

EXPLANATORY MEMORANDUM TO
THE SEED POTATOES (ENGLAND) (AMENDMENT) REGULATIONS 2009

2009 No. 2342

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 Regulations implement Commission Directive 2008/62/EC which provides certain derogations for the acceptance onto the UK National List of Varieties of agricultural landraces and varieties which are naturally adapted to local and regional conditions and threatened by genetic erosion ('Conservation varieties') and for the marketing of seed of those landraces and varieties.
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 2008/62/EC by amending the Seed Potatoes (England) Regulations 2006 to allow the marketing of seed potatoes of conservation varieties in England.
 - 4.2 A transposition note can be seen in Annex 1.
5. Territorial Extent and Application
 - 5.1 The Seed Potatoes (England) (Amendment) Regulations 2009 apply to England. Scotland, Wales and Northern Ireland are implementing similar legislation.
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
 - What is being done and why
 - 7.1 Before seeds of the main agricultural varieties can be legally marketed the variety must be listed on a National List or on the EC Common Catalogue (a compendium of the national lists of all the Member States). National Listing seeks to ensure that no new variety can be marketed unless it is recognisably different from other varieties and an improvement on varieties already being sold. To be added to a National List, a variety must be distinct, sufficiently uniform and stable and have satisfactory value for

cultivation and use. The seed must also have attained minimum marketing standards prescribed in Community law to ensure the quality of seed available to growers.

- 7.2 The Seed Potato (England) Regulations 2006 implement Council Directive 2002/56 on the certification and marketing of seed potatoes and set out requirements for their production, certification and marketing in England. Previously there has been no legal framework to permit the marketing of varieties of seed potatoes which have never been listed in national or common catalogues, or are no longer listed, as Directive 2002/56 applies only to accepted varieties.
 - 7.3 Commission Directive 2008/62/EC provides certain derogations from the normal listing and marketing requirements for varieties of seed, including seed potatoes, which have some conservation value because they are naturally adapted to the local and regional conditions or are threatened by genetic erosion. The Directive provides for less prescriptive listing and certification regimes to encourage the preservation and use of older varieties which may not match contemporary varieties in terms of yield and disease resistance but do have value in sustaining cultural and traditional practices. The provisions are optional in as much as no seed producers are compelled to make applications for listing conservation varieties or to market them. The Directive simply facilitates the legal marketing of such seed.
 - 7.4 Implementation of the national listing provisions and provisions for the certification and marketing of seed other than seed potatoes are covered in a separate Explanatory Memorandum. This memorandum focuses on implementation of the certification and marketing arrangements for conservation varieties of seed potatoes.
 - 7.5 Seed potatoes produced and marketed in England and Wales must be classified under the Seed Potato Classification Scheme (SPCS). The Scheme is designed to ensure that seed potatoes meet the standards specified by the Seed Potatoes (England) Regulations 2006. The amendment to the regulations introduced by this instrument provide for conservation varieties to be treated in the same way as other varieties of seed potatoes; i.e. the conditions and tolerances applicable under the SPCS will apply to conservation varieties.
 - 7.6 Directive 2008/62/EC limits the quantity of seed potatoes of conservation varieties which may be marketed in Member States each year. We do not anticipate that this limit will cause any difficulties in the UK but we will need to monitor applications to ensure that this limit is not exceeded. If the limit were to be exceeded then applications may need to be restricted. There is also a requirement for a 'suppliers' label to be attached to seed potato packages. This requirement will be met by means of the official labels produced under the SPCS.
- Consolidation
- 7.7 Fera has no plans to consolidate the amended legislation at this stage.
 8. Consultation outcome

8.1 The main stakeholder organisations representing the seed potato trade were consulted on implementation of Directive 2008/62/EC in 2008. They supported the proposal to treat conservation varieties in the same way as other varieties of seed potatoes.

9. Guidance

9.1 We have informed the main stakeholders of the changes and a summary will be placed on the Fera website.

10. Impact

10.1 An Impact Assessment has not been prepared as there is no compulsory burden. The market for conservation varieties is limited and growers can choose whether to grow such varieties or not.

11. Regulating small business

11.1 The legislation could apply to small businesses but is optional in as much as no seed potato producers are compelled to make applications to enter conservation varieties under the SPCS. This Directive simply facilitates the legal marketing of such seed. Small firms will not be adversely affected by this legislation.

12. Monitoring & review

12.1 The new arrangements will be monitored by Fera under existing legislative enforcement arrangements and will be reviewed annually until the required review at Community level in 2011.

13. Contact

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TRANSPOSITION NOTE

COMMISSION DIRECTIVE 2008/62/EC PROVIDING FOR CERTAIN DEROGATIONS FOR ACCEPTANCE OF AGRICULTURAL LANDRACES AND VARIETIES WHICH ARE NATURALLY ADAPTED TO THE LOCAL AND REGIONAL CONDITIONS AND THREATENED BY GENETIC EROSION AND FOR THE MARKETING OF SEED AND SEED POTATOES OF THOSE LANDRACES AND VARIETIES

Directive Article	Objectives	Implementation /Regulation
Articles 1-3	Establish the scope, legal basis and definitions of terms including 'conservation variety' for National Listing purposes.	Regulation 3 (definitions). <i>Primarily transposed in regulation 3 of The Seeds (National Lists of Varieties) (Amendments) Regulations 2009</i>
Article 4	Prescribes minimum DUS (Distinctness, Uniformity & Stability) criteria for acceptance as a conservation variety.	Not relevant to these Regulations. <i>Transposed in regulations 4 & 8 of The Seeds (National Lists of Varieties) (Amendments) Regulations 2009.</i>

Article 5	Provides derogation from the normal official examination requirement providing that certain limited information is available on which to base acceptance.	Not relevant to these Regulations. <i>Transposed in regulation 4 of The Seeds (National Lists of Varieties) (Amendments) Regulations 2009</i>
Article 6	Excludes listed and protected varieties from acceptance as conservation varieties	Not relevant to these Regulations. <i>Transposed in regulation 4 of The Seeds (National Lists of Varieties) (Amendments) Regulations 2009</i>
Article 7	Sets parameters for denomination of a conservation variety.	Not relevant to these Regulations. <i>Transposed in regulation 5 of The Seeds (National Lists of Varieties) (Amendments) Regulations 2009</i>
Articles 8 & 9	Sets out criteria for identifying regions of origin and requires conservation varieties to be maintained in their region of origin.	Not relevant to these Regulations. <i>Transposed in regulations 6 & 7 of The Seeds (National Lists of Varieties) (Amendments) Regulations 2009</i>
Article 10	Provides a derogation from normal certification requirements in respect of varietal purity standards and the need for official examinations.	Not relevant to these Regulations, as the derogation is not being used. <i>Note that Regulations 5, 12, 19 & 26 of The Seed (Conservation Varieties Amendment) (England) Regulations 2009 do exercise the derogation possibility in respect of other seed types.</i>
Article 11	Restricts seed production to region of origin but allows some latitude where specific environmental problems exist.	Not transposed. First paragraph of Article 11(1) is transposed via the marketing requirements (below); second paragraph is not relevant to these Regulations (as it is dependent on Article 10).
Article 12	Requires check testing of seed by internationally recognised methods - or appropriate methods.	Not relevant to these Regulations (as it is dependent on Article 10).

Article 13	Confines the marketing of seed of conservation varieties to its region of origin (or similar region within the Member State's own territory) and requires seed to have been produced in its region of origin.	Regulation 4(2), (3) and (7).
Articles 14 & 15	Establishes quantitative restrictions for total amount of conservation variety seed marketed at the variety and species levels. Requires prior notification of planned seed production areas.	Regulation 4(4) and (5).
Article 16	Establishes a monitoring requirement in respect of varieties, location and quantities.	Already covered by existing Regulations
Articles 17 & 18	Also establishes sealing and labelling provisions for conservation variety seed.	Regulation 5.
Article 19	Requires random post control to verify varietal identity and purity.	Already covered by existing Regulations
Article 20	Requirement on seed suppliers to report quantities placed on market.	Regulation 4(6).