

EXPLANATORY MEMORANDUM TO
THE FODDER PLANT SEED (ENGLAND) (AMENDMENT) REGULATIONS 2005

2005 No. 2673

1. This explanatory memorandum has been prepared by Defra and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Regulations reflect changes made by Article 1 of Council Directive 2004/117/EC on examinations carried out under official supervision and equivalence of seed produced in third countries and by OECD Council Decision (2005) 38 which amends the OECD Schemes for the varietal certification or the control of seed moving in international trade. They also introduce provisions to permit the marketing of British native origin seed mixtures for habitat restoration purposes. The Regulations apply in England and amend the Fodder Plant Seed (England) Regulations 2002 (the 2002 Regulations).

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

3.1 None

4. Legislative Background

4.1 The 2002 Regulations included provisions relating to the licensing of industry personnel to undertake tasks under official supervision, which implemented long standing temporary experiments in the European and OECD regimes. The temporary experiments have now been incorporated into EC Seeds Marketing Directives and OECD Schemes on a permanent basis by Directive 2004/117/EC. As a result, changes are required to references to Directive 66/401/EC and the OECD Schemes. These are technical only; they do not change the substance of the Regulations.

4.2 The Regulations introduce arrangements permitting the Secretary of State to authorise the marketing of mixtures of British native-origin seed of species controlled by the 2002 Regulations, which have not been officially certified, where the seed is intended for use in the preservation of the natural environment.

4.3 Directive 2004/117/EC was considered and cleared by Scrutiny Committee in the House of Commons on 18 May 2004 and by Scrutiny Committee in the House of Lords on 21 May 2004.

4.4 A Transposition Table for Article 1 of Directive 2004/117/EC is attached at Annex A to this memorandum. Other Regulations in the series implementing Directive 2004/117/EC are:

- The Cereal Seed (England)(Amendment) Regulations 2005
- The Beet Seed (England)(Amendment) Regulations 2005
- The Oil and Fibre Plant Seed (England)(Amendment) Regulations 2005
- The Vegetable Seed (England)(Amendment) Regulations 2005
- The Seed (Registration, Licensing and Enforcement) (England) (Amendment) Regulations 2005.

5. Extent

5.1 This instrument applies to England.

6. European Convention on Human Rights

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

7. Policy background

7.1 EC Seeds Marketing Directives require official certification of seed of the main commercial crop species before marketing, to ensure that seed sold to farmers and growers meets specified standards. They also include requirements relating to trade with third countries under OECD Schemes. The Directives are implemented in England by 5 Regulations concerned with different species groups (fodder plant, cereals, beet, oil and fibre plant and vegetables) and by a regulation controlling the registration and licensing of seed companies and personnel. The 2002 Regulations now require amendment, as outlined in paragraph 4, to implement subsequent changes to EU legislation.

7.2 A wide range of interests were consulted on the amendments to implement Directive 2004/117/EC, including plant breeders and the seed industry, farmers and growers, environmental and consumer groups, totalling 117 organisations and individuals. Defra did not receive any comment in response to consultation on the changes introduced by Directive 2004/117/EC. Relevant stakeholders were consulted separately on the changes introduced to provide for the marketing of British native-origin seed intended for the preservation of the natural environment.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for the changes introduced by Directive 2004/117/EC. A short RIA has however been prepared (attached at Annex B) about the amendment that provides for an authorisation to market mixtures of seed for use in the preservation of the natural environment.

8.2 There is no impact on the public sector.

9. Contact

Dick Staward at Defra, Plant Variety Rights Office and Seeds Division, Tel:01223 342358 or e-mail Dick.Staward@defra.gsi.gov.uk can answer any queries regarding the instrument.

ANNEX A

THE FODDER PLANT SEED (ENGLAND)(AMENDMENT) REGULATIONS 2005

Council Directive 2004/117/EC amending Directives 66/401/EEC, 66/402/EEC, 2002/54/EC, 2002/55/EC and 2002/57/EC as regards examinations carried out under official supervision and equivalence of seed produced in third countries

Article 1: Amendments to Directive 66/401 on the marketing of fodder plant seed

DIRECTIVE 2004/117/EC	REGULATIONS	COMMENTS
Article 1.1 amends the seed category definitions in the principal directive to provide for seed testing under official supervision, as well as official seed testing.	No change.	The 2002 Regulations incorporate the provisions of the EC temporary experiment on seed sampling and seed testing (Commission Decision 98/320/EC). They provide for all seed categories to be tested officially or under official supervision, so no change is needed to implement Article 1.1.
Article 1.2 inserts amended provisions relating to the licensing of crop inspectors into the principal directive and incorporates new provisions relating to licensed seed testing stations. Article 1.3 deletes a redundant provision from the directive.	Regulation 2 (2)(b)&(c) make consequential changes to the definitions of “licensed EC crop inspector” and “licensed EC testing station”. They have no practical effect.	Article 1.2 does not make any changes which require amendment to the 2002 Regulations. The significant change introduced by Article 1.2 is reduction in the minimum level of checks required on the work of licensed crop inspectors and seed testing stations. The level of checks is set administratively and does not require change to regulations to implement.

<p>Article 1.4 introduces provisions allowing seed trade personnel to be licensed to draw samples under official supervision.</p>	<p>No change.</p>	<p>The 2002 Regulations incorporate the provisions of the EC temporary experiment on seed sampling and seed testing (Commission Decision 98/320/EC). They permit licensed seed samplers to sample seed lots, under official supervision, for certification purposes.</p>
<p>Article 1.5 requires all Member States to accept requests for certification of “not finally certified” seed harvested in an equivalent third country, provided the seed is of a generation eligible for import as “not finally certified” and it satisfies the relevant directive seed conditions.</p>	<p>No change.</p>	<p>Before amendment, Directive 66/401/EEC permitted, but did not require, Member States to accept requests for certification in these circumstances. The 2002 Regulations included this permissive provision, so amendment is not needed to implement Article 1.5.</p>
<p>Article 1.6 enables the Council of Ministers to extend seed equivalence to all generations of seed.</p>	<p>No change.</p>	<p>The 2002 regulations do not require change unless the Council of Ministers uses this enabling provision to extend equivalence to all seed.</p>
<p>Article 8 provides that Member States shall implement the Directive by 1 October 2005</p>	<p>Regulation 1</p>	<p>The Regulations come into force on 26th October 2005.</p>

ANNEX B

REGULATORY IMPACT ASSESSMENT:

TITLE: AMENDMENTS TO THE FODDER PLANT SEED (ENGLAND) REGULATIONS 2002 (SI 2002/3172) (the 2002 Regulations)

Purpose and intended effect

1 The changes introduced by Directive 2004/117/EC on examinations carried out under official supervision and equivalence of seed produced in third countries (the Directive) are technical and non-controversial and primarily extend licensing arrangements that enable the seed industry to carry out certain functions under official supervision. Additional changes regularise the marketing of mixtures of fodder plant seed native to Great Britain for use in the preservation of the natural environment (preservation mixtures) by introducing an exemption from meeting certification standards.

Consultation

2. The proposals were subject to full consultation and no adverse comments were received.

Options

3. Do nothing – not acceptable since the Directive must be implemented to meet EC obligations. In addition, the changes to permit the marketing of preservation mixtures are necessary to legalise trade in such mixtures in order to meet Defra habitat restoration policies.

4. Implement changes – necessary to meet EC obligations and to legalise the marketing of preservation mixtures.

Costs and benefit

Sectors affected

5. A small number of firms trading in preservation mixtures (approx 10).

Analysis of costs and benefits

6. The 2002 Regulations already permit the licensing of industry personnel to undertake tasks under official supervision due to long standing EC and OECD temporary experiments. The Directive confirms these temporary experiments but no changes of substance are required. Consequently, the changes introduced by the Directive do not affect industry or place it under any additional burden.

7. The change introduced to regularise the marketing of preservation mixtures is necessary to ensure that traders operate under appropriate and light touch legal arrangements. There will be a minimal administrative burden in requiring traders to submit an application letter but no fee will be charged for the issue of a marketing authorisation.

Small firms impact test

8. There are no significant burdens on small businesses and the proposals have been welcomed because they regularise trading in preservation mixtures..

Competition assessment

9. The changes will have no effect on competitiveness.

Enforcement, sanctions and monitoring

10. **Enforcement** – subject to completion and submission of a satisfactory application, companies will receive an authorisation to market preservation mixtures. Company records may be subject to random inspection in the same way as with other seed activities.

11. **Sanctions** – breach of an authorisation may lead to proceedings for contravention of a provision of the 2002 Regulations for which the penalty, on conviction, is a fine not exceeding level 5 on the standard scale. If convicted, the holder of the authorisation may also have his registration to engage in seed industry activities revoked.

12. **Monitoring** – seed activities are subject to routine inspection by Plant Health and Seeds Inspectors.

Implementation and delivery plan

13. The industry are aware of the changes and are geared up to implementation from October 2005. The detailed guidance on applying for an authorisation to market preservation mixtures will be reviewed after 12 months or earlier in the light of any new proposals from the EC.

Post implementation review

14. See above

Summary and recommendation

15. The changes introduced are cost neutral, implement the requirements set out in the Directive and regularise the trading of preservation mixtures for habitat restoration purposes. The Minister is therefore recommended to sign the attached Statutory Instruments.

Declaration and publication

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

Signed by the responsible minister

Bach

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

25th September 2005