

EXPLANATORY MEMORANDUM

THE SEEDS (NATIONAL LISTS OF VARIETIES) (AMENDMENT) REGULATIONS 2004

2004 No. 2949

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 These Regulations are made under section 2(2) of the European Communities Act 1972 (c.68) and amend the Seeds (National Lists of Varieties) Regulations 2001 (SI 2001/3510).

2.2 The main changes to the 2001 Regulations are to add hemp to the National List of agricultural plant varieties, amend the provisions relating to the National Listing of genetically modified varieties and amend the definition of *Festulolium*. The Regulations also amend the provisions concerned with the publication of maintainer details in the Gazette and those dealing with changes to arrangements for official measures as well as updating references to relevant EC and National legislation.

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

3.1 The JCSI reported the Seeds (National Lists of Varieties) Regulations 2001 (SI 2001/3510) for defective drafting on 15 January 2002 (Fifteenth Report). This was acknowledged by Defra. The relationship between regulations 9(5) and 9(6) relating to the variation, suspension or revocation of arrangements for official measures was not clear to the JCSI. The amendment made by these regulations (regulation 2(6)) combines and clarifies the powers conferred.

4. Legislative Background

4.1 Commission Decision 74/360/EEC exempted the United Kingdom from applying the provisions of Council Directive 2002/57/EC on the marketing of oil and fibre plant seeds to a number of species including hemp. The decision to remove the exemption was effected through Commission Decision 2003/234/EC and implemented in England by the Oil and Fibre Plant Seed (England) (Amendment) Regulations 2003 (SI 2003/3101) and in Scotland and Northern Ireland by equivalent legislation. Wales intends to implement shortly. These Regulations make consequential amendments resulting from Commission Decision 2003/234/EC by adding hemp to the list of species of oleaginous and fibrous plants included on the National Lists.

4.2 Council Directive 2004/55/EC amended Council Directive 66/401/EEC on the marketing of fodder plant seed and widened the definition of *Festulolium* to include all hybrids resulting from the crossing of a species of the genus *Festuca* with a species of the genus *Lolium*. This was implemented in England by the Fodder Plant Seed

(England)(Amendment) Regulations 2004 (SI 2004/2387). The devolved administrations made separate provision with regard to implementation. These Regulations make consequential amendments as a result of Council Directive 2004/55/EC to amend the definition of *Festulolium* in the 2001 Regulations.

4.3 The Regulations also give effect to the consequential amendments made to Council Directive 2002/53/EC on the common catalogue of varieties of agricultural plant species by Council Regulation (EC) No 1829/2003 on genetically modified food and feed. In particular, they amend the provisions relating to the records that must be kept and information that must be published by the Secretary of State in relation to the National Listing of genetically modified varieties, the provisions relating to the marketing authorisations required in respect of genetically modified varieties in order for National Listing to take place and provide that the National Listing of a genetically modified variety can be revoked where an authorisation issued under the relevant legislation has been revoked or has otherwise expired.

4.4 A Transposition Note in respect of the above amendments is not attached as these amendments are consequential amendments. Transposition Notes were prepared for the amendment relating to hemp for the Oil and Fibre Plant Seed (England)(Amendment) Regulations 2003 and in respect of *Festulolium* in relation to the Fodder Plant Seed (England)(Amendment) Regulations 2004. A Transposition Note was prepared in respect of the amendments relating to genetically modified varieties for the Genetically Modified Food (England) Regulations 2004 (SI 2004/2335) and the Genetically Modified Animal Feed (England) Regulations 2004 (SI 2004/2334).

5. Extent

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

Not applicable.

7. Policy background

7.1 EC Directives 2002/53/EC on the common catalogue of varieties of agricultural plants and 2002/55/EC on the marketing of vegetable seed require Member States to prepare and publish National Lists of varieties of the main agricultural and vegetable species which are eligible for certification and marketing in their territories. The Directives are implemented in the UK by the 2001 Regulations.

7.2. The 2001 Regulations were brought into force in 2001 to bring UK legislation into line with latest directive requirements. Amendments are now needed as outlined in paragraph 4 above to implement subsequent changes to EU legislation and, in particular, to introduce a National List for hemp varieties. Imported hemp has been propagated and marketed in the UK in recent years and the justification for the UK derogation from applying the National List and marketing regulations is considered to be no longer valid. At the UK's request, the derogation has been formally revoked, and as a consequence, seeds of hemp now need to be brought within the regulatory framework. This will allow the industry to develop and market hemp seed varieties in the UK rather than continuing to rely on foreign imports.

8. Impact

8.1 A Regulatory Impact Assessment is appended to this Memorandum. It concentrates on the introduction of a National List for varieties of hemp. The cost of obtaining National Listing for hemp, over two years, would be £3,080, but this would allow UK breeders and producers access to the marketplace. None of the other measures are considered to have an impact on business, charities or voluntary bodies.

9. Contact

Kevin Johnson at Defra, Plant Variety Rights Office and Seeds Division
Tel: 01223 342371 or e-mail: Kevin.Johnson@defra.gsi.gov.uk, can answer any queries about the instrument.

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APPENDIX

REGULATORY IMPACT ASSESSMENT ON AMENDMENT OF THE SEEDS (NATIONAL LISTS OF VARIETIES) REGULATIONS 2001

1. Purpose and intended effect of measure – to amend the Seeds (National Lists of Varieties) Regulations 2001:

- a. to implement a number of routine changes e.g. updating Directive references and, in particular, to give effect to Commission Decision 2003/234/EC, removing the UK's derogation in respect of hemp, so making it a prescribed species in Schedule 1 of the regulations.
- b. to make consequential procedural changes as a result of amendments to the Common Catalogue Directive (Directive 2002/53/EC) and the Vegetable Seed Directive (Directive 2002/55/EC) introduced by the Food and Feed Regulation (Regulation 1829/2003) on genetically modified food and feed.
- c. to make a consequential change to give effect to Directive 2004/55/EC amending Council Directive 66/401/EEC on the marketing of fodder seed.

1(1) The objective: the proposed amendments will bring the regulations up-to-date in respect of a number of Directive cross-references and make consequential procedural changes which have no financial impact on applicants. The most significant amendment would be to add hemp to the list of species for which varieties can be added to the National List in connection with the implementation of Commission Decision 2003/234/EC removing, at the industry's request, the UK's long standing derogation in respect of hemp thus making it subject to the marketing and certification requirements of EC Directives and the corresponding UK regulations. This Decision has been implemented directly in England by the Oil and Fibre Plant Seed (England)(Amendment) Regulations 2003 and in Scotland and Northern Ireland by equivalent legislation. Wales intends to implement shortly. The proposed regulations which are the subject of this RIA are intended to link in with this legislation so as to enable varieties of hemp developed in the UK in the light of specific national requirements to be added to the National List of seed varieties so as to be eligible for marketing.

This RIA deals only with the proposals outlined at 1(a) above. The proposals at 1(b) were the subject of a separate RIA (see paragraph 9 (2) below for details) and an RIA was not prepared for the proposals at 1(c). Please contact Defra at the address given at the end of this RIA if you need further details.

1(2) The background (Hemp only)

Commission Decision 74/360/EEC exempted the United Kingdom from applying the provisions of Council Directive 2002/57/EC (formerly 69/208/EEC) on the marketing of oil and fibre plant seeds to a number of species including hemp. The justification for the United Kingdom derogation rested on the following recital in the Commission Decision:

“Whereas groundnut, hemp, caraway, cotton and opium poppy species are not normally cultivated in the United Kingdom, whereas the seeds of these species are no longer propagated or marketed there;”

Given that imported hemp seed was being propagated and marketed in the UK on a significant scale, it was considered that the justification for the United Kingdom derogation in respect of hemp was no longer valid. Following consultation with industry representative organisations in May 2002, it was decided to seek the removal of the reference to hemp from

Commission Decision 74/360/EEC. This was recently effected through Commission Decision 2003/234/EC.

1(3) Risk assessment

Moves to include hemp in the regulations were initiated at the request of UK hemp producers to allow the certification and marketing of hemp seed in the UK. The risks associated with not regulating in this area are that the UK will be in breach of EU Directives and could result in EU infraction procedures.

1(4) Business sectors affected

Hemp: So far only two companies have expressed an interest in the breeding and marketing of hemp seed in the UK. A further one or two companies have expressed an interest in the possible development of hemp varieties.

1(5) Issues of equity and fairness

No issues of equity and fairness are expected to arise if the changes with respect to hemp are implemented in national legislation. If the amendments are not implemented, seed producers in the UK would be placed at a disadvantage against their EC competitors.

2. Options

Option 1: do nothing.

Option 2: amend the Seeds (National Lists of Varieties) Regulations 2001 in connection with the implementation of Commission Decision 2003/234/EC.

3. Benefits

Option 1: no benefits identified. This option would be inconsistent with the UK's Community obligations and deny our seed producers the opportunities open to their competitors in the rest of Europe.

Option 2: would allow seed producers in the UK to develop and market hemp varieties, tailored for the domestic market and climatic conditions. This would facilitate and increase consumer confidence in UK developed varieties, and would therefore enable UK producers to compete for the first time against foreign imports.

4. Compliance costs for business:

Option 1: do nothing. Preventing the development and marketing of UK hemp varieties would have a negative financial effect on the companies currently dependent on French imports by effectively denying them the opportunity to compete.

Option 2: implementation. Although new statutory fees will be introduced for the National Listing of hemp seed, it is intended that these will be the same as those common to all oil and fibre plant species and would only affect the one or two companies expected to be involved initially in the development of this newly regulated species. The total cost of obtaining National Listing for a variety of hemp, spread over two years, would be £3,080 at current fee rates. There is also an annual fee of £300 for maintaining a variety on the National List.

5. Consultation with small business: ‘small firms impact test’

Only one company is known to be currently involved in marketing hemp seed in England. In these circumstances, commercial considerations make the publication of financial details inappropriate. The company in question and one other that expressed an interest in possibly developing varieties of hemp have been consulted and both support regulation of the species.

6. Competition assessment

The implementation of Commission Decision 2003/234/EC through changes to seeds marketing regulations coupled with these proposed regulations will allow the one English company known to be involved in this niche market to compete against foreign seed imports. The implementation of Commission Directive 2003/45/EC should not distort or affect competition in the market for seed of hybrids of swede rape which has become established over the past 8 years.

7. Enforcement and Sanctions

Upon the addition of Hemp to Schedule 1 Part 1 as a variety of plant species on National Lists and Derogated Species, the enforcement of tests and trials standards and the sanctions for non compliance will be enforceable under The Seeds (National Lists of Varieties) Regulations 2001.

8. Monitoring and review

The legislation is enforced in England by Secretary of State, in Scotland by the Scottish Ministers, in Wales by the National Assembly for Wales and in Northern Ireland by the Department of Agriculture and Rural Development.

These proposals will not impose any costs on any organisation other than the company wishing to develop the variety.

This legislation will not impose any further criminal sanctions over and above those already provided for at Regulation 19 of The Seeds (National Lists of Varieties) Regulations 2001.

9. Consultation

9(1) Within Government: appropriate Divisions within Defra as well as the Devolved Administrations have been consulted at all key stages of development relating to the adoption of Commission Decision 2003/234/EC. The Home Office has been consulted over developments relating to the adoption of Commission Decision 2003/234/EC in view of its licensing and enforcement responsibilities in relation to hemp. The regimes are, however, separate and will operate independently.

9(2) Public consultations:

Written consultations were conducted with stakeholders and interested parties as follows:

Proposals to introduce a National List for Hemp and implement a number of routine amendments were the subject of a public consultation exercise begun on 21 August 2003. No substantive comments on the proposals were received.

Proposals to make consequential amendments to the National List Regulations as a result of amendments introduced by the Food and Feed Regulation (Regulation (EC) 1829/2003) were

included in a joint Defra/Food Standards Agency consultation exercise launched on 30 March 2004 and covered by a separate Regulatory Impact Assessment.

The consequential change to give effect to Directive 2004/55/EC on the marketing of fodder seed was included in a consultation launched on 26 May 2004. No substantive comments were received.

10. Summary and recommendation

This regulatory impact assessment supports and recommends option 2 for the amendment of the Seeds (National Lists of Varieties) Regulations 2001 to support the implementation, in England, of Community obligations in respect of Commission Decision 2003/234/EC.

11. Declaration

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Signed Ben Bradshaw

Date 11 November 2004

Ben Bradshaw

Parliamentary Under Secretary of State
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