EXPLANATORY MEMORANDUM TO

THE SEED MARKETING (CMS WHEAT HYBRIDS) (TEMPORARY EXPERIMENT) (ENGLAND) REGULATIONS 2024

2024 No. 899

1. Introduction

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

2. Declaration

2.1 Baroness Hayman, Parliamentary Under-Secretary of State at the Department of Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

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

3. Contact

3.1 Melanie Tuffen at the Department of Environment, Food and Rural Affairs Telephone: 02087203379 or email: Defra-Plant-Varieties-and-Seeds@defra.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The legislation sets up a temporary experiment, with a duration of seven years, to introduce certification standards for seed of hybrid wheat produced via the means of Cytoplasmic Male Sterility (CMS) (a breeding technique that creates hybrids through use of a female and male parental components, where the female parent cannot produce pollen) so that it can be marketed. Seed of wheat must be certified before it can be marketed. It must undergo field inspections and laboratory tests so that it can be shown to meet high quality standards. The current certification requirements in relation to seed of wheat hybrids were designed for hybrids produced via treatment with chemicals to stop the production of pollen and are not suitable for these new hybrids produced via CMS. They also do not include relevant standards that the parental components of the hybrids should meet during field inspections. Though CMS as a technique to produce hybrid seed has been long used in barley, maize and other crops, this is the first time it has been used in wheat. The temporary experiment will allow us to assess if the certification requirements proposed are suitable.

Where does the legislation extend to, and apply?

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

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

5. Policy Context

What is being done and why?

5.1 Seed for growing key agricultural species, including wheat, can only be marketed if it has been certified. Different varieties have different characteristics and advantages, so it is essential growers can purchase seed confident it is the variety stated. The certification process ensures that growers can access high quality seed that is pure, will germinate and grow and is substantially free of pests, diseases and weeds. The requirements that seed must meet varies depending on the species, and if it is a hybrid variety or not. Hybrids can provide an advantage for farmers as they often have higher yields.

This instrument provides for a temporary experiment to allow seed of wheat hybrids produced by the means of CMS to be marketed at a lower varietal purity standard (the percentage of the seed that should conform to the variety description) than currently required for hybrid wheat in the Seed Marketing Regulations 2011 (hereafter, the 2011 Regulations). This is required because the current standards in the 2011 Regulations for seed of hybrid wheat are based on those produced by a chemical hybridisation method. Production of hybrid seeds via the CMS method uses a blend production system – where the sterile line of plants are pollinated by another, genetically different, wheat line. This blend production system can lead to a higher rate of "off-types" (plants that are not true to the variety description and therefore do not meet varietal purity standards) in the produced hybrid seed compared to hybrids produced using a chemical hybridisation agent. Consequently, seeds of CMS hybrid wheat may not meet the current varietal purity standard of 90% and this temporary experiment will allow them to be marketed at a rate of 85%.

The temporary experiment also sets standards the crop must meet associated with production of hybrid seeds by CMS, for example the level of male sterility. They are based on international standards proposed by the OECD Schemes for the Varietal Certification of Seed, of which the UK is a member. As hybrids of wheat produced by CMS are a very recent development, the certification standards proposed are provisional and real world knowledge from growing the crops is required to ascertain if they are appropriate. The temporary experiment will allow the marketing of seed of these hybrids and for us to gather information about the standards seed of CMS hybrids produced in England are able to meet, ahead of any permanent changes to the legislation.

This temporary experiment will also give growers access to wheat hybrids again as the chemical hybridisation agents are not licensed in the UK, so CMS hybrids are currently the only way that wheat hybrids can be produced in the UK.

What was the previous policy, how is this different?

5.2 There was no previous policy on the certification of hybrids of wheat produced by CMS as this is a recent development in plant breeding in this species.

6. Legislative and Legal Context

How has the law changed?

6.1 Regulation 21A of the 2011 Regulations provides that the Secretary of State may, by licence, exempt any person or class of person from compliance with any provisions of the 2011 Regulations for the purposes of a temporary experiment seeking improved alternatives to the provisions of that Regulation if organised in accordance with regulations made under section 16(5) of the Plant Varieties and Seeds Act 1964.

This instrument provides a licencing procedure for those wishing to take part in the experiment, recording and reporting obligations and provides for access and inspection of premises. It also applies alternative requirements for the certification of CMS Hybrid Wheat seed by modifying specific provisions in the 2011 Regulations. The purpose of the experiment is to ascertain if the standards, which are based on those used for seeds of barley CMS hybrids, are suitable, before introducing any permanent change to the legislation.

Why was this approach taken to change the law?

6.2 As CMS hybrids of wheat are a relatively new development and not yet widely grown anywhere globally, certification standards have been based on those of a similar crop – CMS hybrids of barley. The UK is a member of the OECD Schemes for the Varietal Certification of Seed and seed moved in international trade between member countries (which includes between the UK and EU) must be OECD certified. The proposed requirements for the production of CMS hybrids of wheat are based on the provisional requirements of the OECD schemes. The requirements are provisional as once grown on a larger scale, and in different climatic conditions, CMS wheat hybrids may perform differently than expected – for example, they may be able to meet a higher varietal purity standard. Thus, the information collected will be able to inform any permanent change to the legislation.

7. Consultation

Summary of consultation outcome and methodology

7.1 An informal consultation was carried out with interested stakeholders via email including plant breeders with an interest in hybrids, and stakeholder groups representing growers, plant breeders and those from the seed industry. This was done jointly with Welsh Government who were also consulting on introducing a temporary experiment in line with the one proposed for England, Scotland had already carried out a separate consultation. The consultation asked stakeholders if they agreed with the introduction of a temporary experiment to allow seed of CMS wheat hybrids to be marketed at the certification standards proposed. All responses were supportive of the temporary experiment.

8. Applicable Guidance

8.1 The Animal and Plant Health Agency ("APHA") will issue a seed certification information letter to the trade confirming details of how to participate in the experiment once the legislation is laid.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because there is a low level of impact per business. This temporary experiment will allow access to growers to seed of new varieties of wheat hybrids by allowing them to be certified and thus marketed and would cause no greater impact than the introduction of any other new variety to the market. Taking part in the experiment is voluntary.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the temporary experiment increases the varieties of wheat that can be grown in England at no additional cost compared to other varieties and taking part in the experiment is voluntary.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no significant, impact on the public sector as it does not create any more impact than the current certification system or other temporary experiments.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is to collect data annually on the varietal purity achieved by seed of CMS wheat hybrids with a view to making a permanent change to the 2011 Regulations at the end of the temporary experiment.

10.2 The instrument does not include a statutory review clause as it is a temporary experiment which will expire automatically after seven years.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 Baroness Hayman Parliamentary Under-Secretary of State has made the following statement regarding Human Rights:

"In my view the provisions of The Seed Marketing (CMS Wheat Hybrids) (Temporary Experiment) (England) Regulations 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").