

EXPLANATORY MEMORANDUM TO
THE SEED MARKETING (AMENDMENT) REGULATIONS 2011

2011 No. 2992

1. This explanatory memorandum has been prepared by the Food and Environment Research Agency (Fera), an Executive Agency of Defra, and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The SI implements Commission Directive 2010/60/EU which provides derogations for marketing fodder plant seed mixtures intended for use in the preservation of the natural environment. It is also being used to transpose Commission Decision 2011/180/EU which amends Council Directive 2002/55/EC on the conditions under which the marketing of small packages of mixtures of standard seed of different vegetable varieties belonging to the same species may be authorised. The Seed Marketing Regulations amendment provides derogations for the marketing of these seeds.

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

3.1 None

4. Legislative Context

4.1 This instrument implements Commission Directive 2010/60/EU and Commission Decision 2011/180/EU. The Directive, and the Decision are transposed by the Seed Marketing (Amendment) Regulations 2011 (which amend the Seed Marketing Regulations 2011 (S.I. 2011/463)), to allow the marketing of preservation fodder plant seed mixtures and small packages of inter-varietal vegetable mixtures.

4.2 A transposition note can be seen in Annex 1.

5. Territorial Extent and Application

5.1 The Seed Marketing (Amendment) Regulations 2011 apply to England only; but similar legislation will be made in Scotland, Wales and Northern Ireland.

6. European Convention on Human Rights

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

7. Policy background

- *What is being done and why*

7.1 Before seeds of the main agricultural and vegetable varieties can be legally marketed, the variety must be listed on a National List or on the EC Common Catalogue and the seed must have attained minimum certification standards prescribed in Community law. Seed must be certified under a statutory quality assurance process which ensures that it is sufficiently pure, healthy, viable and correctly labelled. The marketing of seed of the main agricultural and vegetable species in England is regulated by the Seed Marketing Regulations. Only seed which has been certified may be marketed.

7.2 The overall aim of Directive 2010/60/EU is to promote the conservation and restoration of semi-natural and natural habitats. It provides derogations for marketing fodder plant seed mixtures intended for use in the preservation of the natural environment. In 2005, the Seed Marketing Regulations in England were amended in anticipation of these derogations in order to remove a legal conflict with Environmental Stewardship Schemes. The main issue was to allow marketing of seed of ecotypes, originating from semi-natural habitats, such as traditional hay meadows, which could not meet the requirements for National Listing and Certification. Consequently, transposition of 2010/60/EU requires little change to the existing regulations or to established practices in this small scale specialised market. This legislation impacts on a very small number of specialised companies. The 2005 exemptions made in England regulations to meet the needs of producers and consumers in this specialist sector pre-empted the outcome of discussions with the European Commission and other Member States for developing EU legislation in this area. Since then, the UK's negotiating objective in Europe was to secure EU legislation that mirrored, as far as possible, the system that has operated successfully in England since 2005. Commission Directive 2010/60/EU allows most of our existing practices to stand. It does however introduce a further degree of official monitoring and reporting, some changes to the information required for authorisations and labelling, and a formal seed testing requirement for crop grown components of mixtures.

7.3 Fera's policy objective is to transpose and implement this new Community Directive in a proportionate and pragmatic way, in England by an amendment to the Seed Marketing Regulations which require minor adaptation to achieve full compliance.

7.4 Vegetable seed may also be marketed as standard seed, meeting the same quality criteria as certified seed but where seed production is not officially controlled. Almost all vegetable seed marketed in the UK is standard seed.

Fera is also taking the opportunity presented by this amendment of the legislation to make a very small but beneficial amendment to the regulations to transpose Commission Decision 2011/180/EU which extends an existing derogation, currently permitting the marketing of small packages of inter-varietal standard seed mixtures of lettuce and radish seed, to apply to all regulated standard seed of vegetable varieties belonging to the same species. This Decision will permit seed companies to market inter-varietal mixtures of standard vegetable seed in the same packet rather than in individual packets within one packet. This in turn provides amateur growers with a product that offers continuous cropping during the harvest period and reduces packaging costs to industry.

8. Consultation outcome

8.1 **Preservation Fodder Seed Mixtures 2010/60/EU.** Fera has conducted a targeted consultation (informal written and face to face meetings) of the 18 enterprises directly affected by the implementation of Commission Directive 2010/60/EU and all of those who

responded supported the pragmatic and proportionate approach proposed by Fera. The cost/benefit analysis demonstrates that the sector will incur an additional cost of approximately £6,720 per annum in total to cover an additional seed testing requirement and an additional cost of approximately £1,600 per annum in total to cover the increase in administrative burden. However, the sector will potentially benefit from an expansion of the permitted marketing area from England to the UK. This could potentially provide new marketing opportunities for companies within the UK. A more detailed analysis is available on the Defra website at:

<http://www.fera.defra.gov.uk/plants/consultations/documents/marketingPreservationSeed.pdf>

8.2 Inter-varietal mixtures of vegetable seed 2011/180/EU: No specific formal consultation was commissioned. The request for this derogation was made by industry during consultations around a different piece of legislation last year concerning the marketing of seed of amateur vegetable varieties. Fera officials took up the request, which benefits seed companies and amateur growers, with the Commission and other Member States in 2010 and secured agreement this year. The derogation will benefit industry by reducing packaging costs and broadening the range of vegetable seeds that may be marketed as mixtures, and will benefit consumers by containing costs and providing a wider range of products that will offer continuous cropping of produce during the harvest period.

9. Guidance

9.1 Guidance on the procedures are being updated for this instrument and will be available on the Fera website and as a Fera publication.

10. Impact

10.1 The impact on business, charities and voluntary bodies are set out in the final Impact Assessments.

10.2 The impact on the public sector is negligible – see Impact Assessments.

10.3 Impact assessments have been produced and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 This legislation does impact on small businesses. The impact on these enterprises is recognised and examined in the impact assessment.

11.2 The basic provisions of Commission Directive 2010/60/EU are already embodied in English regulations (The Seed Marketing Regulations 2011) and will require minor adjustment to meet the transposition requirements of this directive. These proposed transposition arrangements minimise the cost and administrative burden to this specialised market.

11.3 Commission Decision 2011/180/EU will positively impact on all enterprises equally. This Decision is entirely beneficial and provides medium sized and smaller enterprises the opportunity to market a wider range of products of inter-varietal mixtures of standard vegetable seed of the same species.

12. Monitoring & review

12.1 Success of this instrument will be measurable in terms of the number of companies/individuals applying to market preservation fodder seed mixtures. The new procedures will be monitored by Fera under existing legislative enforcement arrangements and will be reviewed annually until the required review at Community level in 2014.

13. Contact

Andy Mitchell of the Food and Environment Research Agency Tel: 01223 342384 or email: andy.mitchell@fera.gsi.gov.uk can answer any queries regarding this instrument.

Annex 1

TRANSPOSITION NOTE FOR COMMISSION DIRECTIVE 2010/60/EU

| Article of Directive | Purpose | Transposition |
|-----------------------------|--|---|
| | | The Seed Marketing (Amendment) Regulations 2011, amending The Seed Marketing Regulations 2011 (SMR 2011)(2011/463) References given below refer to the SMR 2011 as amended |
| Article 1 | Defines a number of terms for the purposes of the Directive | Schedule 4, paragraph 8(6) |
| Article 2 | Provides derogation from the normal certification requirements in respect of “preservation mixtures” as defined This derogation does not apply to preservation mixtures containing conservation varieties | Schedule 4, paragraph 8 Schedule 4, paragraph 8(3)(c) |
| Article 3 | Requires the member State to determine the region of origin with which a preservation mixture is naturally associated when authorising the marketing of such a mixture | Schedule 4, paragraph 8(3)(b) provides that an authorisation issued by the Secretary of State must state the region of origin as determined in accordance with Article 3 |
| Article 4 | Sets out the conditions for granting an authorisation for the marketing of a preservation mixture Requires an authorisation to contain the information specified in Article 4(2) | Schedule 4, paragraph 8(3)(a) Schedule 4, paragraph 8(3)(d) |
| Article 5 | Sets out the authorisation requirements for directly harvested preservation mixtures | Schedule 4, paragraph 8(3)(a) – an authorisation can only be granted if such seed complies with Article 5 |
| Article 6 | Sets out the authorisation requirements for crop-grown preservation mixtures | Schedule 4, paragraph 8(3)(a) – an authorisation can only be granted if such seed complies with Article 6 |
| Article 7 | Provides that an authorisation shall be granted on application by the producer and sets out the information that the application is to include | Schedule 4, paragraph 8(2)(a) and (b) |

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| | Requires member State to carry out visual inspections preservation mixtures | No specific transposition required. No authorisation granted unless MS satisfied that seed complies with requirements and carries out inspections to ensure this. |
| Article 8 | Provides that member State must ensure that the quantity of preservation mixtures marketed each year does not exceed 5% of the total weight of fodder plant seed mixtures marketed in the same year | Schedule 4, paragraph 8(5) |
| Article 9 | Requires member States to ensure that producers notify before the beginning of each production season the quantity of seed of preservation mixtures for which they intend to apply for authorisation, and details of size and location of collection sites and multiplication sites MS are to allocate to each producer the amount of seed that he may market | Guidance Schedule 4, paragraph 8(3)(d) – authorisation must specify the matters listed in Article 4(2) which includes the quantity of seed to which the authorisation applies |
| Article 10 | Requires packages to be sealed | general packaging requirements of principal SI |
| Article 11 | Requires preservation mixtures to be labelled with a producer's label bearing specific information | Schedule 4, paragraph 8(4) |
| Article 12 | Requires member states to undertake monitoring to ensure Directive complied with | No transposition required |
| Article 13 | Member States to ensure that producers report the amount of preservation mixtures marketed for each season | Guidance |
| Articles 14 - 16 | | No transposition required |