

## **EXPLANATORY MEMORANDUM TO THE MARKETING OF FRUIT PLANT MATERIAL (AMENDMENT) (ENGLAND) REGULATIONS 2004 NO.2603**

- 1.1. This Explanatory Memorandum is laid before Parliament by Command of Her Majesty.
- 1.2. Department for Environment, Food and Rural Affairs.
2. The Regulations implement Directive 2003/111/EC which amends Directive 92/34/EEC on the marketing of fruit propagating material and fruit plants intended for fruit production.
3. [Matter of special interest to the Joint Committee on Statutory Instruments/Select Committee on Statutory Instruments N/A)
4. Legislative background
  - 4.1. Directive 92/34/EEC establishes provisions for the marketing of fruit propagating material within the Community. The genera and species, which are subject to these provisions, are listed in Annex II to the Directive. This Directive is implemented in England by the Marketing of Fruit Plant Material Regulations 1995.
5. Extent
  - 5.1. The instrument applies in respect of England only.
6. Policy background
  - 6.1. Following a review of the material covered by Directive 92/34/EEC, Annex II has been amended to include further fruit genera and species, which have increased in economic importance. The following have now been added to the Annex by Commission Directive 2003/111/EC: *Castanea sativa* Mill., *Ficus carica* L., *Fortunella* Swingle., *Poncirus* Raf. and *Vaccinium* L. In addition, *Citrus* L., *Fragaria* L., *Pyrus* L., *Ribes* L., *Rubus* L have replaced the previous entries for these species.
  - 6.2. All suppliers of fruit propagating material of the genera and species that are listed in Annex II to Directive 92/34/EEC are required to ensure that any material marketed is substantially free from any harmful organisms which impair its quality and usefulness as plant material and in particular from the organisms listed in the Annex to Directive 93/48/EEC. They must also meet various other requirements to maintain the quality of material during production and marketing, and issue supplier documentation at the point of marketing.
7. Impact
  - 7.1. A public consultation exercise has been carried out on the implementation of these measures. No comments were received. A Regulatory Impact Assessment (which applies to England only) has been prepared.
8. Contact

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**Department for Environment, Food and Rural Affairs  
October 2004**

**REGULATORY IMPACT ASSESSMENT**

## **1. TITLE**

### **AMENDMENT OF THE MARKETING OF FRUIT PLANT MATERIAL REGULATIONS 1995**

## **2. PURPOSE AND INTENDED EFFECT OF MEASURE**

### **2.1 Objective**

To implement Commission Directive 2003/111/EC amending Annex II to Directive 92/34/EEC on the marketing of fruit plant propagating material and fruit plants intended for fruit production.

### **2.2 Issue**

Directive 92/34/EEC lays down quality standards, which must be met by certain genera and species of plant material when marketed within the Community. Annex II to the Directive sets out the genera and species covered by the Directive. The Directive is implemented in England by the Marketing of Fruit Plant Regulations 1995.

This Regulatory Impact Assessment applies to England only. The Devolved Administrations will be preparing separate assessments in respect of their areas.

### **2.3 Risk assessment**

There are two main risks if the new measures are not implemented. Firstly, there is the risk of infraction proceedings by the Commission, which would be initiated if the measures were not implemented. Secondly, our industry would be out of line with the rest of the Community.

### **2.4 Main provisions**

Annex II to Directive 92/34/EEC lists the genera and species covered by the provisions laid down in the Directive. Following a review by the Commission of the material covered, member states have agreed a new list, which reflects current industry marketing practices.

## **3. OPTIONS**

### **3.1 Identifying the issue**

Two options have been identified

Option 1 – Do nothing

Not implementing the new provisions will place English traders out of line with the rest of the Community and result in infraction proceedings by the Commission.

Option 2 – Implement the new provisions.

Businesses who supply fruit propagating material of the genera and species that have been added to Annex II of the Directive will be required to ensure that the material is substantially free from any harmful organisms which impair its quality and usefulness as plant material and in particular from the organisms and diseases listed in the Annex to Directive 93/48/EEC. The businesses will also be required to provide the relevant supplier documentation when marketing the material and meet other specified requirements to maintain the quality of material being marketed.

## **4. Benefits**

### **4.1 Business sectors affected**

All professional suppliers of fruit propagating material are required to comply with Directive 92/34/EEC. 'Suppliers' include producers, distributors and retailers of fruit propagating material. Charities and voluntary organisations are not included, as they do not generally market propagating material professionally. The Directive does not apply to small producers whose production and sales of propagating material and fruit plants is intended for final use by persons on the local market who are not professionally involved in plant production.

### **4.2 Issues of equity and fairness**

It is envisaged that none of these measures will have an unfair impact on any sector of the industry.

## **5. Costs**

### **5.1 Compliance costs**

The main change will be associated with the provision of documentation when propagating material of the new genera/species is marketed. However, additional costs are unlikely to be significant as many suppliers already issue documentation with their products and this could be adapted to include the information required by the Directive. In particular, for those suppliers who already issue plant passports there will be negligible costs as the passport can be adapted to incorporate the limited additional information required.

Suppliers who only trade in *Ficus carica* L. (Common edible fig) and *Vaccinium* L. (blueberry, cranberry, etc) (which are not plant passportable) would need become 'accredited' before marketing this material. It is envisaged that only a very small number of suppliers will fall into this category. In order to be accredited, suppliers have to meet the criteria laid down in Schedule 3 to the Marketing of Fruit Plant Material Regulations 1995. However, there are no charges associated with accreditation and the minimum requirements specified reflect good practice which is likely to be followed by many suppliers already.

## **5.2 Costs for a typical business**

These are likely to be negligible for the majority of suppliers as existing documentation can be adapted and if accreditation is necessary, this will be free of charge.

## **6. Consultation with small business: the Small Firms' Impact Test**

The Directive does not apply to small producers whose production and sales of propagating material is intended for final use by persons on the local market who are not professionally involved in plant production.

## **7. Competition assessment**

The Competition Filter has been applied and the conclusion is that there is no significant risk of impact on competition. A detailed assessment has therefore not been prepared.

In applying the filter, the market identified was the fruit plant propagating material industry. In this sector, no businesses are known to have more than a 10% share of the market. It is therefore considered that the costs will fall evenly across the markets. The proposals will have no impact on market structure and will not adversely affect new firms compared to existing ones. Neither is rapid technology change a characteristic of the markets. Finally the introduction of these measures has no impact on the choice of firms in respect of price, quality, range or location of their products.

## **8. Enforcement and sanctions**

The measures will be implemented by an amendment to the Marketing of Fruit Plant Material Regulations 1995 which lay down provisions for non-compliance. The Regulations are enforced by the Plant Health and Seeds Inspectorate.

## **9. Monitoring and review**

There is a continuous programme to monitor developments in this sector, carried out at Community level by the Standing Committee on Propagating Material and Plants of Fruit Genera and Species. This takes into account developments within member states. This latest amendment to Directive 92/34/EEC is as a result of a review by the Commission of the genera and species covered by the Directive and takes into account member states' views. The Commission's Food and Veterinary Office (FVO) also undertakes audits of member states' compliance with EC legislation.

## **10. Consultation**

A public consultation exercise has been carried out. No comments were received.

## **11. Summary and recommendation**

The Department considers that these measures should be implemented into national legislation. Legislation has been prepared to reflect the amendment being made to

Council Directive 92/34/EEC on the marketing of fruit plant propagating material and fruit plants intended for fruit production. The SI will amend the Marketing of Fruit Plant Material Regulations 1995.

## **12. Declaration**

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed by the responsible Minister...Ben Bradshaw

Date..... 5<sup>th</sup> October 2004

## **13. Contact points**

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