

---

## STATUTORY INSTRUMENTS

---

# 2023 No. 676

## The Seed Marketing (Heterogeneous Material) (Temporary Experiment) (England) Regulations 2023

### PART 1

#### Introductory

##### **Citation, commencement, extent and application**

1.—(1) These Regulations may be cited as the Seed Marketing (Heterogeneous Material) (Temporary Experiment) (England) Regulations 2023 and come into force on 14th July 2023.

(2) These Regulations extend to England and Wales but apply in relation to the production of seed in England only.

(3) These Regulations cease to have effect at the end of the day on 13th July 2030.

##### **Interpretation**

2. In these Regulations—

“the 2011 Regulations” means the Seed Marketing Regulations 2011(1);

“the applicant” means a person applying for a licence in accordance with regulation 5;

“the experiment” means the temporary experiment organised in accordance with these Regulations and complying with the purpose specified in regulation 21A of the 2011 Regulations(2);

“heterogeneous material” means a plant grouping within a single botanical taxon of the lowest known rank which presents common phenotypic characteristics and has been developed by crossing multiple varieties of a plant species, with the resulting plants being genetically diverse and having varied characteristics;

“lot” means one or more units of a single commodity, identifiable by its homogeneity of composition and origin, which form part of a consignment;

“low-input agriculture” means systems of crop production managed with reduced use of external inputs, such as fertilisers and fuel, resulting in a more sustainable agricultural system;

“marketing” has the meaning given by regulation 2 of the 2011 Regulations;

“participant” means a person granted a licence to participate in the experiment referred to in regulation 3;

“population” means heterogeneous material which, as a grouping, is—

(a) identifiable on the bases set out in regulation 13(1), but insufficiently uniform to be a variety,

---

(1) [S.I. 2011/463](#) (“the 2011 Regulations”); relevant amendments were made by [S.I. 2011/2992](#), [2012/3035](#), [2016/613](#) and [2019/131](#) (as amended by [S.I. 2020/1388](#)).

(2) Regulation 21A was inserted by [S.I. 2012/3035](#) and substituted by [S.I. 2019/131](#).

- (b) characterised by a high level of genetic and phenotypic diversity between individual reproductive units, so that the plant grouping is represented by the material as a whole and not by a small number of plants, and
  - (c) not a mixture of varieties;
- “variety” has the meaning given by section 1(3) of the Plant Varieties Act 1997<sup>(3)</sup>.

## PART 2

### Licence to participate in the experiment

#### **Temporary experiment**

3.—(1) The Secretary of State may grant a licence for the purpose of participating in an experiment organised in accordance with these Regulations.

(2) An experiment is established in accordance with regulation 21A of the 2011 Regulations, the purpose of which is to seek alternatives that may be more suitable for use under particular conditions to seed complying with all the requirements specified in the 2011 Regulations.

(3) For the purposes of paragraph (2), improved alternatives to requirements under the 2011 Regulations may include those better adapted to—

- (a) climate change, including extreme weather conditions;
- (b) specific environments;
- (c) pests and diseases;
- (d) low input agriculture.

(4) The activities to be carried out in relation to the experiment may include, but are not limited to—

- (a) the development of a population;
- (b) the generation and collection of data relating to the population, including—
  - (i) identification and traceability;
  - (ii) identification of the region of production;
- (c) the marketing of a population.

(5) The experiment begins on the day on which these Regulations come into force and ends at the end of the day on 13th July 2030.

#### **Species included in the experiment**

4.—(1) Schedule 1, which lists the species which are included in the experiment, has effect.

(2) No species other than those specified in Schedule 1 may be included in the experiment.

#### **Application for a licence to participate in the experiment**

5.—(1) An application for a licence under regulation 21A of the 2011 Regulations to participate in the experiment must be made in writing to the Secretary of State and include the information specified in paragraph (2).

(2) The information to be included in the application is—

---

(3) 1997 c. 66.

- (a) the name, address and email address of the applicant and, where the applicant is not an individual, the name of the individual who is to be responsible for participation in the experiment;
  - (b) the objectives of the breeding programme which is to form part of the experiment;
  - (c) the species and the varieties of plants which have been or are to be used in the breeding programme to create a population;
  - (d) a description of the type of technique which has been or is to be used to generate a population, including the breeding scheme;
  - (e) the region or proposed region of production;
  - (f) where a population has been developed, a description of its characteristics, including—
    - (i) the degree of heterogeneity;
    - (ii) whether it is self-pollinating;
    - (iii) yield, yield stability and quality;
    - (iv) performance;
    - (v) usability in low-input agriculture;
    - (vi) disease resistance;
    - (vii) taste or colour; and
    - (viii) any other characteristic which the applicant regards as relevant;
  - (g) the results of any experimental trials concerning the characteristics specified in subparagraph (f); and
  - (h) where a population has been developed and the Secretary of State has approved a name for the population in accordance with regulation 14, that name, or, if the Secretary of State has not yet approved a name for the population, the name which the applicant proposes to use for provisional identification of the population.
- (3) The Secretary of State may include conditions in a licence such as—
- (a) controls on the production and marketing of seed from populations, including, but not limited to—
    - (i) specifying a maximum quantity of seed from a population which may be marketed by or on behalf of the participant during the period of participation in the experiment;
    - (ii) requirements in relation to the skill or qualifications of the persons who are to maintain a population;
  - (b) requirements in relation to the characteristics or quality of a population;
  - (c) any other conditions that the Secretary of State considers to be appropriate.
- (4) A participant must comply with any conditions specified in the licence.

#### **Period of validity of a licence**

6.—(1) Subject to paragraphs (2) and (4) and to regulation 9, the period of validity of a licence granted under regulation 21A of the 2011 Regulations begins on the date of issue specified in the licence and ends at the end of the day of 13th July 2030.

(2) If the participant's licence specifies a shorter period of validity, the licence ceases to be valid at the end of the day specified in the licence.

(3) If the participant intends to cease participation in the experiment, they must give notice in writing to the Secretary of State, specifying the date on which participation will cease.

- (4) Where the participant informs the Secretary of State that they intend to cease participation in the experiment, the participant's licence ceases to be valid at the end of the day specified in the notice referred to in paragraph (3).

#### **Effect of the grant of a licence to participate in the experiment**

7. Schedule 2, which makes transitory modifications to the application of the 2011 Regulations during the period of validity of a licence granted under regulation 21A of those Regulations, has effect in relation to a participant granted such a licence insofar as the provision relates to heterogeneous material developed in accordance with these Regulations.

#### **Variation of conditions included in a licence**

8.—(1) The Secretary of State may at any time vary any of the conditions included in a licence granted under regulation 21A of the 2011 Regulations by giving notice in writing to the participant.

(2) The written notice referred to in paragraph (1) must state the reasons for the variation and the date from which it is to take effect.

#### **Revocation or suspension of a licence**

9.—(1) If satisfied that a participant has—

- (a) included incorrect information in an application for a licence under regulation 5, or
- (b) failed to comply with any requirement or condition imposed by or under—
  - (i) regulation 10 or 11;
  - (ii) the Plant Varieties and Seeds Act 1964;
  - (iii) the 2011 Regulations, as they have effect under Schedule 2;
  - (iv) any other legislation covering plant health and applying in relation to England; or
  - (v) the licence,

the Secretary of State may revoke or suspend the licence by giving written notice to the participant.

(2) The written notice referred to in paragraph (1) must state the reasons for the revocation or suspension and the date from which it is to take effect.

(3) Where the Secretary of State is satisfied that it is appropriate to do so, the Secretary of State may lift the suspension of a licence (referred to in paragraph (1)) by giving written notice of this to the participant, specifying the date on which the suspension will cease to have effect.

#### **Recording and reporting obligations relating to the experiment**

10. A participant and any person acting on behalf of a participant must keep accurate records concerning the experiment in relation to—

- (a) the species and varieties of plants which have been used to create a new population;
- (b) the techniques by which the population has been created;
- (c) the traceability of the population;
- (d) the features which make the population identifiable;
- (e) any changes to the information specified in regulation 5(2) since the licence application was made; and
- (f) information allowing the participant to identify—
  - (i) all suppliers of the seeds used to create a population;

- (ii) any person to whom seeds of the population have been supplied; and
- (iii) the person responsible for the development and maintenance of a population.

#### **Access to and inspection of premises etc.**

**11.**—(1) A participant must ensure that the Secretary of State, having given notice in accordance with paragraph (2), is permitted to access and inspect—

- (a) fields or premises being used for the production or marketing of a population; and
- (b) records relating to the production or marketing of a population.

(2) Before an inspection takes place, the Secretary of State must give reasonable notice in writing to the participant and to any person who has control of the premises, fields or records which are to be inspected.

(3) Inspections under this regulation may be carried out at any reasonable time and with such frequency as the Secretary of State considers to be appropriate.

## **PART 3**

### **Marketing and certification**

#### **Certification procedure**

**12.**—(1) A participant may apply to the Secretary of State under the 2011 Regulations, as they have effect under Schedule 2, for certification of seeds from a population developed under the experiment.

(2) If the Secretary of State considers that the requirements specified in this Part and in the relevant provisions of the 2011 Regulations are met, the Secretary of State may certify those seeds for the purpose of regulation 8(a) of those Regulations.

(3) An application under paragraph (1) must—

- (a) specify the plant varieties used in crossing to generate the population;
- (b) state the degree of heterogeneity;
- (c) describe the characteristics of the population;
- (d) confirm that the population can be reproduced unchanged once established in a specified region of production and specified agro-climatic conditions;
- (e) state the techniques used in crossing to generate the population;
- (f) state the name of the population, or where a name has not yet been approved by the Secretary of State in accordance with regulation 14, the proposed name for the population;
- (g) provide the name and address of the maintainer of the population, or where a maintainer has not yet been approved by the Secretary of State in accordance with regulation 15(1), the proposed maintainer;
- (h) include a statement confirming that—
  - (i) the population meets the traceability requirements specified in regulation 16; and
  - (ii) the maintainer of the population will continue to ensure that accurate records are kept;
- (i) include confirmation that the container or package to be used for marketing the population meets—

- (i) the labelling requirements specified in regulation 17; and
  - (ii) the packaging and sealing requirements specified in regulation 16 of the 2011 Regulations; and
- (j) specify the quantity of seed which the participant intends to market during the period of participation in the experiment.
- (4) Paragraph (2) is subject to—
- (a) any quantitative restrictions included in the licence or imposed on a participant under regulation 18; and
  - (b) compliance with any requirements in relation to the official controls carried out in accordance with regulation 19.

### **Identification of a population**

- 13.—(1) A population developed under the experiment must be identifiable on the basis of—
- (a) the varieties used in crossing to generate it;
  - (b) the techniques used in crossing;
  - (c) the degree of heterogeneity;
  - (d) a description of its characteristics; and
  - (e) whether it can be reproduced unchanged once established in a specified region of production with specified agro-climatic conditions.
- (2) The technique used in crossing to generate the population must include one or more of the following—
- (a) the crossing of several different varieties of plants, using crossing protocols to produce diverse heterogeneous material by bulking of the progeny, in order to produce material with a high level of genetic diversity;
  - (b) on-farm management practices which include selecting, establishing or maintaining material characterised by a high level of genetic diversity;
  - (c) any other technique used for the breeding or production of heterogeneous material and specified in the participant's licence.
- (3) For the purposes of paragraph (2), “bulking of the progeny” means repeatedly re-sowing and exposing the stock to natural or human selection.

### **Naming of a population**

- 14.—(1) A participant who intends to market a population developed under the experiment must propose to the Secretary of State a name for the population, which must end with the word “population”.
- (2) If satisfied that the name is suitable, the Secretary of State may authorise its use.
- (3) For the purposes of this regulation, a name is not suitable if the Secretary of State is satisfied that—
- (a) its use in the territory of the United Kingdom is precluded by a prior right of a third party;
  - (b) it may commonly cause users difficulties as regards recognition or reproduction;
  - (c) it is identical to or may be confused with the name of a plant variety or another population;
  - (d) it is liable to give offence or is contrary to the public interest;

- (e) it is liable to mislead or cause confusion concerning the characteristics, value or identity of the population;
- (f) it is liable to convey a false impression that the population is related to or derived from a variety other than those varieties used to create the population;
- (g) it refers to a characteristic or value in a way which is liable to give a false impression that only that population possesses it, when other varieties or populations also possess the same characteristic or value;
- (h) its similarity to a well-known trading name suggests that the population is a different population or a variety, or is liable to mislead the public as to the identity of the participant or the maintainer;
- (i) it consists of or contains comparatives or superlatives;
- (j) it includes a geographical name which is liable to mislead the public as to the characteristics or value of the population.

### **Maintenance of a population**

**15.**—(1) The Secretary of State may approve a person proposed as the maintainer of a population developed under the experiment if satisfied that that person will comply with the obligations specified in paragraph (2).

- (2) The maintainer, once approved, must—
  - (a) maintain the population in accordance with accepted practices for the species concerned during any period that marketing of the population takes place; and
  - (b) keep records in relation to the maintenance of the population.

### **Traceability of a population**

**16.**—(1) A participant and any person maintaining or marketing seeds of a population developed under the experiment must ensure their traceability.

- (2) Traceability must be ensured by keeping accurate records in relation to—
  - (a) the varieties which have been used in the crossing of parental material to produce the population; and
  - (b) the suppliers of those varieties.
- (3) The records must be kept for five years, beginning with the date of their creation.

### **Labelling**

**17.**—(1) A container or package containing seed from a population marketed under the experiment must bear an official label or, in the case of a small package not exceeding 15 kg in weight, may bear a supplier's label.

- (2) The container or package must be labelled at the time of sealing.
- (3) The label must—
  - (a) be on the outside of the container or package;
  - (b) not have been previously used;
  - (c) be adhesive, or secured by a sealing device;
  - (d) be in English, though it may in addition be in other languages;
  - (e) be at least 110 mm x 67 mm; and

- (f) be affixed to the container or package by an authorised officer of the Secretary of State, a licensed seed sampler<sup>(4)</sup> or any person being supervised by such a person.
- (4) The label must include—
- (a) the words “GB rules and standards: temporary experiment under APHA control” and “Seed certification authority DEFRA”;
  - (b) the registration code of the processor (allocated by the Secretary of State in accordance with regulation 21 of the 2011 Regulations) responsible for affixing the label;
  - (c) the reference number (allocated by the Secretary of State) of the seed lot;
  - (d) either—
    - (i) the month and year of sealing the container or package, expressed as “sealed ...” (month and year); or
    - (ii) the month and year of the last official sampling for the purposes of certification expressed as “sampled ...” (month and year);
  - (e) the Latin names of all species from which the population has been created through cross-breeding;
  - (f) the name of the population;
  - (g) the net or gross weight, or the number of seeds; and
  - (h) where materials other than seeds have been added to the container or package, details of—
    - (i) the nature of those materials; and
    - (ii) the ratio between the weight of the seeds and the total weight of the container or package.
- (5) If a population has been genetically modified, this must be stated on the label.
- (6) If a population has been subjected to any chemical treatment, the label must state this fact and—
- (a) the nature of the treatment; or
  - (b) the proprietary name of the chemical used.
- (7) For heterogeneous material, the label must be coloured blue, with a green diagonal stripe.

### Quantitative restrictions

- 18.—(1) The Secretary of State must set a maximum quantity of seed from all populations produced under the experiment that may be marketed during the period that the experiment remains in force.
- (2) In setting the maximum quantity, the Secretary of State must consider—
- (a) the need to test different types of population;
  - (b) the need to ensure that the quantity is sufficient to produce reliable and representative results; and
  - (c) the need to prevent the development of a market parallel to that in seed which meets the requirements of the 2011 Regulations.
- (3) A participant must, in each year of participation in the experiment, on or before a date specified in the participant’s licence, declare to the Secretary of State the quantity of seed produced under the experiment which the participant intends to market in the following calendar year.

---

(4) See regulation 21(1) of the 2011 Regulations, which deals with licensing of seed samplers.

- (4) The participant must make a separate declaration under paragraph (3) in respect of each population under the participant's control in respect of which the participant is licensed.
- (5) The Secretary of State may from time to time consider whether it is desirable to adjust the maximum quantity referred to in paragraph (1), having regard to—
- (a) the purpose of the experiment;
  - (b) the maximum quantity set under paragraph (1);
  - (c) the matters specified in paragraph (2); and
  - (d) the cumulative total of seed declared by the participants in accordance with paragraph (3).
- (6) Where the Secretary of State determines, in accordance with paragraph (5), that it is appropriate to adjust the quantity of seed which may be marketed in any year, the Secretary of State—
- (a) must publish the adjustment to the quantity of seed which may be marketed for that year; and
  - (b) may also adjust the maximum quantity which may be marketed by any individual participant in the same year.
- (7) Where a determination is made in accordance with paragraph (6)(a) or (b), the Secretary of State must immediately—
- (a) inform any participant affected and, where not the same person, any person responsible for production or marketing of the seed affected; and
  - (b) where necessary, vary the terms of the participant's licence to reflect the adjustments to the quantity of seed which may be marketed.

### **Official controls**

- 19.—(1) The Secretary of State must carry out official controls on the production and marketing of seed produced under a licence granted under regulation 21A of the 2011 Regulations.
- (2) Official controls must include, but are not limited to—
- (a) inspection of production fields, to be carried out at least twice during the course of the experiment;
  - (b) sampling of seeds from each population developed under the experiment, to be carried out—
    - (i) at least annually;
    - (ii) on at least 5% of the population; and
    - (iii) on a random selection basis; and
  - (c) comparative field trials on each of the populations developed under this experiment which are to be, or are being, marketed.
- (3) The field trials referred to in paragraph (2)(c)—
- (a) may be carried out by—
    - (i) the Secretary of State;
    - (ii) breeders or producers of the population under the supervision of the Secretary of State; or
    - (iii) research institutions; and
  - (b) may be carried out at any intervals that the Secretary of State considers appropriate.

---

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

---

Mark Spencer  
Minister of State  
Department for Environment, Food and Rural  
Affairs

19th June 2023