

EXPLANATORY MEMORANDUM TO
THE SEED MARKETING (HETEROGENEOUS MATERIAL) (TEMPORARY
EXPERIMENT) (ENGLAND) REGULATIONS 2023

2023 No. 676

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs (Defra) and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

- 2.1 To allow the production and marketing of limited quantities of heterogeneous material (“HM”) (seed with diverse genetic characteristics derived from several varieties and produced through repeated sowings) for the purposes of a temporary experiment. A temporary experiment is being used to assess if HM may offer an improved alternative for the production and marketing of seed of certain cereal species that do not meet all requirements currently specified in the Seed Marketing Regulations 2011 (“the 2011 regulations”) (S.I.2011/463).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 Regulation 21A of the 2011 Regulations provides that the Secretary of State may, by licence, exempt any person or class of person from compliance with any provisions of the 2011 Regulations for the purposes of a temporary experiment seeking improved alternatives to the provisions of that Regulation if organised in accordance with regulations made under section 16(5) of the Plant Varieties and Seeds Act 1964.
- 6.2 This instrument provides for certain species of cereal seed to be produced and marketed in England as HM under a temporary experiment. The purpose of the temporary experiment is to seek alternatives to seed complying with all the requirements specified in the 2011 Regulations and which may be more suitable for use in particular conditions, for example in extreme weather conditions or where there

is lower use of fertiliser or pesticides on the growing crops. This experiment will expire after 7 years on the 13 July 2030.

- 6.3 Schedule 2 to this instrument makes transitory modifications to the 2011 Regulations to enable seed produced under the experiment to be certified and marketed on the basis of meeting the requirements in this instrument. Those modifications at paragraph 12 of Schedule 2 provide for existing appeal rights under the 2011 Regulations to also apply where a person is aggrieved by a decision of the Secretary of State to refuse to grant a licence to participate in the experiment, to vary conditions attached to the licence, or to suspend or revoke the licence.

7. Policy background

What is being done and why?

- 7.1 Before seeds of varieties of the main agricultural and vegetable species can be legally marketed, the variety must be accepted onto a GB variety list in accordance with the rules laid down in the Seeds (National Lists of Varieties) Regulations 2001. The seed must also meet minimum certification standards prescribed in the 2011 Regulations to ensure minimum quality standards and traceability for marketed seed. The 2011 Regulations also set out administrative provisions (including, where appropriate, provision for fees), impose record-keeping requirements and provide for the licensing of industry crop inspectors, seed samplers and seed testing stations to carry out these statutory functions.
- 7.2 There is a growing interest within industry to market HM which is currently prohibited as the material does not meet the certification standards prescribed in the 2011 Regulations. HM refers to plant reproductive material (e.g. seed) that has been developed by crossing multiple varieties of a plant species. It is genetically diverse and designed to adapt to specific local environments, with the resulting plants having varied characteristics – unlike typical agricultural varieties which produce a uniform crop. Though a niche area, HM has potential for growth and is aligned with Defra priorities to encourage a more sustainable and resilient agriculture sector.
- 7.3 This instrument therefore provides for the temporary marketing of HM for the purposes of an experiment to assess if such material may offer an improved alternative, under particular conditions, for the production and marketing of seed of certain cereal species that do not meet the requirements specified in the 2011 Regulations.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 No consolidation is being undertaken as this instrument does not amend another instrument.

10. Consultation outcome

- 10.1 Defra held frequent meetings throughout 2021-2022 with seed companies who had approached Defra, expressing an interest in marketing HM. Defra also informally consulted the main representative bodies of the plant breeding and seed industries in

parallel. Their views have been considered and are reflected in Defra's policy proposals.

- 10.2 In addition, Defra ran a 2 ½ week informal targeted consultation by email with stakeholders with a known interest in, or experience with, the use of populations of HM, as well as the main representative bodies of the plant breeding and seed industries.
- 10.3 Defra received 15 responses to the consultation. The responses showed that the majority of respondents endorsed the potential benefits of HM and were generally supportive of Defra's proposals to set up a temporary experiment to allow its marketing. Amongst the benefits cited were greater resilience to drought, flooding, disease and pests; more compatibility with lower input farming systems, thus supporting reduced fertiliser and pesticide use; and more resilience in the face of climate change. Some reported more consistent yields compared to conventional varieties.
- 10.4 A number of respondents did not foresee any risks and drawbacks to allowing the marketing of HM through a temporary experiment and, moreover, felt that the current inability to market HM was leading to incentives to circumvent legislation, with the associated risks to farmers and growers.
- 10.5 Some respondents voiced concerns about unduly encouraging farm-saved seed and undermining the system of royalty collection for plant breeders' rights. Several respondents, both those positive and those less so about the benefits of HM, felt that traceability would be an essential tool in ensuring the provenance of populations and protecting farmers and consumers.
- 10.6 Defra, in finalising its policy proposals, has sought to balance the needs and views of all sectors and will use the information gathered from the temporary experiment to inform future policy and legislation in this area.
- 10.7 Policy counterparts in the devolved administrations are supportive of Defra's framework for allowing the marketing of HM that addresses the need of England based industry. Scotland and Wales are considering the approach to marketing HM within their own territories. Northern Ireland, by virtue of the Northern Ireland Protocol, has the means to market organic HM through directly applicable EU legislation (Regulation (EU) 2018/848 and Commission Delegated Regulation (EU) 2021/1189).

11. Guidance

- 11.1 The Animal and Plant Health Agency ("APHA") will issue a seed certification information letter to the trade confirming details of how to participate in the experiment once the legislation is laid.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities, or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument as industry participation in the temporary experiment is voluntary. For those businesses who do choose to participate, we envisage a low level of impact per business.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 13.3 No mitigating action is proposed because this instrument makes provision for the voluntary participation by businesses in a temporary experiment to assess if there may be improved alternatives to the current seed marketing regulations. It therefore makes no permanent changes to current policy.

14. Monitoring & review

- ~~14.1~~ Compliance with the provisions contained in this instrument will be monitored by APHA, Defra's executive agency and delivery partner, under existing legislative enforcement arrangements.
- 14.2 Success of this instrument will be measurable in terms of the quality of the information gathered in assessing the economic, agronomic and environmental value of heterogeneous material as an improved alternative, under particular conditions, to the current seed marketing requirements.
- 14.3 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Lord Benyon, Minister of State (Minister for Rural Affairs and Biosecurity) at Defra, has made the following statement:

"As this instrument has no significant annualised net impact on business, it would not be appropriate to undertake a statutory review given the costs of doing so. Results of the temporary experiment will, however, be captured and evaluated annually by Defra in order to assess whether a change to current policy would be beneficial."

15. Contact

- 15.1 Helen Fasham and Christina Bradley at the Department for Environment, Food and Rural Affairs email: Fasham-Bradley.jobshare@defra.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Nicola Spence, Deputy Director for Plant Health, Bee Health and Seeds at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Benyon, Minister of State (Minister for Rural Affairs and Biosecurity) at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.