

**EXPLANATORY MEMORANDUM TO
THE SEEDS (NATIONAL LISTS OF VARIETIES) (AMENDMENT)
REGULATIONS 2011**

2011 No. 464

AND

THE SEED MARKETING REGULATIONS 2011

2011 No. 463

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 instruments

2.1 Both SIs implement Commission Directive 2009/145/EC. The Seeds (National Lists of Varieties) (Amendment) Regulations provide certain derogations for the acceptance, onto the UK National List of Varieties, of vegetable landraces and varieties which are traditionally grown in particular locations and are threatened by genetic erosion (conservation varieties) and vegetable varieties of low intrinsic value developed for the amateur market (amateur varieties). The Seed Marketing Regulations provide derogations for the marketing of seed of those conservation and amateur vegetable varieties.

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

3.1 None

4. Legislative Context

4.1 These instruments implement Commission Directive 2009/145/EC. The seed listing aspects are transposed by amendments to the Seeds (National Lists of Varieties) Regulations 2001 (S.I. 2001/3510), to facilitate the acceptance of conservation and amateur vegetable varieties on to the UK National List. The seed marketing aspects of the Directive are transposed by the Seed Marketing Regulations (which revoke and replace the recently made Seed Marketing Regulations 2010 (S.I. 2010/2605)), to allow the marketing of seed of conservation and amateur vegetable varieties in England.

4.2 In relation to conservation varieties, Directive 2009/145/EC extends to vegetable conservation varieties (with certain modifications) the regime already in existence in relation to agricultural conservation varieties by virtue of Commission Directive 2008/62/EC.

4.3 A transposition note can be seen in Annex 1.

5. Territorial Extent and Application

5.1 The Seeds (National Lists of Varieties) (Amendment) Regulations 2011 apply to the UK where Fera and the Devolved Administrations act jointly. The Seed Marketing Regulations 2011 apply to England only; but similar legislation has been made in Scotland and will shortly be made in Wales and Northern Ireland.

6. European Convention on Human Rights

As the instruments are subject to negative resolution procedure and do 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 and vegetable varieties can be legally marketed, the variety must be listed on a National List or on the EC Common Catalogue and the seed must have attained minimum certification standards prescribed in Community law.

7.2 National Listing is a legal requirement for new varieties of the main agricultural and vegetable species. It seeks to ensure that no new variety can be marketed unless it is recognisably different from other varieties and, for agricultural species, an improvement on varieties already being sold. To be added to a National List, a variety must be distinct, sufficiently uniform and stable (DUS) and have satisfactory value for cultivation and use (VCU).

7.3 Seed Certification is a statutory quality assurance process which ensures that seeds are sufficiently pure, healthy, viable and correctly labelled. The marketing of seed of the main agricultural and vegetable species in England is regulated by the Seed Marketing Regulations. Seeds may only be marketed as certified or standard seed. Standard seed meets the same quality criteria as certified seed but seed production is not officially controlled. Almost all vegetable seed marketed in the UK is standard seed.

7.4 The overall aim of Directive 2009/145/EC is the sustainable use of plant genetic resources, specifically traditionally grown vegetable varieties and landraces and vegetable varieties of 'no intrinsic value for crop production but developed for growing under particular conditions'. In practice, this means encouraging the marketing of conservation varieties and varieties intended specifically for amateur gardeners. It aims to do this through simpler requirements to those described above, giving a cheaper and quicker route to national listing and marketing.

7.5 In order to achieve the main objective of the Commission Directive, which is to encourage the conservation of old vegetable varieties and landraces and to provide a less prescriptive framework for the national listing and marketing of conservation vegetable varieties and amateur vegetable varieties, the implementing

measures are as simple and proportionate as possible with the minimum financial burden on applicants. However, because the UK has traditionally under-implemented existing European legislation in relation to the national listing of amateur vegetable varieties in the past, transposing this de-regulatory proposal will have the effect of introducing some additional regulatory costs in the UK but these will be kept to an absolute minimum.

8. Consultation outcome

8.1 Fera undertook a series of fact finding visits to seed enterprises in the sector prior to launching its wider formal public consultation which included individuals and organisations involved in the vegetable seed industry, plant genetic resource authorities and conservation bodies. The responses to the consultation showed that the majority of stakeholders were generally content with Fera's proposals for simple, and proportionate implementation proposals. In total fifteen responses were received to the England and Wales consultation over the twelve week consultation period. Parallel consultations were undertaken in Northern Ireland and Scotland which resulted in one additional response. A more detailed analysis is available on the Defra website at;

<http://www.defra.gov.uk/corporate/consult/veg-variety/veg-variety-responses.pdf>

9. Guidance

9.1 Guidance on the procedures are being produced for both instruments and will be available on the Fera website and as a Fera publication.

10. Impact

10.1 The impact on business, charities and voluntary bodies is set out in the final Impact Assessment.

10.2 The impact on the public sector is negligible – see Impact Assessment.

10.3 An impact assessment has been produced and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation applies to small business. The impact on small and medium sized enterprises is recognised and examined in the impact assessment.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is pragmatic by permitting a transitional period to list amateur vegetable varieties to allow a staggered approach to implementation.

11.3 The basis for the final decision on what action to take to assist small business was arrived at as a result of Fera visiting a range of small and medium sized businesses who all agreed in principle to Fera's proposed pragmatic approach to implementation. All thought a transitional period would be necessary to allow a staggered approach to implementation. The micro-business and charitable organisations recognised this Directive goes some way to address the regulatory

burden of the EU legislation by providing derogations from the normal listing and marketing provisions. However, they also felt the cost of compliance could be prohibitive without a transitional period. Fera is, therefore, allowing a transitional period to list amateur vegetable varieties.

12. Monitoring & review

12.1 Success of these instruments will be measurable in terms of the number of conservation and amateur vegetable varieties listed and the number of seed companies/individuals registering to market seed of conservation vegetable varieties. The new procedures will be monitored by Fera under existing legislative enforcement arrangements and will be reviewed annually until the required review at Community level in 2013.

13. Contact

Andy Mitchell of the Food and Environment Research Agency Tel: 01223 342384 or email: andy.mitchell@fera.gsi.gov.uk can answer any queries regarding these instruments.

Annex 1

TRANSPOSITION NOTE FOR COMMISSION DIRECTIVE 2009/145/EC

Commission Directive 2009/145/EC is transposed by two SIs:

(1) (for England¹ only) the Seed Marketing Regulations 2011 (S.I. 2011/463), in this Note referred to as the Marketing Regulations;

(2) (for the whole of the UK) the Seeds (National Lists of Varieties) Regulations 2001 (S.I. 2001/3510), in this Note referred to as the Listing Regulations; the amendments to those Regulations which transpose that Directive are made by the Seeds (National Lists of Varieties) (Amendment) Regulations 2011 (S.I. 2011/464).

Article of Directive 2009/145/EC	Purpose	Transposition
Articles 1 - 2	Establish the scope of the Directive and definitions of terms.	The Listing Regulations, regulation 2(1), definition of "conservation variety", and regulation 5A(4); The Marketing Regulations, Schedule 4, paragraphs 7(12) and 15(7)
Article 3	Defines how a conservation variety may be accepted onto the UK's National List and the common catalogue as either certified seed or standard seed.	The Marketing Regulations, Schedule 4, paragraph 7(1), (2) and (8); The Listing Regulations, regulation 3(2)
Article 4	Prescribes DUS criteria for acceptance as a conservation variety.	The Listing Regulations, regulation 5(3)(b)(i) and (ca) and Schedule 2, paragraph 1A
Article 5	Provides derogation from the normal official examination requirement providing that certain limited information is available on which to base acceptance.	The Listing Regulations, regulation 5(2) and (2A)
Article 6	Excludes listed and protected varieties from acceptance as conservation	The Listing Regulations, regulation 5(3A)

¹ The marketing aspects of Directive 2009/145 EC have been transposed in relation to vegetable seeds in Scotland by S.S.I. 2010/425; transposition in relation to Wales and Northern Ireland is expected by the end of February 2011.

	varieties	
Article 7	Sets parameters for denomination of a conservation variety.	The Listing Regulations, regulations 5(3)(f) and 6(1A) and (2)(a)
Articles 8 & 9	Sets out criteria for identifying regions of origin and requires conservation varieties to be maintained in their region of origin.	The Listing Regulations, regulations 7(1) and (5)(a) and 12(2A)
Article 10	Provides a derogation from normal certification requirements in respect of “certified seed”, as regards varietal purity standards and the need for official examinations.	The Marketing Regulations, Schedule 4, paragraph 7(1), (6), (8)(a) and (9)
Article 11	Seed of a conservation variety may be verified as “standard seed” if the seed complies with the marketing requirements for standard seed, with the exception of the requirements in respect of minimal varietal purity; but the seed must have sufficient varietal purity.	The Marketing Regulations, Schedule 4, paragraph 7(1), (8)(b) and (9)
Article 12	Requires check testing of seed by internationally recognised methods - or appropriate methods.	The Marketing Regulations, regulation 11 and Schedule 2, paragraph 50
Article 13	Confines the production of seed of a conservation variety to its region of origin. Additional regions may be approved if there are specific environmental problems in that region. However seed produced in additional regions shall be used exclusively in the region of origin.	The Marketing Regulations, Schedule 4, paragraph 7(1) and (3)
Article 14(1)	Confines the production & marketing of seed of conservation varieties to its region of origin (or similar region within the Member	The Marketing Regulations, Schedule 4, paragraph 7(1), (3) and (4)

	State's own territory)	
Article 14(2)	Derogation relating to additional regions for marketing of seed of conservation varieties	Derogation not utilised by the UK. In practice the region will be the UK and therefore the derogation is not required
Article 15 and Annex I	For each conservation variety, the quantity of seed marketed per year must not exceed the quantity necessary for producing vegetables on the number of hectares set out in Annex 1 for the respective species.	The Marketing Regulations , Schedule 4, paragraph 7(1) and (5)
Article 16	Producers shall notify the size and location of the area for seed production before the beginning of each production season, and quantities may be allocated to producers in order to achieve the quantitative restrictions.	Transposition is by means of guidance; allocations to producers will not in practice be required in the UK as the quantitative restrictions will not be exceeded
Article 17	Sealing provisions for conservation variety seed.	The Marketing Regulations, regulation 16(1) and (4) and Schedule 4, paragraph 7(1) and (10)
Article 18	Labelling provisions for conservation variety seed.	The Marketing Regulations, regulation 17, Part 4 of Schedule 3 and Schedule 4, paragraph 7(1) and (11)
Article 19	Requires random post control to verify varietal identity and purity.	The Marketing Regulations, regulation 15
Article 20	Establishes a monitoring requirement in respect of varieties, location and quantities.	The Marketing Regulations, regulation 19, and to be covered in detailed guidance
Article 21	Defines how a variety developed for growing under particular conditions (known in the UK as an amateur vegetable variety) may be accepted onto the UK's National List and the common catalogue as standard seed.	The Marketing Regulations, Schedule 4, paragraph 15(1), (2) and (3) The Listing Regulations, regulation 3(2)
Article 22	Prescribes DUS criteria for acceptance as a variety developed for growing under particular conditions.	The Listing Regulations, regulation 5A(1), (2)(a) and (4) (see entry for article 4 of the Directive)
Article 23	Provides derogation from the normal official examination	The Listing Regulations, regulation 5A(1) (see entry

	requirement providing that certain limited information is available on which to base acceptance.	for article 5 of the Directive)
Article 24	Excludes listed and protected varieties from acceptance as a variety developed for growing under particular conditions.	The Listing Regulations, regulation 5A(1) and (3) (see entry for article 6 of the Directive)
Article 25	Sets parameters for denomination of a variety developed for growing under particular conditions	The Listing Regulations, regulation 5A(1) (see entry for article 7 of the Directive)
Article 26	Seed of a variety developed for growing under particular conditions may be verified as such seed if the seed complies with the marketing requirements for marketing of 'standard seed', with the exception of the requirements in respect of minimal varietal purity; but the seed must have sufficient varietal purity.	The Marketing Regulations, Schedule 4, paragraph 15(1), (3) and (4)
Article 27	Requires check testing of seed by internationally recognised methods - or appropriate methods.	The Marketing Regulations, regulation 11 and Schedule 2, paragraph 50
Article 28 and Annex II	Seed of varieties developed for growing under particular conditions shall be marketed in small packets, not exceeding the maximum net weight set out per species in Annex II.	The Marketing Regulations , Schedule 4, paragraph 15(1) and (5)
Article 29	Sealing provisions for seed of varieties developed for growing under particular conditions.	The Marketing Regulations, regulation 16(1) and (4)
Article 30	Labelling provisions for seed of varieties developed for growing under particular conditions.	The Marketing Regulations, regulation 17, paragraph 25 of Schedule 3 and paragraph 15(1) and (6) of Schedule 4
Article 31	Requires random post control to verify varietal identity and purity.	The Marketing Regulations, regulation 15
Article 32	Establishes a monitoring requirement in respect of varieties, location and quantities.	The Marketing Regulations, regulation 19, and to be included in guidance

Article 33, first paragraph	Obligation on UK to ensure that suppliers report the amount of conservation varieties and varieties developed for growing under particular conditions placed on the market.	Transposition is by means of guidance
Article 33, second paragraph, and Articles 34 to 38	General and final provisions	Not necessary to transpose.