

# **EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION WITHIN THE SCOPE OF THE UK/EU WITHDRAWAL AGREEMENT AND NORTHERN IRELAND PROTOCOL**

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## **COMMISSION IMPLEMENTING DIRECTIVE (EU) .../... OF 5.11.2021 AMENDING ANNEXES I AND II TO COUNCIL DIRECTIVE 66/402/EEC AS REGARDS REQUIREMENTS FOR SEEDS OF HYBRID WHEAT PRODUCED BY MEANS OF CYTOPLASMIC MALE STERILITY**

Submitted by the Department for Environment, Food and Rural Affairs

22 December 2021

### **SUBJECT MATTER**

1. Commission Implementing Directive (EU) 2021/1927 (“Directive 2021/1927”) published on 5 November 2021 amends Annexes I and II to Council Directive 66/402/EEC on the requirements for seeds of hybrid wheat produced by means of cytoplasmic male sterility (“CMS”). CMS is a condition under which a plant is unable to produce functional pollen and represents a valuable tool in the production of hybrid seed in self-pollinating crop species. Member States are required to transpose Directive 2021/1927 by 31 August 2022 and apply the new provisions from 1 September 2022 to 31 August 2029.
2. Directive 2021/1927 is time limited to allow breeders to test and review the efficiency of these new technical requirements, with an obligation for Member States to report annually to the Commission on the results of hybrid seed produced by CMS in their territory in the preceding year.
3. Council Directive 66/402/EEC sets out the EU’s requirements on the production and marketing of cereal seed. Before the amendment by Directive 2021/1927, EU Directive 66/402/EEC permitted hybrid wheat seed to be produced by techniques involving direct crossing of two different varieties of the same plant and chemical hybridization. Directive 2021/1927 amends the technical requirements within Directive 66/402/EEC to enable seed of hybrid wheat to also be produced by CMS which, in recent years, has been accepted worldwide as an alternative breeding technique and looks to benefit farmers by providing them with a new type of wheat variety.

4. Seed marketing regulations in the UK were derived from EU seed marketing legislation covering the production and marketing of seed and plant propagating material, including Council Directive 66/402/EEC.
5. Future UK policy on the marketing of hybrid wheat within GB has yet to be determined and, as a devolved policy area, discussions on future policy will be held under the provisional common framework agreed decision-making fora.
6. EU Directive 66/402/EEC falls under Annex 2 to the Protocol on Ireland/Northern Ireland to the Withdrawal Agreement and as such will apply in Northern Ireland. This means Northern Ireland is required to transpose Directive 2021/1927 into its domestic law. Although there is therefore the potential for regulatory divergence, the impact on goods moving from NI to GB is considered negligible. This is because:
  - trade in cereal seed from Northern Ireland to GB is small.
  - the seed marketing regulations in GB make provision for seed certified in any part of the UK to be marketable throughout GB.
  - the UK Internal Market Act 2020 provides unfettered access to the UK internal market for qualifying Northern Ireland goods which includes regulated seed for sowing.
7. For goods moving from GB to Northern Ireland, seed must be certified in line with OECD requirements for seed moving in international trade. Membership of the OECD seed schemes forms the basis for the EU recognising third countries as equivalent. The UK is a member of the OECD cereal seed scheme and the EU recognises the UK as equivalent for the production and marketing of cereal seed under Council Decision 2003/17 on the equivalence of field inspections carried out in third countries on seed-producing crops and on the equivalence of seed produced in third countries.
8. The OECD has recently approved a similar experiment for hybrid wheat seed which the UK supports and on which Directive 2021/1927 is based. Changes to the OECD seed scheme rules to temporarily allow for the certification of seed of hybrid wheat produced by CMS are expected to be in place by January 2022.
9. No implications are foreseen in the trade of hybrid wheat seed between GB and Northern Ireland. This is because the anticipated changes to the OECD seed scheme rules, which the UK will have the option to apply, will facilitate compliance with the EU's conditions for equivalence which includes application of the OECD seed scheme rules as well as satisfying the conditions within Directive 2021/1927.

## **SCRUTINY HISTORY**

10. There is no Parliamentary scrutiny history relevant to this Explanatory Memorandum.

## **MINISTERIAL RESPONSIBILITY**

11. Responsibility lies with the Secretary of State for Environment, Food and Rural Affairs.

## **INTEREST OF THE DEVOLVED ADMINISTRATIONS**

12. Directive 2021/1927 sets out the requirements for the marketing of seed of hybrid wheat produced using the CMS production technique. Marketing of seed and other plant propagating material is a devolved policy area and will be subject to the provisional common framework developed and agreed with the Devolved Administrations. As such, a UK-wide approach will be taken in terms of agreeing any proposed changes to existing technical requirements within domestic legislation.

13. As Scottish Ministers, Welsh Ministers and Northern Ireland Executive Ministers have an interest, the Devolved Administrations have been consulted and are content with the Explanatory Memorandum.

## **LEGAL AND PROCEDURAL ISSUES**

14.

i. **Legal Base**

- The Treaty on the Functioning of the European Union
- Council Directive 66/402/EEC of 14 June 1966 on the marketing of cereal seed, and in particular Article 21b thereof.

ii. **Voting Procedure**

Qualified majority

iii. **Timetable for adoption and implementation**

This proposal was adopted on 5 November 2021 and published in the OJ on the 8 November. The provisions shall apply in the EU from 1 September 2022 until 31 August 2029.

## **POLICY IMPLICATIONS**

15. The amendments made by Directive 2021/1927 have arisen due to developments in recent years in breeding techniques for the production of hybrids of cereal seed varieties using CMS which were found to benefit increased yield performance and/or improved yield stability under drought stress. The benefits of using CMS for the production of hybrid barley is already recognised and is reflected within current seed marketing legislation.
16. Future UK policy on the marketing of hybrid wheat produced under CMS within GB has yet to be determined and, as a devolved area, discussions on future policy will be held under the provisional common framework. Directive 2021/1927 is founded on recent OECD proposals to temporarily modify the conditions within the OECD cereal seed scheme for the certification of seed moving in international trade, to allow the production and certification of hybrid wheat using CMS. With an increasing demand globally for wheat that can both withstand the effects of climate change and sustain an increasing world population the UK, as a member of the OECD seed schemes, has supported the OECD proposals which are due to take effect in the OECD from January 2022, and has volunteered to be part of a working group going forward. Any engagement with the EU and its MSs on this issue on a technical level is likely to take place in this international forum in the first instance.
17. Directive 2021/1927 amends the Annexes to EU Directive 66/402/EEC which falls under Annex 2 to the Protocol on Ireland/Northern Ireland to the Withdrawal Agreement and as such will apply in Northern Ireland. This means Northern Ireland is required to transpose Directive 2021/1927 into its domestic law. Although there is therefore the potential for regulatory divergence, the impact is considered negligible. This is because:
  - trade in cereal seed from Northern Ireland to GB is small.
  - the seed marketing regulations in GB make provision for seed certified in any part of the UK to be marketable throughout GB.
  - the UK Internal Market Act 2020 provides unfettered access to the UK internal market for qualifying Northern Ireland goods which includes regulated seed for sowing.
  - It will be possible to export and market hybrid wheat seed into NI from GB under the OECD seed schemes (see paragraphs 7 and 8 for further explanation).
18. The Government is in intensive discussions with the EU with the aim of delivering significant changes to the NI Protocol. The UK Government's Command Paper 'The Northern Ireland Protocol: the way forward', published on 21 July 2021, put forward our proposals for durable solutions. The UK has proposed a number of possible ways forward but it has not been possible to make progress so far. We

need solutions-focused discussions. The talks need to proceed with renewed urgency in the New Year.

## **CONSULTATION**

19. The views of any relevant stakeholders will be sought when considering any similar amendments to the technical requirements for GB. However, no significant cost implications for business are foreseen as any amendments would involve a change to only a small number of technical requirements within existing rules. We do not therefore envisage an impact assessment will be needed.

## **FINANCIAL IMPLICATIONS**

20. None.



**LORD BENYON**

**PARLIAMENTARY UNDER SECRETARY OF STATE (MINISTER FOR RURAL AFFAIRS AND BIOSECURITY)**

**DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS**