STATUTORY INSTRUMENTS

2024 No. 899

SEEDS, ENGLAND

The Seed Marketing (CMS Wheat Hybrids) (Temporary Experiment) (England) Regulations 2024

Made - - - -	*3rd September 2024*
Laid before Parliament	*4th September 2024*
Coming into force - -	*26th September 2024*

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 16(1), (1A), (3) and (5) and 36 of the Plant Varieties and Seeds Act 1964(**a**), and now vested in the Secretary of State, after consultation with representatives of such interests as appear to the Secretary of State to be concerned.

PART 1

Introductory

Citation, commencement, extent, application and expiry

1.—(1) These Regulations may be cited as the Seed Marketing (CMS Wheat Hybrids) (Temporary Experiment) (England) Regulations 2024.

(2) These Regulations come into force on 26th September 2024.

(3) These Regulations extend to England and Wales but apply in relation to England only.

(4) These Regulations cease to have effect at the end of 25th September 2031.

Interpretation

2. In these Regulations—

"the 2011 Regulations" means the Seed Marketing Regulations 2011(**b**);

"CMS wheat hybrid" means a hybrid of the plant species of *Triticum aestivum*, *Triticum durum* or *Triticum spelta* produced by means of cytoplasmic male sterility;

"the experiment" means the temporary experiment organised in accordance with these Regulations;

"licence", except in regulation 4(2)(d), means a licence granted under regulation 3(3);

(**a**) 1964 c. 14 ("the 1964 Act"). Section 16 was amended by section 4 of, and paragraph 5 of Schedule 4 to, the European Communities Act 1972 (c. 68), section 2 of the Agriculture Act 1986 (c. 49), sections 38 and 46 of the Criminal Justice Act 1982 (c. 48) and S.I. 1977/1112. See section 38(1) of the 1964 Act for the definition of "the Minister". The functions of the Minister of Agriculture, Fisheries and Food under the 1964 Act were transferred to the Secretary of State by S.I. 2002/794.

(**b**) S.I. 2011/463 ("the 2011 Regulations"); relevant amending instruments are S.I. 2012/3035, 2019/131 (as amended by S.I. 2020/1388), 2020/682 and 2022/1090. Non-textual modifications were made to the 2011 Regulations by S.I. 2023/676.

"marketing" has the meaning given by regulation 2 of the 2011 Regulations;

"participant" means a person granted a licence.

PART 2

The experiment

Purpose and duration of the experiment, and the granting of licences to participate in it

3.—(1) The purpose of the experiment, in accordance with regulation 21A(1) of the 2011 Regulations(**a**), is to seek alternative requirements for the certification of CMS wheat hybrids which may be more suitable than the requirements specified in Schedule 2 to the 2011 Regulations.

(2) The experiment lasts for a period of seven years beginning with 26th September 2024 and ending at the end of 25th September 2031.

(3) The Secretary of State may grant a licence for the purpose of participating in the experiment to a person who applies for a licence in accordance with regulation 4(1) and (2).

Application for a licence

4.—(1) An application for a licence must be made in writing to the Secretary of State and include the information specified in paragraph (2).

(2) The information is—

(a) the name, telephone number, address and email address of the applicant and, where the applicant is not an individual, the name of the individual who is to be responsible for participation in the experiment,

(b) the varieties of CMS wheat hybrids proposed to be used in the experiment,

(c) the region or proposed region in which CMS wheat hybrids are to be grown, and

(d) where the applicant is required to have a licence for the marketing of seed under regulation 20 of the 2011 Regulations, the number of that licence.

(3) The Secretary of State may include, as a condition in a licence, that participants must resubmit the information specified in paragraph (2) annually, and any other conditions that the Secretary of State considers to be appropriate.

(4) The participant must comply with any conditions specified in the licence.

Period of validity of a licence

5.—(1) Subject to paragraphs (2) and (5) and to regulation 8, the period of validity of a licence to participate in the experiment begins on the date of issue specified in the licence and ends at the end of 25th September 2031.

(2) If the participant's licence specifies a shorter period of validity, the licence ceases to be valid at the end of the date specified in the licence.

(3) If the participant intends to cease participation in the experiment, they must give notice in writing to the Secretary of State, specifying the date on which participation will cease.

(4) The date specified for the purpose of paragraph (3) must be a date earlier than the date on which the participant's licence would otherwise cease to be valid in accordance with paragraph (1) or (2).

(**a**) Regulation 21A of the 2011 Regulations was inserted by S.I. 2012/3035 and substituted by S.I. 2019/131. It provides that that the Secretary of State may by licence exempt any person or class of persons from compliance with any provision of the 2011 Regulations for the purposes of a temporary experiment seeking improved alternatives to provisions of those Regulations.

(5) Where the participant informs the Secretary of State that they intend to cease participation in the experiment, the participant's licence ceases to be valid at the end of the date specified in the notice referred to in paragraph (3).

Effect of the grant of a licence to participate in the experiment

6. The Schedule, which makes transitory modifications to the application of the 2011 Regulations during the period of validity of a licence, has effect in relation to a participant in so far as the provision relates to CMS wheat hybrids developed in accordance with the licence.

Variation of conditions included in a licence

7.—(1) The Secretary of State may at any time vary any of the conditions included in a licence by giving notice in writing to the participant.

(2) The written notice referred to in paragraph (1) must state the reasons for the variation and the date from which it is to take effect.

Revocation or suspension of a licence

8.—(1) The Secretary of State may revoke or suspend a licence by giving written notice to the participant if satisfied that a participant has—

(a) included incorrect information in an application for the licence under regulation 4;

(b) failed to comply with any requirement or condition imposed on them by or under any legislation covering plant health and applying in relation to England, including in particular—

(i) regulation 9, 10 or 11,

(ii) the Plant Varieties and Seeds Act 1964, or

(iii) the 2011 Regulations, as they have effect under the Schedule;

(c) failed to comply with a requirement or condition of the licence.

(2) The written notice referred to in paragraph (1) must state the reasons for the revocation or suspension and the date from which it is to take effect.

(3) Following the suspension of a licence referred to in paragraph (1), the Secretary of State may, where they are satisfied that it is appropriate to do so, lift the suspension by giving written notice of this to the participant, specifying the date on which the suspension will cease to have effect.

PART 3

Record keeping and inspection of premises

Recording and reporting obligations relating to the experiment

9. A participant or, where the participant is not an individual, the person responsible for the participant's participation in the experiment, must keep accurate records concerning the experiment in relation to—

(a) the parental components which have been used to create a CMS wheat hybrid,

(b) any changes to the information specified in regulation 4(2) since the licence application was made, and

(c) information allowing the participant to identify—

(i) all suppliers of the seeds used to create a CMS wheat hybrid,

(ii) any person to whom seeds of the hybrid have been supplied, and

(iii) the person responsible for the development and maintenance of the hybrid.

10.—(1) A participant or, where the participant is not an individual, the person responsible for the participant's participation in the experiment, must notify the Secretary of State in writing of any changes to the information specified in regulation 4(2) since the licence application was made.

(2) The written notification referred to in paragraph (1) must be given within the period of 30 days beginning with the date on which the change took place, or the date on which the participant ought reasonably to have become aware of it.

Access to and inspection of premises etc.

11.—(1) A participant must ensure that the Secretary of State, having given notice in accordance with paragraph (2), is permitted to access and inspect—

(a) fields or premises being used by the participant for the production or marketing of a CMS wheat hybrid, and

(b) the records concerning the experiment required to be kept by regulation 9.

(2) Before an inspection takes place, the Secretary of State must give reasonable notice in writing to the participant and to any person who has control of the premises, fields or records which are to be inspected.

(3) Inspections under this regulation may be carried out at any reasonable time and with such frequency as the Secretary of State considers to be appropriate.

PART 4

Marketing and certification

Certification procedure

12.—(1) A participant may apply to the Secretary of State under the 2011 Regulations, as they have effect under the Schedule, for certification of CMS wheat hybrid seeds developed under the experiment.

(2) If the Secretary of State considers that the requirements specified in the relevant provisions of the 2011 Regulations are met, the Secretary of State may certify those seeds for the purpose of regulation 8(a) of those Regulations.

Hayman of Ullock
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

3rd September 2024

SCHEDULE

Regulation 6

Transitory modifications: application of the 2011 Regulations

PART 1

General

1. The 2011 Regulations apply to CMS wheat hybrids produced in accordance with a licence, subject to the modifications specified in Part 2 of this Schedule.

2. In this Schedule—

(a) references to a regulation are to a regulation of the 2011 Regulations;

(b) references to Schedule 2 are to Schedule 2 to the 2011 Regulations.

PART 2

Transitory modifications: certification

3. Regulation 3 (interpretation of other terms) is to be read as if—

(a) after paragraph (1)(b), there were inserted—

"(ba) "CMS wheat hybrid" has the meaning given by regulation 2 of the CMS Wheat Hybrids Regulations;

(bb) "the CMS Wheat Hybrids Regulations" means the Seed Marketing (CMS Wheat Hybrids) (Temporary Experiment) (England) Regulations 2024;

(bc) "CWH licence" means a licence granted under regulation 3(3) of the CMS Wheat Hybrids Regulations;";

(b) after paragraph (2), there were inserted—

"(3) Any Reference to a regulation of, or to a paragraph of Schedule 2 to, these Regulations whose application is modified by the Schedule to the CMS Wheat Hybrids Regulations is to be read as a reference to that provision as modified by the CMS Wheat Hybrids Regulations.".

4. Regulation 10 (overriding requirements: the building blocks necessary for certification) is to be read as if—

(a) the existing text were numbered paragraph (1);

(b) in paragraph (1), as numbered by this regulation, in the opening words after "seed must" there were inserted "(except in the case of a seed of a CMS wheat hybrid)";

(c) after paragraph (1), as numbered by this regulation, there were inserted—

"(2) To be certified as category (c) or (d) of regulation 5, a seed of a CMS wheat hybrid must—

(a) be produced under a CWH licence, and

(b) meet the requirements for certification specified in Schedule 2.".

5. Regulation 11 (detailed requirements for certification) is to be read as if, in paragraph (3), in the opening words, after "Schedule 2" there were inserted "and, in relation to CMS wheat hybrids, the CMS Wheat Hybrids Regulations".

6. Regulation 15 (control plots and tests) is to be read as if, in paragraph (2), after "varietal purity" there were inserted "or, in relation to a seed of a CMS wheat hybrid, the applicable certification requirements in Schedule 2 and the CMS Wheat Hybrids Regulations,".

7. Regulation 28 (appeals) is to be read as if, in paragraph (1), after sub-paragraph (a), there were inserted—

"(aa) in relation to a seed used to create a CMS wheat hybrid—

(i) refuse to grant a CWH licence;

(ii) vary the conditions attached to such a licence in accordance with regulation 7 of the CMS Wheat Hybrids Regulations;

(iii) suspend or revoke such a licence in accordance with regulation 8 of those Regulations;".

8. Paragraph 15 of Schedule 2 (crop and seed certification requirements) is to be read as if, after sub-paragraph (2A), there were inserted—

"(2B) In addition, in relation to CMS wheat hybrids—

(a) Annex I to Council Directive 66/402/EEC is to be read as if—

(i) paragraph 5 were omitted,

(ii) after paragraph 5a, there were inserted—

"**5b.** Crops to produce basic and certified seed of hybrids of *Triticum aestivum*, *Triticum durum* or *Triticum spelta* by means of the technique of CMS:

(a) For crops to produce hybrids of Triticum aestivum, Triticum durum or Triticum spelta by means of the technique of CMS, the minimum distance from neighbouring crops or plants of other species, or of other varieties of the same species, liable to cross-pollinate with the crop is the distance specified in column 2 of the following table, with reference to the corresponding purpose for which the crop is used specified in column 1.

Purpose for which the crop is used	*Minimum distance*
For the production of basic seed for the CMS female component	300 m
For the production of certified seed	25 m

(b) The crop must have sufficient varietal identity and varietal purity as regards the components. In particular, the percentage by number of plants which are recognisable as obviously not being true to the variety must not exceed—

(i) where the crop is used for the production of basic seed, 0.1% for the maintainer and the restorer line and 0.3% for the CMS female component;

(ii) where the crop is used for the production of certified seed, 0.3% for the restorer line and 0.6% for the CMS female component, or 0.3% for the restorer line and 1% for the CMS female component where the CMS female component is a simple hybrid.

(c) The level of male sterility of the CMS female component must be at least—

(i) where the crop is used for the production of basic seed, 99.7%, and

(ii) where the crop is used for the production of certified seed, 99%.

(d) The requirements of paragraphs (b) and (c) must be examined in official post-control tests.

(e) Certified seed may be produced in mixed cultivation of a female male-sterile component with a male component which restores fertility.";

(b) Annex II to Council Directive 66/402/EEC (conditions to be satisfied by the seed) is to be read as if—

(i) in paragraph 1(c), after "*Hordeum vulgare*", in the second place those words occur, there were inserted ", *Triticum aestivum*, *Triticum durum* and *Triticum spelta*";

(ii) in paragraph 1(e), after "Hordeum vulgare", insert ", Triticum aestivum, Triticum durum and Triticum spelta".".

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations apply in relation to seed produced in England under a temporary experiment. The purpose of the temporary experiment is to seek alternative requirements for the certification of CMS wheat hybrids (defined in regulation 2 of these Regulations) falling within the basic or certified category of seed within the meaning of regulation 5 of the Seed Marketing Regulations 2011 (S.I. 2011/463) ("the 2011 Regulations"), which are more suitable than the requirements currently specified in the 2011 Regulations. Certification is one of the requirements for the marketing of seed under regulation 8 of the 2011 Regulations. The experiment is to run for a period of 7 years beginning with 26th September 2024. Licences granted under regulation 3(3) of these Regulations exempt participants in the experiment from compliance with specified provisions of the 2011 Regulations. These provisions currently effectively prevent the certification of CMS wheat hybrids, as they specify conditions which such hybrids are unable to satisfy. Regulation 21A of the 2011 Regulations permits such experiments where the experiment is

organised in accordance with regulations made under section 16(5) of the Plant Varieties and Seeds Act 1964 (c. 14) ("the 1964 Act").

Regulations 3 to 6 of these Regulations make provision concerning the purpose of the temporary experiment, the licensing procedure and the effect of the grant of a licence.

Regulations 7 and 8 permit the Secretary of State to vary, suspend or revoke a licence granted under regulation 3(3) in certain circumstances. Regulations 9 to 11 specify participants' reporting and recording obligations and impose a requirement to provide the Secretary of State with access to premises and records for the purpose of inspections.

Regulation 12 sets out the procedure for applying for certification of CMS hybrid seeds developed in accordance with these Regulations. Such an application is made under the 2011 Regulations, as modified by the Schedule to these Regulations.

Paragraph 7 of the Schedule modifies the existing appeal rights under the 2011 Regulations so that they apply in relation to a refusal to grant a licence to participate in the experiment, a variation of conditions attached to the licence, and a decision to suspend or revoke the licence.

Paragraph 8 makes transitory modifications to the 2011 Regulations, and to how Annexes 1 and 2 to Council Directive 66/402/EEC on the marketing of cereal seed are to be read for the purpose of paragraph 15 of Schedule 2 to the 2011 Regulations, to enable CMS wheat hybrids produced under the experiment to be certified and marketed on the basis that they meet the requirements in the 2011 Regulations, as so modified.

Under section 16(7) of the 1964 Act, breach of any provision of these Regulations, or the inclusion in a statutory statement of anything which is false in a material particular, is an offence punishable on summary conviction by a fine not exceeding level 5 on the standard scale.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

© Crown copyright 2024

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Saul Nassé, Controller of His Majesty's Stationery Office and King's Printer of Acts of Parliament.

£8.14

http://www.legislation.gov.uk/id/uksi/2024/899

ISBN 978-0-34-826315-2

9 780348 263152