

2004 No. 2386

SEEDS, ENGLAND

The Cereal Seed (England) (Amendment) Regulations 2004

<i>Made</i> - - - -	<i>10th September 2004</i>
<i>Laid before Parliament</i>	<i>15th September 2004</i>
<i>Coming into force</i> - -	<i>8th October 2004</i>

The Secretary of State in exercise of the powers conferred by sections 16(1), (1A), (2), (3), (4), (5), (5A) and 36 of the Plant Varieties and Seeds Act 1964(a), and now vested in her(b), after consultation in accordance with section 16(1) of that Act with representatives of such interests as appear to her to be concerned, hereby makes the following Regulations:

Title and commencement

1. These Regulations may be cited as the Cereal Seed (England) (Amendment) Regulations 2004 and shall come into force on 8th October 2004.

Amendment of the Cereal Seed (England) Regulations 2002

2.—(1) The Cereal Seed (England) Regulations 2002(c) shall be amended in accordance with the following provisions of this regulation.

(2) In regulation 2(1)—

- (a) After the definition of “the Act”, there shall be inserted the following definition—

““Annex II.A(3) official certificate” means an official certificate of the type specified in paragraph 3 of Part A of Annex II to the Third Country Equivalence Decision;”;
- (b) for the definition of “approved seed certification authority”, there shall be substituted the following definition—

““approved seed certification authority” means an authority specified in column 2 of the table set out in Annex I to the Third Country Equivalence Decision;”;
- (c) for the definition of “approved species”, there shall be substituted the following definition—

““approved species” means—

(a) 1964 c. 14; section 16 was amended by section 4(1) of, and paragraph 5(1), (2) and (3) of Schedule 4 to, the European Communities Act 1972 (c. 68), S.I. 1977/1112 and section 2 of the Agriculture Act 1986 (c. 49); see section 38(1) for a definition of “the Minister”.

(b) Under the Transfer of Functions (Wales) (No. 1) Order 1978 (S.I. 1978/272), article 2(1) and Schedule 1, the functions of the Minister of Agriculture, Fisheries and Food under the Plant Varieties and Seeds Act 1964 were, so far as they are exercisable in relation to Wales, transferred to the Secretary of State and under the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2(1) and Schedule 1, the functions transferred to the Secretary of State by the 1978 transfer Order were transferred to the National Assembly for Wales; under the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794) the functions of the Minister of Agriculture, Fisheries and Food under the Plant Varieties and Seeds Act 1964 were, so far as they are exercisable in relation to England, transferred to the Secretary of State.

(c) S.I. 2002/3173.

- (a) subject to paragraph (b), any of the species referred to in Schedule 2; and
- (b) maize in the case of seed officially certified by the approved seed certification authority in South Africa;”;
- (d) for the definition of “the Cereal Seed Directive”, there shall be substituted the following definition—
 - ““the Cereal Seed Directive” means Council Directive 66/402/EEC on the marketing of cereal seed, as last amended by Council Directive 2003/61/EC(a);”;
- (e) for the definition of “the Common Catalogue Directive”, there shall be substituted the following definition—
 - ““the Common Catalogue Directive” means Council Directive 2002/53/EC(b) on the common catalogue of varieties of agricultural plant species, as last amended by the Food and Feed Regulation;”;
- (f) after the definition of “control plot”, there shall be inserted the following definition—
 - ““the Deliberate Release Directive” means Council Directive 2001/18/EC(c) on the deliberate release into the environment of genetically modified organisms, as last amended by Council Regulation (EC) No 1830/2003(d) concerning the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms;”;
- (g) for the definition of “EEA State”, there shall be substituted the following definition—
 - ““EEA State” means –
 - (a) a State which is a member of the Communities; and
 - (b) Iceland, Liechtenstein and Norway;”;
- (h) for the definition of “equivalent third country”, there shall be substituted the following definition—
 - ““equivalent third country” means Argentina, Australia, Bulgaria, Canada, Chile, Croatia, Israel, Morocco, New Zealand, Romania, Serbia and Montenegro, South Africa, Turkey, the United States of America, and Uruguay;”;
- (i) after the definition of “equivalent third country”, there shall be inserted the following definition—
 - ““the Food and Feed Regulation” means Council Regulation (EC) No 1829/2003(e) on genetically modified food and feed;”;
- (j) for the definition of “genetically modified”, there shall be substituted the following definition—
 - ““genetically modified” has the same meaning as for the purposes of the Deliberate Release Directive;”;
- (k) for the definition of “member State”, there shall be substituted the following definition—
 - ““member State” means, in addition to a State which is a member of the Communities, any other EEA State and Switzerland;”;
- (l) the definition of “a Part II.A(3) official certificate” shall be deleted; and
- (m) for the definition of “the Third Country Equivalence Decision” there shall be substituted the following definition—
 - ““the Third Country Equivalence Decision” means Council Decision 2003/17/EC(f) on the equivalence of field inspections carried out in third countries on seed-producing

(a) O.J. No. L165, 3.7.2003, p. 23.
 (b) O.J. No. L193, 20.7.2002, p. 1.
 (c) O.J. No. L106, 17.4.2001, p. 1.
 (d) O.J. No. L268, 18.10.2003, p24.
 (e) O.J. No. L268, 18.10.2003, p. 1.
 (f) O.J. No. L8, 14.1.2003, p. 10.

crops and on the equivalence of seed produced in third countries, as last amended by Council Regulation (EC) No 885/2004(a);”.

(3) In regulation 9(2)(d), for the words “a Part II.A(3) official certificate” there shall be substituted the words “an Annex II.A(3) official certificate”.

(4) In regulation 11(15)(c), for paragraph (ii) there shall be substituted the following paragraph—

“(ii) not finally certified CS, C1 or C2 seed harvested in an equivalent third country and for which the Annex II.A(3) official certificate relating to the crop from which the seed in the seed lot was harvested has been lodged with the Secretary of State in accordance with regulation 9.”.

(5) In regulation 13(5)(e)(ii), the words “, third country” shall be deleted.

(6) In regulation 19, for paragraph (4) there shall be substituted the following paragraph—

“(4) The Secretary of State shall not grant a regulation 19 authorisation in respect of seed of a genetically modified variety unless an authorisation is in force in respect of the variety concerned under either—

- (a) Part C of the Deliberate Release Directive; or
- (b) the Food and Feed Regulation.”.

(7) In regulation 20, for paragraph (4)(c) there shall be substituted the following paragraph—

“(c) in the case of seed of a genetically modified variety, an authorisation is in force in respect of the variety concerned under either—

- (i) Part C of the Deliberate Release Directive; or
- (ii) the Food and Feed Regulation.”.

(8) In regulation 23(6), after the words “application made under” there shall be inserted the word “regulation”.

(9) In regulation 24—

- (a) in paragraph 5(c), for the words “paragraph B.I of Part II of the Annex to the Third Country Equivalence Decision” there shall be substituted the words “paragraph 1 of Part B of Annex II to the Third Country Equivalence Decision”; and
- (b) in paragraph 10(c), for the words “paragraph B.I of Annex II to the Third Country Equivalence Decision” there shall be substituted the words “paragraph 1 of Part B of Annex II to the Third Country Equivalence Decision”.

(10) In regulation 26—

- (a) in paragraph 7(c), for the words “paragraph B.I of Part II of the Annex to the Third Country Equivalence Decision” there shall be substituted the words “paragraphs 1 and 3 of Part B of Annex II to the Third Country Equivalence Decision”;
- (b) in paragraph 11(c), for the words “paragraph B.I of Part II of the Annex to the Third Country Equivalence Decision” there shall be substituted the words “paragraph 3.3 of Part B of Annex II to the Third Country Equivalence Decision”; and
- (c) in paragraph 17, for the words “paragraph 16, 22, 30, 31(3), 38 or 39(3)” there shall be substituted the words “paragraph 16, 17(3), 22, 23(3), 30, 31(3), 31(4), 38 and 39(3), 39(4), 45A, 46(3) or 46(4)”.

(11) In Schedule 1—

- (a) in paragraph 16(2) of Part II—
 - (i) in paragraph (a)(ii), for the words “paragraph 6 of Part II(B) of the Annex to the Third Country Equivalence Decision” there shall be substituted the words “paragraph 5 of Part B of Annex II to the Third Country Equivalence Decision”;

(a) O.J. No. L168, 1.5.2004, p. 1.

- (ii) in paragraph (b)(iii), for the words “paragraphs 1 and 3 of Part II(B) of the Annex to the Third Country Equivalence Decision” there shall be substituted the words “paragraphs 1 and 2 of Part B of Annex II to the Third Country Equivalence Decision”; and
- (iii) in paragraph (c), for the words “paragraph 4 of Part II(B) of the Annex to the Third Country Equivalence Decision” there shall be substituted the words “paragraph 3 of Part B of Annex II to the Third Country Equivalence Decision”;
- (b) in paragraph 22 of part II—
 - (i) in sub-paragraph (2)(a)(ii), for the words “paragraph 6 of Part II(B) of the Annex to the Third Country Equivalence Decision” there shall be substituted the words “paragraph 5 of Part B of Annex II to the Third Country Equivalence Decision”;
 - (ii) in sub-paragraph (2)(b)(iii), for the words “paragraphs 1 and 3 of Part II(B) of the Annex to the Third Country Equivalence Decision” there shall be substituted the words “paragraphs 1 and 2 of Part B of Annex II to the Third Country Equivalence Decision”; and
 - (iii) in sub-paragraph (2)(c), for the words “paragraph 4 of Part II(B) of the Annex to the Third Country Equivalence Decision” there shall be substituted the words “paragraph 3 of Part B of Annex II to the Third Country Equivalence Decision”;
- (c) in paragraph 30 of part III—
 - (i) in sub-paragraph (2)(a)(ii), for the words “paragraph 7 of Part II(B) of the Annex to the Third Country Equivalence Decision” there shall be substituted the words “paragraph 6 of Part B of Annex II to the Third Country Equivalence Decision”;
 - (ii) in sub-paragraph (2)(b)(iii), for the words “paragraphs 1 and 3 of Part II(B) of the Annex to the Third Country Equivalence Decision” there shall be substituted the words “paragraphs 1 and 2 of Part B of Annex II to the Third Country Equivalence Decision”; and
 - (iii) in sub-paragraph (2)(c), for the words “paragraph 4 of Part II(B) of the Annex to the Third Country Equivalence Decision” there shall be substituted the words “paragraph 3 of Part B of Annex II to the Third Country Equivalence Decision”;
- (d) in paragraph 31(3)(d)(i) of part III, for the words “a Part II.A(3) official certificate” there shall be substituted the words “an Annex II.A(3) official certificate”;
- (e) in paragraph 38 of part III—
 - (i) in sub-paragraph (2)(a)(ii), for the words “paragraph 7 of Part II(B) of the Annex to the Third Country Equivalence Decision” there shall be substituted the words “paragraph 6 of Part B of Annex II to the Third Country Equivalence Decision”;
 - (ii) in sub-paragraph (2)(b), for the words “paragraphs 1 and 3 of Part II(B) of the Annex to the Third Country Equivalence Decision” there shall be substituted the words “paragraphs 1 and 2 of Part B of Annex II to the Third Country Equivalence Decision”; and
 - (iii) in sub-paragraph (2)(c), for the words “paragraph 4 of Part II(B) of the Annex to the Third Country Equivalence Decision” there shall be substituted the words “paragraph 3 of Part B of Annex II to the Third Country Equivalence Decision”;
- (f) in paragraph 39(3)(d)(i) of part III, for the words “a Part II.A(3) official certificate” there shall be substituted the words “an Annex II.A(3) official certificate”;
- (g) in sub-paragraph 44(3) of part III—
 - (i) in paragraph (d)(iii), the word “and” shall be deleted;
 - (ii) in paragraph (e)(i), after the words “another member state” there shall be added the words “or an equivalent third country”; and
 - (iii) after paragraph (e), there shall be inserted the following paragraphs—
 - “(f) C2 seed of a listed variety that—

- (i) has been imported into the United Kingdom as not finally certified C2 seed harvested in an equivalent third country; and
- (ii) complies with the requirements of paragraphs (a)(ii) and (iii); and
- (g) C2 seed—
 - (i) of a previously listed variety that is on the OECD list;
 - (ii) that has been imported into the United Kingdom as not finally certified C2 seed harvested in an equivalent third country;
 - (iii) that complies with the requirements of paragraphs (a)(ii) and (iii); and
 - (iv) for which a marketing extension is in force.”;
- (h) after paragraph 45 of part III there shall be inserted the following paragraph—

“Third country officially certified C2 seed of a listed variety

45A.—(1) In these Regulations “third country officially certified C2 seed of a listed variety” means C2 seed of an approved species to which sub-paragraph (2) or (3) applies.

(2) This sub-paragraph applies to C2 seed of a listed variety that—

- (a) was harvested from a crop that was produced—
 - (i) in an equivalent third country,
 - (ii) from seed of a preceding generation that was produced in accordance with the provisions of paragraph 6 of Part B of Annex II to the Third Country Equivalence Decision;
- (b) has been officially certified as C2 seed by the approved seed certification authority in that country in accordance with the OECD Cereal Seed Scheme and the conditions specified in paragraphs 1 and 2 of Part B of Annex II to the Third Country Equivalence Decision;
- (c) has been packed in packages that have been officially closed and marked in accordance with the OECD Cereal Seed Scheme, and, as regards the packaging, in accordance with the relevant conditions specified in paragraph 3 of Part B of Annex II to the Third Country Equivalence Decision; and
- (d) has been imported into the United Kingdom and was accompanied—
 - (i) by an OECD Certificate issued by the approved seed certification authority in respect of the seed lot from which the seed was taken approving the seed in that lot as C2 seed; and
 - (ii) subject to paragraph (iii), by an Orange or Green International Seed Lot Certificate issued under the Rules of ISTA showing that it has been found to satisfy the relevant Directive seed conditions for C2 seed other than those relating to varietal identity and varietal purity; or
 - (iii) in a case where the seed has been certified in Canada or the United States of America, instead of a certificate of the type referred to in paragraph (ii) by a Lot Inspection Certificate issued by the Official Seed Testing Laboratory under the authority of the State Seed Testing Agency showing that it has been found to satisfy those conditions.

(3) This sub-paragraph applies to C2 seed—

- (a) of a previously listed variety that is on the OECD List and for which a marketing extension is in force, and
- (b) that complies with the requirements of sub-paragraphs 2(a) to (d).”;
- (i) for paragraph 46 of part III there shall be substituted the following paragraph—

“Overseas tested officially certified C2 seed of a listed variety

46.—(1) In these Regulations “overseas tested officially certified C2 seed of a listed variety” means C2 seed to which sub-paragraph (2), (3) or (4) applies.

(2) This sub-paragraph applies to C2 seed—

- (a) that has been harvested from a crop produced in a member State (including the United Kingdom) for which a field inspection report was issued on behalf of the competent seed certification authority in the member State stating that the crop has been found to satisfy the relevant Directive crop conditions for C2 seed;
- (b) for which a seed test report has been issued—
 - (i) by or on behalf of the competent seed certification authority in the member State, or in a member State, other than the United Kingdom, into which the seed was subsequently imported, or
 - (ii) by a licensed EC seed testing station in either of the member States referred to in paragraph (i),
stating that the seed has been found to satisfy the relevant Directive seed conditions for C2 seed;
- (c) that has been imported into the United Kingdom as C2 seed of a variety that was unlisted at the time when the seed was imported but has since been listed; and
- (d) that is accompanied by—
 - (i) an Annex V(C) document relating to the seed issued by or on behalf of the competent seed certification authority in the member State referred to in paragraph (a); and
 - (ii) the seed test report referred to in paragraph (b).

(3) This sub-paragraph applies to C2 seed of an approved species that—

- (a) was harvested from a crop produced in an equivalent third country for which a field inspection report was issued by the approved seed certification authority or a licensed third country crop inspector in that country stating that the crop had been found to satisfy the relevant Directive crop conditions for C2 seed;
- (b) was subsequently imported into a member State other than the United Kingdom and for which a seed test report has been issued by or on behalf of the competent seed certification authority or by a licensed EC seed testing station in that member State, stating that the seed has been found to satisfy the relevant Directive seed conditions for C2 seed;
- (c) has been imported into the United Kingdom as C2 seed of a variety that was unlisted at the time when the seed was imported but has since been listed; and
- (d) is accompanied by—
 - (i) an Annex II.A(3) official certificate relating to the crop from which the seed was harvested issued by the approved seed certification authority in the third country referred to in paragraph (a) stating that the crop has been found to satisfy the relevant crop conditions for C2 seed; and
 - (ii) the seed test report referred to in paragraph (b).

(4) This sub-paragraph applies to C2 seed of an approved species that—

- (a) complies with the requirements of paragraph 45A(2)(a) to (d); and
- (b) was imported into the United Kingdom as C2 seed of a variety that was unlisted at the time when the seed was imported but has since been listed.”;

(j) in paragraph 47(3) of part III—

- (i) in paragraph (c)(ii), the word “and” shall be deleted;
- (ii) after paragraph (d), there shall be inserted the following paragraphs—
“(e) C2 seed of a listed variety that—

- (i) has been imported into the United Kingdom as not finally certified C2 seed harvested in an equivalent third country; and
 - (ii) complies with the requirements of paragraphs (a)(ii) to (iv); and
- (f) C2 seed—
 - (i) of a previously listed variety that is on the OECD list;
 - (ii) that has been imported into the United Kingdom as not finally certified C2 seed harvested in an equivalent third country;
 - (iii) that complies with the requirements of paragraphs (a)(ii) to (iv); and
 - (iv) for which a marketing extension is in force;”;
- (k) after sub-paragraph (b) of paragraph 49 of part III, there shall be inserted the following sub-paragraph—
 - “(bb) third country officially certified C2 seed of a listed variety;”
- (l) in paragraph 56(1) of part IV—
 - (i) in paragraph (b)(ii), for the words “Part II.A of the Annex to the Third Country Equivalence Decision” there shall be substituted the words “Part A of Annex II to the Third Country Equivalence Decision”;
 - (ii) in paragraph (c), for the words “paragraph 2 of Part II.A of the Annex to the Third Country Equivalence Decision” there shall be substituted the words “paragraph 2 of Part A of Annex II to the Third Country Equivalence Decision”; and
 - (iii) in paragraph (e), for the words “a part II.A(3) official certificate” there shall be substituted the words “an Annex II.A(3) official certificate”;
- (m) in paragraph 57(1) of part IV—
 - (i) in paragraph (b)(ii), for the words “Part II.A of the Annex to the Third Country Equivalence Decision” there shall be substituted the words “Part A of Annex II to the Third Country Equivalence Decision”;
 - (ii) in paragraph (c), for the words “paragraph 2 of Part II.A of the Annex to the Third Country Equivalence Decision” there shall be substituted the words “paragraph 2 of Part A of Annex II to the Third Country Equivalence Decision”; and
 - (iii) in paragraph (e), for the words “a part II.A(3) official certificate” there shall be substituted the words “an Annex II.A(3) official certificate”; and
- (n) after paragraph 57 of part IV, there shall be inserted the following paragraph—

“Not finally certified C2 seed harvested in an equivalent third country

58.—(1) In these Regulations “not finally certified C2 seed harvested in an equivalent third country” means C2 seed—

- (a) to which sub-paragraph (2) applies;
- (b) that has been harvested from a crop that —
 - (i) has been produced in an equivalent third country directly from officially certified basic seed or C1 seed; and
 - (ii) has been found, by a field inspection of the crop carried out by the approved seed certification authority in the equivalent third country in which the crop was produced, or a licensed third country field inspector in that country, in accordance with the conditions specified in Part A of Annex II to the Third Country Equivalence Decision, to satisfy the Directive crop conditions for C2 seed;
- (c) that has been packed in a sealed package and labelled in accordance with the requirements specified in paragraph 2 of Part A of Annex II to the Third Country Equivalence Decision;
- (d) that has been imported into the United Kingdom as not finally certified seed; and

- (e) that is accompanied by an Annex II.A(3) official certificate relating to the seed issued by the approved seed certification authority in the equivalent third country in which the seed was harvested.
- (2) This sub-paragraph applies to C2 seed of—
- (a) a listed variety;
 - (b) a variety that is unlisted but in respect of which an application for listing has been made that has not been withdrawn or finally determined; or
 - (c) a previously listed variety that is on the OECD List and for which a marketing extension is in force.”.
- (12) In Schedule 4—
- (a) in paragraph 14 of part II, for the words “column 4” there shall be substituted the words “column 6”; and
 - (b) in paragraph 15(1) of part II, for the words “column 4” there shall be substituted the words “column 6”.
- (13) In paragraph 1(h) of column 1 in the table in Schedule 5, after the word “EC” there shall be inserted the words “, third country”.
- (14) In Schedule 6, after paragraph 18 there shall be inserted the following paragraph—
- “(18A) Third country officially certified C2 seed of a listed variety.”.
- (15) In Schedule 10—
- (a) after the entry for “the Act” there shall be inserted the following entry—
“Annex II.A(3) official certificate Regulation 2(1)”;
 - (b) after the entry for “darnel” there shall be inserted the following entry—
“Deliberate Release Directive Regulation 2(1)”;
 - (c) after the entry for “final seed test report” there shall be inserted the following entry—
“Food and Feed Regulation Regulation 2(1)”;
 - (d) after the entry for “not finally certified C1 seed harvested in an equivalent third country” there shall be inserted the following entry—
“not finally certified C2 seed harvested in an equivalent third country” Paragraph 58 of Schedule 1
 - (e) the entry for “Part II.A(3) official certificate shall be deleted; and
 - (f) after the entry for “third country officially certified C1 seed of a listed variety” there shall be inserted the following entry—
“third country officially certified C2 seed of a listed variety” Paragraph 45A of Schedule 1

10th September 2004

Ben Bradshaw
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Cereal Seed (England) Regulations 2002 (SI 2002/3173) (the “2002 Regulations”).

The amendments to the 2002 Regulations—

- (a) update references to “the Third Country Equivalence Decision” to take account of Council Decision 2003/17/EC (O.J. No. L8, 14.1.2003, p. 10) 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, as last amended by Council Regulation (EC) No 885/2004 (O.J. No. L168, 1.5.2004, p. 1) (*Regulations 2(2)(a); 2(2)(b); 2(2)(c); 2(2)(k); 2(2)(m); 2(3); 2(4); 2(5); 2(9); 2(10); 2(11); 2(13); 2(14); 2(15)(a); 2(15)(d); 2(15)(e) and 2(15)(f)*);
- (b) provide for Switzerland to be treated as a member state for the purpose of the 2002 regulations, in accordance with Annex 6 to the Agreement between the European Community and the Swiss Confederation on trade in agricultural products (O.J. No. L114, 30.4.2002, p. 132) (*Regulation 2(2)(k)*);
- (c) amend references to “equivalent third countries” and “EEA State” to take account of the accession of Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia to the EC (*Regulations 2(2)(g); and 2(2)(h)*);
- (d) provide that, where there is a requirement for a consent to have been obtained in relation to seed of genetically modified varieties, a consent can be obtained either in accordance with Council Directive 2001/18/EC (O.J. No. L106, 17.4.2001, p. 1) on the deliberate release to the environment of genetically modified organisms or in accordance with Council Regulation (EC) No 1829/2003 (O.J. No. L268, 18.10.2003, p. 1) on genetically modified food and feed (*Regulations 2(2)(i); 2(6); 2(7); and 2(15)(c)*);
- (e) correct an error in regulation 23(6) and a cross-reference in paragraph 4 of part II to Schedule 4 (*Regulations 2(8); and 2(12)*); and
- (f) update references to amended EC legislation (*Regulations 2(2)(d); 2(2)(e); 2(2)(j) and 2(15)(b)*).

A Transposition Note has been prepared for these Regulations and a copy has been placed in the library of each House of Parliament. Copies of the Transposition Note can be obtained from the Plant Variety Rights Office and Seeds Division of the Department for Environment, Food and Rural Affairs, White House Lane, Huntingdon Road, Cambridge CB3 0LF.

A regulatory impact assessment has not been prepared for this instrument, as it has no impact on the costs of businesses, charities or voluntary bodies.

STATUTORY INSTRUMENTS

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SEEDS, ENGLAND

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