

## **EXPLANATORY MEMORANDUM TO**

### **The Seed (England) (Amendments for Test and Trials etc.) Regulations 2006**

**2006 No. [2314]**

**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.

#### **2. Description**

2.1 The Regulations reflect the requirements of Commission Decision 2004/842/EC concerning the implementing rules where by Member States may authorise the placing on the market seed of a variety for which an application for entry in the national catalogue of varieties of agricultural plant species or vegetable species has been submitted (the Commission Decision). The Regulations apply in England and amend the Beet Seed (England) Regulations 2002 (S.I. 2002/3171, as amended by S.I. 2004/2385 and S.I. 2005/2671), the Cereal Seed (England) Regulations 2002 (S.I. 2002/3173, as amended by S.I. 2004/2386, S.I. 2005/2672 and S.I. 2006/1678), the Fodder Plant Seed (England) Regulations 2002 (S.I. 2002/3172, as amended by S.I. 2004/2387, S.I. 2005/2673 and S.I. 2006/1678), the Oil and Fibre Plant Seed (England) Regulations 2002 (S.I. 2002/3174, as amended by S.I. 2003/3101, S.I. 2004/2388 and S.I. 2005/2674) and the Vegetable Seed (England) Regulations 2002 (S.I. 2002/ 3175, as amended by S.I. 2004/2389 and S.I. 2005/2675) (The 2002 Regulations).

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

3.1 None.

#### **4. Legislative Background**

4.1 The 2002 Regulations which implement EC Seeds Directives (see paragraph 7.1 below) require official certification of seed of the main crop species to ensure that seed sold to farmers meets specified standards, one prerequisite of certification being that the variety must be listed on the UK National List or the Common Catalogue (these are catalogues of varieties recognised in the UK and EC respectively). Pending a Commission decision on detailed rules, the 2002 regulations include interim provisions which enable seed which is subject to an application for National Listing and which is hence uncertified seed to be placed on the market for test and trial purposes or, in the case of vegetable seed, market test purposes. The Commission Decision now establishes these formal procedures.

4.2 A Transposition Note for The Seed (England) (Amendments for Test and Trials etc.) Regulations 2006 is attached to this memorandum.

#### **5. Extent**

5.1 This instrument applies to England.

## **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**

7.1 EC Directives require official certification of seed of the main commercial crop species before marketing to ensure that seed sold to farmers and growers meets specific standards. They also include arrangements whereby seed of a variety that is not yet on a National List, for which an application for listing in a Member State has been received and is active, can be marketed under an authorisation for test or trials or market testing. The 2002 Regulations now require amendment for the reasons outlined in paragraph 4.1 to implement the changes to EU legislation.

7.2 A wide range of interests were consulted, including the Agricultural Industries Confederation (AIC) which represents the interests of the majority of seed companies, the NFU and the British Society of Plant Breeders which represent the interest of seed producers and plant breeders respectively as well as farmers, and growers environmental groups totalling 146. The comments received acknowledged and welcomed the benefit of the arrangements to encourage new varieties. The industry see this provision as allowing buyers to use commercial scale amounts of a variety before having to buy large amounts once National Listing has occurred. Concerns were expressed about the requirement that seed issued with an authorisation has to go through the certification procedure with its resultant costs which negate much of the cost benefit of the current interim arrangements.

## **8. Impact**

8.1 A Regulatory Impact Assessment is attached to this memorandum.

8.2 There is no impact on the public sector.

## **9. Contact**

Tony Watts at the Defra Plant Variety Rights Office and Seeds Division Tel: 01223 34 2374 or e-mail: [tony.a.watts@defra.gsi.gov.uk](mailto:tony.a.watts@defra.gsi.gov.uk) can answer any queries regarding the instrument.

## REGULATORY IMPACT ASSESSMENT

### TITLE: AMENDMENTS TO THE SEED MARKETING REGULATIONS 2002<sup>1</sup>:

#### Purpose and Intended Effect

1. Commission Decision 2004/842/EC<sup>2</sup> (the Commission Decision) introduces procedures that set out how Member States may authorise the placing on the market seed of a variety for which an application for entry in the UK National Catalogue of varieties of agricultural plant species or the UK National Catalogue or the EC Common Catalogue of vegetable species has been made but not determined.
2. The Seed Marketing Regulations 2002 covering beet, cereal, fodder plants, oil and fibre, and vegetable seed currently provide for authorisations to be granted by the Secretary of State to permit the marketing in England of agreed quantities of agricultural and vegetable species for the purpose of test and trials/market test purposes. The procedures required by the Commission Decision are more prescriptive and align them closely to the seed certification procedure for a variety that is already on a national list.

#### Consultation

3. The proposal has been subject to full consultation. The plant breeding industry accept that to take advantage of the larger scale EU wide marketing provided by the Commission Decision implementation of the Commission Decision is necessary and accept that this will result in additional costs.

#### Options

4. To do nothing - would disadvantage UK plant breeders, preventing them testing and trialling new varieties EU wide.
5. Implement changes - necessary to comply with all aspects of the Commission Decision.

---

<sup>1</sup> The Beet Seed (England) Regulations 2002 (S.I. 2002/3171, as amended by S.I. 2004/2385 and S.I. 2005/2671), the Cereal Seed (England) Regulations 2002 (S.I. 2002/3173, as amended by S.I. 2004/2386, S.I. 2005/2672 and S.I. 2006/1678), the Fodder Plant Seed (England) Regulations 2002 (S.I. 2002/3172, as amended by S.I. 2004/2387, S.I. 2005/2673 and S.I. 2006/1678), the Oil and Fibre Plant Seed (England) Regulations 2002 (S.I. 2002/3174, as amended by S.I. 2003/3101, S.I. 2004/2388 and S.I. 2005/2674), the Vegetable Seed (England) Regulations 2002 (S.I. 2002/3175, as amended by S.I. 2004/ 2389 and S.I. 2005/2675).

<sup>2</sup> Commission Decision of 1 December 2004 concerning implementing rules whereby Member States may authorise the placing on the market of seed belonging to varieties for which an application for entry in the national catalogue of varieties of agricultural plant species or vegetable species has been submitted.

## **Costs and Benefits**

### **Sectors Affected**

6. UK plant breeding companies and some seed companies want to trial varieties for specific end use e.g. bread making. Currently twelve companies have been issued with fourteen authorisations. We expect the numbers of applications for authorisation to increase because the Commission Decision increases the quantities that can be entered.

### **Analysis of Cost and benefits**

7. The Seed Marketing Regulations 2002 already permit authorisation to be issued for test and trials but the Commission Decision requires a more detailed procedure that mirrors seed certification for a listed variety.

8. Consequently the procedures introduced by the Decision will affect the industry and place upon it additional burdens. Seed entered for test and trial will have to comply with the technical conditions set out in the Seed Marketing Regulations 2002 as they apply to crop and seed standards and those relating to seed tests, packing, sealing and labelling of the seed. The use of an official label is required for all seed for which there is an authorisation. **(See Annex 3)**

### **Small Firm Impact Test**

9. There will be an additional burden on smaller business involved in breeding new varieties, as will there be for medium size companies. The burdens relate to the additional costs of meeting crop and seed standards and of meeting packaging, sealing and labelling requirements, none of which were required under the interim arrangements.

### **Competition Assessment**

10. The changes will enable UK breeding companies to expand activities in this area EU wide and will therefore improve competitiveness.

### **Enforcement, sanctions and monitoring**

#### **Enforcement**

11. Subject to completion and acceptance of an application companies will receive an authorisation to market a stated quantity of a specific variety for test and trial purposes. The applicant will have to ensure the seed covered by the authorisation achieves the technical standards set out in the seed marketing regulations. Company records may be subject to random inspection by an authorised official in the same way as with all other seed activities.

#### **Sanctions**

12. Breaches of the authorisation or the technical standards set out in the seed marketing regulations could lead to an authorisation being withdrawn. It could also lead to proceedings for a contravention of a provision of the Seed Marketing Regulations 2002 for which the penalty, on conviction, is a fine not exceeding level 5 on the standard scale.

## **Monitoring**

13. The technical aspects of an authorisation will be overseen by NIAB, the technical contractor to PVS on seed certification. Seed activities are subject to routine inspection by Plant Health and Seeds Inspectors.

## **Implementation and delivery plan**

14. The breeding industry is aware of the requirements that apply to marketing unlisted varieties for test and trial. The procedure involved will mirror the seed certification early multiplication procedure, which is familiar to the seed industry.

## **Post implementation review**

See 14 above.

## **Summary and recommendation**

15. The changes introduced will result in additional costs to the plant breeding industry. The costs can be offset by the opportunity to increase marketing opportunities EU wide. The Minister is therefore recommended to sign the attached statutory instrument.

16. Responsibility for enforcement of seed legislation in England rests with the Plant Varieties and Seeds Division of Defra.

17. Monitoring and review is the responsibility of the Plant Varieties and Seeds Division of Defra.

## **Declaration and publication**

- **I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.**

**Signed by the responsible Minister**

-----**Ben Bradshaw**-----

**Date: -----23rd August 2006-----**

## Tests and Trials of Unlisted Varieties

### 1. Application for authorisation 2004/05

In the seeds year June 2004 - July 2005, 14 authorisations for test and trial of unlisted species were granted covering the following species:

White Lupine - 1 x 30T  
Wheat - 1 x 500t  
Oil Seed Rape - 7 total 8571Kg  
Barley - 1 x 25t  
Field Peas - 1 x 100t  
Oats - 1 x 1.5t  
Swede - 1 x 6kg  
Lettuce - 1 no weight required

### 2. Cost Example

a. Using the example of a 25t seed lot of barley entered for malting trials the additional cost under the new regulations would be:

1. *Seed lot entry fee*

C2 lot = £22.25

2. *Crop entry fees*

C2 crop of 4 hectare at £6.10p per hectare= £24. 40. (25t of seed at an application of 7 tones per hectare = 3.6 hectare rounded to 4 hectare)

3. *Cost of labels*

25t in 500kg bags would require 50 labels at 12p = £ 6.00

### **Total cost per application for an authorisation £52.65**

b. There will be costs for the company in providing information and carrying out licensed crop inspection, seed sampling and testing under official supervision. However, the additional costs are likely to be low given that companies would probably carry out similar quality assurance on seed marketed under existing arrangements for test and trials.

## **Transposition Note**

### **The Seed (England) (Amendments for Test and Trials etc.) Regulations 2006**

**Commission Decision 2004/842/EC concerning implementing rules whereby Member States may authorise the placing on the market of seed belonging to varieties for which an application for entry in the national catalogue of varieties of agricultural plant species or vegetable species has been submitted**

#### **Background**

EC Seeds Marketing Directives 66/401/EEC, 66/402/EEC, 2002/54/EC, 2002/57/EC and 2002/55/EC require official certification of fodder plant, cereal, beet, oil and fibre plant and vegetable seed respectively of prescribed species before marketing to ensure that seed sold to farmers and growers meets specified standards.

The EC Seed Marketing Directives are implemented in England by the following regulations (together “the Seeds Regulations”):

The Beet Seed (England) Regulations 2002 (S.I. 2002/3171 as amended by S.I. 2004/2385 and S.I. 2005/2671) (the Beet Seed Regulations);

The Cereal Seed (England) Regulation 2002 (S.I. 2002/3173 as amended by S.I. 2004/2386, S.I. 2005/2672 and S.I. 2006/1678) (the Cereal Seed Regulations);

The Fodder Plant Seed (England) Regulations 2002 (S.I. 2002/3172 as amended by S.I. 2004/2387, S.I. 2005/2673 and S.I. 2006/1678) (the Fodder Plant Seed Regulations);

The Oil and Fibre Plant Seed (England) Regulation 2002 (S.I. 2002/3174 as amended by S.I. 2003/3101, S.I. 2004/2388 and S.I. 2005/2674) (the Oil and Fibre Plant Seed Regulations);  
and

The Vegetable Seed (England) Regulations 2002 (S.I. 2002/3175 as amended by S.I. 2004/2389 and S.I. 2005/2675) (the Vegetable Seed Regulations).

#### **The Commission Decision**

For the agricultural species (species other than vegetable species), Article 4a of Directives 66/401/EEC and 66/402/EEC and Article 6 of Directives 2002/54/EC and 2002/57/EC enable Member States to authorise the marketing of seed for test and trial purposes prior to final certification provided that an application has been made in that Member State for national listing of the variety to which the seed belongs. In the case of vegetable seed, Article 23 of Directive 2002/55/EC enables Member States to authorise the marketing of seed to gain knowledge from the use of the variety provided the application for national listing has been made in at least one Member State and technical information has been gathered.

The purpose of the Commission Decision is to determine the specific requirements for the grant of authorisations in each case under the EC Seed Marketing Directives. Articles 2-19 set out the requirements for fodder plant, cereal, beet and oil and fibre plant seed (they are the same for all the agricultural species) and Articles 20-38 set out the slightly different requirements for vegetable seed.

Regulation 18 of the Beet Seed Regulation, regulation 19 of the Oil and Fibre Plant Seed Regulations and the Vegetable Seed Regulations and regulation 20 of the Cereal Seed Regulations and the Fodder Plant Seed Regulations already implement the basic authorisation provisions of the EC Seeds Marketing Directives. Implementation of the Commission Decision by the Seed (England) (Amendments for Test and Trials etc.) Regulations 2006 (the 2006 Regulations) is achieved by replacing regulation 18, 19 or 20, as the case may be, in the Seeds Regulations, with a new regulation, which sets out the detailed requirements for the grant of an authorisation. Amendments are also made to the sampling, packaging, sealing and labelling provisions in the Seeds Regulations.

The following table sets out in detail the important Articles of the Commission Decision and how they have been implemented for the agricultural species and the vegetable species.

| <b>Articles of Commission Decision 2004/842/EC</b> | <b>Objectives</b>  | <b>Implementation (by the 2006 Regulations)</b>  |
|--|--|--|
| <b>Agricultural Species</b>                        |  |  |
| Article 2  | Member States may authorise producers established in their own territory to place on the market seed belonging to a variety for which an application for entry in the national catalogue of that territory of varieties of agricultural plant species has been made. | Regulations 2(3), 3(3), 4(3) and 5(3). The Secretary of State may only grant an authorisation in relation to the proposed marketing of seed for test and trial purposes in England. Scotland, Wales and Northern Ireland are introducing their own legislation. However the application for listing of the variety will have been made for entry on to the UK National List. |
| Article 3  | The person who applies for listing of the variety may apply for an authorisation to market test and trial seed. The Article also sets out how an application can be made.  | Regulations 2(3), 3(3), 4(3) and 5(3)  |
| Article 4  | This Article states that authorisations may only be granted for test and trials carried out at an agricultural enterprise to gather information on the cultivation or use of the variety.  | Regulations 2(3), 3(3), 4(3) and 5(3)  |

|                          |   |   |
|--------------------------|---|---|
| Article 5                | This Article sets out the technical conditions that apply to each individual agricultural species and which the seed must meet.   | Regulations 2(3), 3(3), 4(3) and 5(3)<br>The technical conditions need not be met prior to grant of the authorisation. However, test and trial seed may not be marketed if the technical conditions have not been met (which will occur at the point of issue of satisfactory field inspection and seed test reports). This keeps procedures in line with the system used for seed that is certified in the normal way. If these requirements are not met then the authorisation can be withdrawn for breach of condition or the producer can be prosecuted (for which the penalty on conviction is a fine not exceeding level 5 on the standard scale, currently £5000). |
| Article 7                | This Article specifies the maximum amount of seed of each variety that a member State may authorise for marketing for test and trial purposes.  | Regulations 2(3), 3(3), 4(3), 5(3)  |
| <b>Vegetable Species</b> | <b>Objectives</b>   | <b>Implementation</b>   |
| Article 20               | Member States may authorise breeders established on their own territory to place on the market vegetable seed belonging to a variety for which an application for entry in a national catalogue of varieties of at least one member State has been submitted. | Regulation 6(2)<br>The Secretary of State may only grant an authorisation in relation to the proposed marketing of seed for market test purposes in England. Scotland, Wales and Northern Ireland are introducing their own legislation. However the application for listing of the variety will have been made for entry on to the UK National List.   |
| Article 21               | The person who applies for listing of the variety may apply for an authorisation to market test and trial seed. The Article also sets out how an application can be made.   | Regulation 6(3)   |

|            |   |   |
|------------|---|---|
| Article 22 | This Article states that authorisations may only be granted to gain knowledge from practical experience during cultivation. | Regulation 6(3)   |
| Article 23 | This Article sets out the technical conditions that must be complied with.  | Regulation 6(3)<br>The technical conditions need not be met prior to grant of the authorisation. However, market test seed may not be marketed if the technical conditions have not been met. This will be determined by official post control testing of the seed. If these requirements are not met then the authorisation can be withdrawn for breach of condition or the producer can be prosecuted (for which the penalty on conviction is a fine not exceeding level 5 on the standard scale, currently £5000). |