing Decision 2012/340/EU on the organisation of a temporary experiment under Council Directives 66/401//EEC, 66/402/EEC, 2002/54/EC, 2002/55/EC and 2002/57/EC as regards field inspection under official supervision for basic seed and bred seed of generations prior to bred seed[4] ("the 2012 Decision").

4.4 The amendments effected by regulations 5 and 6 rectify minor errors in the implementation of the seed marketing Directives.

4.5 A transposition note can be seen in the Annex to this memorandum.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

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

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[2] The Beet Seed (England) Regulations 2002 (S.I. 2002/3171) (regulation 19); the Fodder Plant Seed (England) Regulations 2002 (S.I. 2002/ 3172) (regulation 21); the Cereal Seed (England) Regulations 2002 (S.I. 2002/3173) (regulation 21); the Oil and Fibre Plant Seed (England) Regulations 2002 (S.I. 2002/3174) (regulation 2002/3174); and the Vegetable Seed (England) Regulations 2002 (S.I. 2002/3175) (regulation 20).

[3] The Seed (Registration, Licensing and Enforcement) (England) Regulations 2002 (S.I. 2002/3176).

[4] OJ No L 166, 27.6.2012, p. 90.

7. Policy background

- ***What is being done and why***

7.1 This instrument further amends the principal Regulations to include an ambulatory reference to the 2003 Decision. The 2003 Decision determines that field inspections carried out in specified third countries and the seed produced in these countries satisfies the conditions laid down in EU legislation and is equivalent to seed produced in the EU. It applies only until the end of 2012. There is currently a European Commission Proposal dated 28th June 2012 (COM(2012) 343 final) ("the Proposal") to renew these equivalence arrangements from 1st January 2013 until the end of 2022 for all third countries referred to in its Annex. In anticipation of this, the opportunity is being taken to make the reference to the 2003 Decision ambulatory. Although there is a reference to the 2003 Decision in Part 3 of Schedule 4 to the principal Regulations, there is no ambulatory reference to it in regulation 3(2). In the event that the Proposal is adopted, this amendment will enable trade under equivalence arrangements with third countries to continue beyond the end of 2012.

7.2 It is also necessary to amend the principal Regulations to allow the Secretary of State to license exemptions for temporary experiments organised under any of the seed marketing Directives because the UK has agreed to participate in a temporary experiment under the 2012 Decision. This will allow for inspections of pre-basic and basic seed crops by licensed crop inspectors. The experiment will benefit industry by reducing costs and is in keeping with Defra's policy objective of transferring responsibility for operational matters from Government to industry. The experiment will run from 1st January 2013. We therefore need to reinstate a temporary experiment provision in the principal Regulations by the end of 2012.

7.3 Regulation 5 effects a minor but necessary addition of lucerne (*Medicago sativa*) to the list of fodder plant seeds in respect of which the definition of "certified seed" does not apply, so correcting a minor error in the implementation of Council Directive 66/401/EEC on the marketing of fodder plant seed.

7.4 Regulation 6 effects a minor but necessary amendment to one of the requirements as regards the content of an official label on a mixture of seed to correct an error (the omission of the word "pesticides") in the implementation of each of the seed marketing Directives.

7.5 These amendments are only the second set of amendments of the principal Regulations[5] and Fera and Defra do not intend to undertake a consolidation of the principal Regulations at this stage.

[5] The first set of amending Regulations are the Seed Marketing (Amendment) Regulations 2011 (S.I. 2011/2992).

8. Consultation outcome

8.1 Because the proposals are minor and do not introduce new measures or burdens on business or the wider public, Fera sought advice from Defra's Better Regulation advisors and decided to conduct a proportionate consultation targeting only the four main industry representative organisations i.e. the British Society of Plant Breeders, the Agricultural Industries Confederation, the National Farmers Union and the National Association of Agricultural Contractors who represent the interests of plant breeders, seed merchants, farmers and ancillary trades respectively. Consultation was conducted over a two month period by means of initial informal discussions at routine bilateral meetings with each of the four representative organisations and subsequently by correspondence. All four organisations responded by acknowledging the minor, but important, nature of the amendments and fully supported the proposals.

9. Guidance

9.1 As this is not introducing any new measures, current procedures and guidance will remain the same.

10. Impact

10.1 No impact assessment has been conducted as current procedures will not change and there is no impact on the public sector, business, charities and voluntary bodies.

11. Regulating small business

11.1 The legislation continues to apply to small business but current procedures will not change.

12. Monitoring & review

12.1 The efficacy of this legislation will be monitored and reviewed with seed companies through Fera's established biannual meetings with the main industry representative organisations (NFU, Agricultural Industries Confederation, British Society of Plant Breeders and the National Association of Agricultural Contractors). The principal Regulations (regulation 33A) require the Secretary of State from time to time to carry out a review of the Regulations, set out the conclusions of the review in a report and publish the report. The first such report must be published before the end of the end of the period of five years beginning on 6th January 2012 and subsequent reports must be published at intervals not exceeding five years.

13. Contact

Andy Mitchell of the Food and Environment Research Agency Tel: 01223 342384 or email: andy.mitchell@fera.gsi.gov.uk can answer any queries regarding this instrument.

Annex

Transposition Note

The Seed Marketing (Amendment) Regulations 2012

References to the "SM Regs 2011" are references to the Seed Marketing Regulations 2011, as amended[6] (S.I. 2011/463)

Article	Purpose	Implementation
Directive 2002/54/EC on the marketing of beet seed		
12(a)	Labelling requirements of basic and certified seeds except for small packages of certified seed	Reg 6 (paragraphs 5-9 of Schedule 3 to the SM Regs 2011)
19	Temporary experiments under specified conditions at EU level releasing Member States from certain obligations may be organised under Article 28(2) procedure	Reg 4
22(3)	Seed harvested in a third country to be officially certified if produced directly from basic seed in MS or third country with equivalence or the crossing of basic seed officially certified in a MS with basic seed officially certified in that third country; field inspection	Reg 3 (paragraph 17 of Schedule 4 to the SM Regs 2011)
Directive 66/402/EC on the marketing of cereal seed		
10(1)(a)	Labelling requirements for packages of basic and certified seeds of all kinds	Reg 6 (paragraphs 5-9 of Schedule 3 to the SM Regs 2011)
13a	Temporary experiments under specified conditions at EU level releasing Member States from certain obligations may be organised under Article 21 procedure	Reg 4
15(3)	Seed harvested in a third country to be officially certified if produced directly from basic or certified seed of the first generation in MS or third country with equivalence or the crossing of basic seed officially certified in a MS with basic seed officially certified in that third	Reg 3 (paragraph 17 of Schedule 4 to the SM Regs 2011)

[6] SI 2011/463 was amended by SI 2011/2992.

	country; field inspection	
Directive 66/401/EC on the marketing of fodder plant seed		
2(1)(C)	Certified seed definition	Reg 5 (paragraph 24 of Schedule 2 to the SM Regs)
10(1)(a)	Labelling requirements for packages of basic, certified and commercial seeds except for small EC B packages of certified or commercial seed	Reg 6 (paragraphs 5-9 of Schedule 3 to the SM Regs)
13a	Temporary experiments under specified conditions at EU level releasing Member States from certain obligations may be organised under Article 21 procedure	Reg 4
15(3)	Seed harvested in a third country to be officially certified if produced directly from basic or certified seed in MS or third country with equivalence or the crossing of basic seed officially certified in a MS with basic seed officially certified in that third country; field inspection	Reg 3 (paragraph 17 of Schedule 4 to the SM Regs 2011)
Directive 2002/57/EC on the marketing of seed oil and fibre plants		
12(1)(a)	Labelling requirements of basic, certified and commercial seeds	Reg 6 (paragraphs 5-9 of Schedule 3 to the SM Regs)
16	Temporary experiments under specified conditions at EU level releasing Member States from certain obligations may be organised under Article 25(2) procedure	Reg 4
19(3)	Seed harvested in a third country to be officially certified if produced directly from basic or certified seed in MS or third country with equivalence or the crossing of basic seed officially certified in a MS with basic seed officially certified in that third country; field inspection	Reg 3 (paragraph 17 of Schedule 4 to the SM Regs 2011)
Directive 2002/55/EC on the marketing of vegetable seed		
28(1)(a)	Labelling requirements of basic and certified seeds except for packages of certified seed	Reg 6 (paragraphs 5-9 of Schedule 3 to the SM

		Regs)
33	Temporary experiments under specified conditions at EU level releasing Member States from certain obligations may be organised under Article 46(2) procedure	Reg 4
36(3)	Seed harvested in a third country to be officially certified if produced directly from basic or certified seed in MS or third country with equivalence or the crossing of basic seed officially certified in a MS with basic seed officially certified in that third country; field inspection	Reg 3 (paragraph 17 of Schedule 4 to the SM Regs 2011)