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SCOTTISH STATUTORY INSTRUMENTS

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**2000 No. 201**

**The Seed Potatoes (Scotland) Regulations 2000**

**PART I**

**PRELIMINARY**

**Citation, commencement and extent**

- 1.—(1) These Regulations may be cited as the Seed Potatoes (Scotland) Regulations 2000.
- (2) These Regulations, except regulation 6, shall come into force on 7 July 2000.
- (3) Regulation 6 shall come into force on 1 April 2001.
- (4) These Regulations extend to Scotland only,

**Interpretation**

- 2.—(1) In these Regulations, unless the context otherwise requires—
  - “the Act” means the Plant Varieties and Seeds Act 1964;
  - “the 1991 Regulations” means the Seed Potatoes Regulations 1991(1);
  - “agricultural unit” has the meaning assigned to that expression in section 86(2) of the Agriculture (Scotland) Act 1948(2);
  - “authorised officer” means an officer of the Scottish Ministers or a person authorised by the Scottish Ministers to execute Part II of the Act;
  - “basic seed potatoes” means—
    - (a) in the case of seed potatoes produced in Scotland, seed potatoes in relation to which a certificate of classification as basic seed potatoes has been issued and not withdrawn; and
    - (b) in the case of seed potatoes produced outside Scotland, seed potatoes being a lot or part of a lot moved into Scotland in a package or container, to or in which a label or document, approved by the relevant authority, has been attached or placed, stating that on examination of the potatoes they were classified as seed potatoes of a basic category in that country or place;
  - “certificate of classification” means a certificate of classification issued under these Regulations stating the particulars specified in Schedule 3;
  - “class” means—
    - (a) in the case of seed potatoes produced in Scotland the class in which the seed potatoes were placed during the course of classification and specified in the certificate relating to those potatoes, being in the case of pre-basic seed potatoes any one of the classes specified in order of superiority in column 1 of Table I in Schedule 2 and in the case of

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(1) S.I.1991/2206; amended by 1992/1031, 1993/1878, 1994/2592 and 1997/1474.

(2) 1948 c. 45.

basic seed potatoes any one of the classes specified in order of superiority in column 1 of Table II in Schedule 2; and

- (b) in relation to seed potatoes produced outside Scotland, the class specified in a label or document approved by the relevant authority, being a label attached to or document contained in the package or container in which the seed potatoes are moved into Scotland, and “classification”, “classify” and “classified” shall be construed accordingly;

“the Common Catalogue Directive” means Council Directive 70/457EEC(3) on the common catalogue of varieties of agricultural plant species;

“Community grade” in relation to basic seed potatoes means EEC1, EEC2 or EEC3 being one of the grades determined by Commission Directive 93/17/EEC(4) determining Community grades of basic seed potatoes, together with the conditions and designations applicable to such grades;

“container” includes a chitting tray, box or crate;

“Council Directive 66/403” means Council Directive 66/403(5) of June 14, 1966 on the marketing of seed potatoes;

“Council Directive 90/220” means Council Directive 90/220 EEC(6) of 23 April 1990 on the deliberate release into the environment of genetically modified organisms;

“genetically modified” has the same meaning as for the purposes of Council Directive 90/220 EEC;

“lot” means an identifiable part of a consignment which is recorded and listed as a separate item in an invoice, delivery note or other document provided in accordance with regulation 14;

“marketing” means marketing to which these Regulations apply by virtue of regulation 3;

“nuclear stock” means the initial propagating material which, in circumstances notified in writing as being acceptable to the Scottish Ministers, is tested and maintained free from pathogens;

“official document” means the document required by Article 10.1(b) of Council Directive 66/403;

“official examination” means an examination carried out by or on behalf of the Scottish Ministers;

“official label” means—

- (a) in the case of seed potatoes produced in Scotland, a wear and tear resistant label supplied by or on behalf of the Scottish Ministers which meets the requirements set out in Schedule 6, paragraph 1 or 2; and
- (b) in the case of seed potatoes produced outside Scotland, a label approved by the relevant authority and issued pursuant to Council Directive 66/403 which meets the requirements set out in Schedule 6, paragraph 1 or 2;

“package” includes a bag, box or sack;

“pre-basic seed potatoes” means—

- (a) in the case of seed potatoes produced in Scotland, seed potatoes in relation to which a certificate of classification as pre-basic seed potatoes has been issued in accordance with Schedule 1 and not withdrawn; and

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(3) O.J. No. L225, 12.10.70, p1 (English Special Edition Supplement Series 1 (66-70) p.36); as last amended by Council Directive 98/96 EC (O.J. No. L25, 1.2.1999, p.27).

(4) O.J. No. L106, 30.4.93, p.7.

(5) O.J. No. L125, 11.7.66, p.154 as last amended by Council Directive 98/96 EC (O.J. No. L25, 1.2.1999, p.27).

(6) O.J. No. L117, 8.5.90, p.15.

- (b) in the case of seed potatoes produced outside Scotland, seed potatoes –
  - (i) produced in a country or place where the arrangements applying to pre-basic seed potatoes have been approved by Scottish Ministers as being equivalent to those applying in Scotland; and
  - (ii) being a lot or part of a lot moved into Scotland in a package or container, to or in which a label or document, approved by the relevant authority, has been attached or placed, stating that on examination of the potatoes they were classified as seed potatoes of a pre-basic category;

“potato” means any tuber or part thereof or any plant or part thereof of *Solanum tuberosum* L. or other tuber-forming species or hybrids of *Solanum*;

“premises” includes any land or building other than a private dwellinghouse and also includes any vehicle, vessel, aircraft, hovercraft or freight container;

“relevant authority” means the authority in the country or place where seed potatoes are produced which is concerned with the classification of seed potatoes in that country or place for the purposes of Council Directive 66/403;

“seed potatoes” means potatoes which bear that description or any description indicating their suitability for planting and propagation and which are capable of being used for planting and propagation or any potatoes that are intended to be used for planting and propagation;

“seed potatoes produced outside Scotland” means seed potatoes produced in any part of the European Community other than Scotland or in Switzerland, the Channel Islands, or the Isle of Man or in any country or place in which seed potatoes are produced in circumstances notified in writing as being acceptable to the Scottish Ministers;

“size” in relation to seed potatoes means the size of the square mesh of the riddle or gauge through or by which the seed potatoes may be passed or retained.

(2) Unless the context otherwise requires, any reference in these Regulations to a numbered regulation or Schedule shall be construed as a reference to the regulation or Schedule bearing that number in these Regulations and in any Schedule to these Regulations any reference to a numbered paragraph or Table shall be construed as a reference to the paragraph or Table so numbered in that Schedule.

(3) Any reference in these Regulations to a Community instrument is a reference to that instrument and any amendment of such instrument in force on the date these Regulations are made.

### **Application**

3.—(1) Subject to paragraphs (2), (4) and (5), these Regulations apply to—

- (a) the production of seed potatoes on or after 7 July 2000 with a view to marketing;
- (b) the classification and grading on or after that date of seed potatoes produced in Scotland; and
- (c) the marketing on or after that date of seed potatoes.

(2) In the case of regulation 6, for the reference in paragraph (1) to 7 July 2000 there is substituted reference to 1 April 2001.

(3) In paragraph (1), “marketing” means—

- (a) selling, holding with a view to sale and offering for sale; and
- (b) any disposal, supply or transfer,

for the purpose of commercial exploitation of seed potatoes to third parties, whether or not for consideration; and “market” and “marketed” shall be construed accordingly.

(4) The supply of seed potatoes, not aimed at commercial exploitation of the variety, such as the following operations, shall not be treated as marketing of seed potatoes of that variety—

- (a) the supply of seed potatoes to official testing and inspection bodies; or
- (b) the supply of seed potatoes to any person for the purpose of processing or packaging the seed potatoes provided he does not acquire title to the seed potatoes supplied.

(5) Nothing in these Regulations shall apply to the marketing by a producer under the authority of the Scottish Ministers of small quantities of seed potatoes used or to be used for the purposes of scientific investigation or in the course of a process of selection by or under the supervision of an authorised officer.

(6) In respect of genetically modified material, an authorisation may be granted under paragraph (5) only if—

- (a) the deliberate release of the genetically modified material has been authorised under a Part B consent, or the genetically modified material has been accepted for marketing in accordance with a Part C consent, issued for the purposes of Council Directive 90/220/EEC;
- (b) the seed potatoes are accompanied during marketing by a copy of the consent;
- (c) all appropriate measures, in accordance with an environmental risk assessment in respect of the material carried out in accordance with article 7(4) of the Common Catalogue Directive, have been taken by the producer of the seed potatoes to avoid adverse effects on human health and the environment; and
- (d) in the case of genetically modified material issued with a Part C consent, the conditions mentioned in paragraph (7) are met.

(7) The conditions referred to in paragraph (6)(d) are—

- (a) the producer intending to market the small quantity of seed potatoes for scientific purposes or selection work has made a written application for authorisation under paragraph (5) to Scottish Ministers giving—
  - (i) notice of intention to market a small quantity of seed potatoes for scientific purposes or selection work; and
  - (ii) such information relating to the acceptance for marketing of the variety of the seed potatoes concerned under Council Directive 90/220/EEC, and the scientific purposes or selection work in respect of which the marketing is to be carried out, as the Minister may require for the purposes of identifying the marketing and determining whether or not to grant the authorisation; and
- (b) the Minister is satisfied that an authorisation would be in accordance with the purpose of Article 4a.1(a) of Council Directive 66/403/EEC.

## PART II

### CLASSIFICATION AND GRADING

#### Classification of seed potatoes

- 4.—(1) Seed potatoes produced in Scotland shall be classified by an authorised officer as —
- (a) pre-basic seed potatoes of one of the classes (Pre-basic TC, Pre-basic 1 or Pre-basic 2) specified in column 1 of Table I in Schedule 2; or
  - (b) basic seed potatoes of one of the classes ( VTSC1, VTSC2, Super Elite 1, Super Elite 2, Super Elite 3, Elite 1, Elite 2, Elite 3 or AA) specified in column 1 of Table II in Schedule 2.

(2) Application for classification (of seed potatoes produced in Scotland) shall be made to the Scottish Ministers with such information in such form and in such manner as they may require.

### **Community Grading of basic seed potatoes**

5. Basic seed potatoes marketed in Scotland shall be graded by an authorised officer into one of the Community grades.

### **Production measures in the interests of plant health**

6.—(1) The production of seed potatoes shall at all stages be conducted in such manner as to ensure that they do not come into contact with any potatoes other than seed potatoes or with any plant, machinery, equipment, container, store or vehicle previously used in the production of potatoes other than seed potatoes.

(2) The Scottish Ministers may withdraw a certificate of classification where they are not satisfied that the seed potatoes covered by the certificate have been produced in compliance with paragraph (1).

(3) Paragraph (1) shall not apply where—

- (a) the potatoes were produced on the same agricultural unit; or
- (b) the production is conducted in accordance with arrangements approved in writing by the Scottish Ministers prior to the use of the plant, machinery, equipment, container, store or vehicle.

### **Separation in the interests of varietal purity**

7.—(1) The production of seed potatoes shall at all stages be conducted in such manner as to ensure that they are kept separate from—

- (a) seed potatoes of any other class or variety;
- (b) any potatoes other than seed potatoes.

(2) The Scottish Ministers may withdraw a certificate of classification where they are not satisfied that the seed potatoes covered by the certificate have been produced in compliance with paragraph (1).

## **PART III**

### **MARKETING AND LABELLING OF SEED POTATOES**

#### **Marketing of seed potatoes**

8.—(1) No person shall market any seed potatoes other than—

- (a) pre-basic seed potatoes; or
- (b) basic seed potatoes of a Community grade.

(2) No person shall market seed potatoes—

- (a) as being of a class superior to that in which they were classified;
- (b) otherwise than in a lot consisting wholly of seed potatoes of that class;
- (c) otherwise than in a lot which meets the requirements as to varietal purity and size specified in Schedule 4 in relation to a lot of seed potatoes of that class;

- (d) which have been treated with a product which is produced primarily as an application for inhibiting germination; or
- (e) otherwise than in—
  - (i) a new package or container; or
  - (ii) a container which, having been previously used for any purpose, has been cleaned and disinfected, in accordance with the requirements of an authorised officer, since being last so used.

(3) No person shall market any genetically modified seed potatoes unless it is clearly indicated in the sales catalogue of the person marketing the seed potatoes and in any other marketing information or marketing representations provided by that person, that the seed potatoes have been genetically modified.

(4) A person who imports any quantity of seed potatoes exceeding 2 kilograms from outside the European Community shall provide the Scottish Ministers with the particulars specified in Schedule 5 in respect of the seed potatoes.

### **Labelling of seed potatoes**

9.—(1) No person shall market a package or container of seed potatoes unless there is attached to the outside—

- (a) in the case of pre basic seed potatoes, the official label meeting the requirements set out in Schedule 6, paragraph 1 issued in relation to those potatoes;
- (b) in the case of basic seed potatoes, the official label meeting the requirements set out in Schedule 6, paragraph 2 issued in relation to those potatoes; and
- (c) in either case, where the label particulars are not indelibly printed on the package or container or on a wear and tear resistant or adhesive label attached to it, it contains the official document required by Article 10.1(b) of Council Directive 66/403 so issued.

(2) Application for an official label in respect of seed potatoes produced in Scotland shall be made to the Scottish Ministers with such information in such form and in such manner as they may require.

(3) No person shall, in connection with the issue of an official label, supply any information which is false in a material respect.

(4) Where seed potatoes have been treated with any chemical product, the type and function or the proprietary name of that product shall be stated on a label attached to the package or container and on a document contained in the package or container.

(5) In the case of a genetically modified variety of seed potatoes, any label, whether official or otherwise, attached to any lot of that variety and any document contained in the package or container, shall clearly indicate that the variety has been genetically modified.

(6) When a package or container is re sealed in accordance with regulation 10(2) the official label shall state—

- (a) that the package or container has been so re sealed;
- (b) the date of re sealing; and
- (c) the authority responsible for re sealing.

(7) Except in accordance with the requirements of the Act or of these Regulations or of any Order made under the Plant Health Act 1967(7), no person shall in connection with the marketing or the preparation for the marketing of any seed potatoes, wilfully reproduce, remove, alter, deface,

conceal or misuse in any way any official label or any other label attached to or document contained in the package or container of such potatoes in accordance with this regulation.

### **Sealing of packages**

**10.**—(1) No person shall market a package or container of pre-basic or basic seed potatoes unless it is sealed with an unbroken sealing device.

(2) Where a sealing device on a package or container is broken, the package or container shall not be re-sealed with a sealing device otherwise than by or under the supervision of an authorised officer.

(3) For the purposes of this regulation a “sealing device” means a device applied in such a manner to a package or container that when the package or container is opened the device will be broken but does not include an official label with a punched tie hole which is machine stitched into the mouth of a bag.

### **Official examination prior to marketing**

**11.** No person shall market any quantity of seed potatoes which has been prepared for marketing until it has been subjected to an official examination, or that person has been notified in writing by an authorised officer that official examination prior to marketing is not required.

### **Withholding or withdrawal of official label**

**12.** The Scottish Ministers may withhold an official label or may withdraw any official label in respect of any lot or any part thereof where they are satisfied that—

- (a) the lot does not comply with the requirements as to varietal purity and size specified in Schedule 4 in relation to a lot of seed potatoes of the class stated on the label;
- (b) the seed potatoes comprised in the lot exceed any of the tolerances for diseases, pests, damage and defects specified in the Table set out in Schedule 7 applicable to those potatoes;
- (c) any official label already issued in respect of the seed potatoes contains any particular which is false in a material respect; or
- (d) there has been any failure to comply with these Regulations in respect of any of the seed potatoes.

### **Compliance and disease control measures**

**13.**—(1) Where in the course of any official examination of seed potatoes an authorised officer is satisfied that in relation to the seed potatoes—

- (a) any requirement specified in these Regulations has not been met; or
- (b) any of the tolerances specified in the Table set out in Schedule 7 applicable to those potatoes are exceeded,

the authorised officer may serve a notice on the person in whose possession or charge the potatoes appear to be informing that person accordingly and requiring him—

- (i) not to move or permit or cause to be moved the seed potatoes specified in the notice from the premises specified in the notice except in accordance with the written consent of an authorised officer; or
- (ii) to move or permit or cause to be moved such seed potatoes within the period specified in the notice to such premises as may be so specified and thereafter not to move or permit or cause to be moved the seed potatoes from those premises except as provided in the notice.

(2) A notice served on a person by an authorised officer under paragraph (1) of this regulation may require that person to carry out on such premises at such time, within such period and in accordance with such methods as may be specified in the notice, such measures as may be specified being measures which in the opinion of the authorised officer are necessary—

- (a) to ensure that the requirements specified in these Regulations are met; or
- (b) to prevent the spread of any of the specified diseases or pests by means of the seed potatoes.

(3) The measures specified pursuant to paragraph (2) shall—

- (a) not be varied except by or in accordance with the written consent of an authorised officer; and
- (b) be carried out to the satisfaction of an authorised officer by and at the expense of the person on whom the notice has been served.

(4) Where in the course of any official examination an authorised officer is of the opinion that any seed potatoes are affected by any disease, pest or damage mentioned in the Table set out in Schedule 7 applicable to those potatoes, the authorised officer may serve on the person in whose possession or charge the potatoes appear to be a notice—

- (a) making any requirement and specifying any measure which may be made or specified pursuant to paragraph (2) in a notice served under paragraph (1);
- (b) specifying a period not exceeding 14 days beginning with the date of service of the notice during which the potatoes shall not be moved from the premises specified in the notice except in accordance with the written consent of an authorised officer.

(5) Where a notice has been served under paragraphs (1) or (4) and until such time as the requirements of the notice have been complied with to his satisfaction, an authorised officer may remove and retain or direct the person in whose possession or charge the potatoes appear to be to remove and deliver to the authorised officer—

- (a) any official label; and
- (b) in the case of seed potatoes produced outside Scotland, any document of the kind referred to in regulation 9(1)(c).

### **Particulars of sale**

**14.** Any person who sells, consigns or delivers seed potatoes shall issue to the purchaser not later than 14 days after the sale, or, if the seed potatoes are not delivered at the time of the sale, not later than 14 days after delivery thereof, a sale note, delivery note, invoice or similar document specifying in relation to the seed potatoes so sold, consigned or delivered the particulars specified in Schedule 8.

### **Retail sales of seed potatoes**

**15.—(1)** The regulations mentioned in paragraph (2) do not apply to a sale by retail of a quantity of less than 50 kg of seed potatoes—

- (a) in circumstances where at the time of sale there is displayed conspicuously on or in close proximity to the seed potatoes a statement of the particulars specified in Schedule 8; or
- (b) in a package or container upon which is printed, or otherwise legibly and indelibly marked, or attached to or inserted therein a label marked with the particulars specified in Schedule 8.

(2) The regulations referred to in paragraph (1) are—

- (a) regulation 9 (labelling of seed potatoes);
- (b) regulation 10 (sealing of packages);



- (c) regulation 11 (official examination prior to marketing); and
- (d) regulation 14 (particulars of sale).

## PART IV

### GENERAL

#### **Sampling of seed potatoes**

**16.**—(1) A sample of seed potatoes required for the purposes of these Regulations shall be taken by an authorised officer in accordance with the provisions of this regulation.

(2) Where a sample is so required in connection with classification of seed potatoes an authorised officer may take a sample of potatoes of such quantity or number and from such part or parts of the growing or harvested crop as he may think expedient.

(3) Where a sample is so required otherwise than as mentioned in paragraph (2) of this regulation an authorised officer shall take the sample in accordance with Schedule 9.

#### **Information regarding seed potatoes**

**17.**—(1) Any person who produces pre-basic seed potatoes or basic seed potatoes shall maintain for a period of not less than 2 years records of purchase of seed potatoes for planting and particulars of the crops grown and of the marketing of the produce of these crops.

(2) Any person who markets pre-basic seed potatoes or basic seed potatoes shall maintain for a period of not less than 2 years thereafter a record of his marketing of such seed potatoes.

(3) Any person who produces or markets pre-basic seed potatoes or basic seed potatoes or otherwise has or has had pre-basic seed potatoes or basic seed potatoes in his possession or in his charge shall if so required in writing by an authorised officer give within 7 days any information he may possess as to the person in whose possession or under whose charge they are or have been and shall produce for examination by an authorised officer any declarations, certificates, labels, records or invoices relating to the planting, classification or marketing of seed potatoes.

#### **Service of notices**

**18.**—(1) For the purposes of these Regulations, a notice shall be deemed to have been served on any person if it is delivered to him personally or left for him at his last known place of abode or business or sent through the post in a letter addressed to him there.

(2) A notice may—

- (a) in case of a body corporate, be served on the secretary or clerk of that body at the address of the registered or principal office of that body; and
- (b) in the case of a partnership, be served on the firm at the principal office of the partnership.

#### **Exemptions**

**19.** Notwithstanding any provisions of these Regulations, the Scottish Ministers may exempt any person or class of person, or persons generally, from compliance with any of the requirements of these Regulations in respect of seed potatoes subject to such conditions as the Scottish Ministers may think fit.

### Consequential Amendment to Plant Health Order 1993

20. For article 18(4) (miscellaneous provisions for certain solanaceous species) of the Plant Health Order 1993((8)there is substituted—

“(4) No person shall plant, or knowingly cause or permit to be planted, in Scotland, potatoes other than—

- (a) potatoes which may be marketed in Scotland under the Seed Potatoes (Scotland) Regulations 2000; or
- (b) one year’s direct progeny of such potatoes, where that direct progeny has been grown by that person.

Persons involved in the planting of potatoes in Scotland shall retain and make available to an authorised officer documentation specified in paragraph (5).”.

### Extension and modification of provisions of the Act

21.—(1) In connection with the provisions of these Regulations the operation of the provisions of sections 25 and 26 of the Act shall be modified or, as the case may be, excluded in accordance with the provisions of this regulation.

(2) Section 25(9) of the Act (powers of entry) shall be modified as if for the purposes of that section any reference to “premises” were a reference to premises as defined in these Regulations relating to seed potatoes and any reference to a subsection containing a reference to premises were a reference to that subsection as so modified.

(3) Section 25(1) of the Act shall be modified as if the reference to subsection (4) of that section were a reference to that subsection as modified by paragraph (4) of this regulation.

(4) In section 25(4) of the Act the words after “potatoes” (where it first occurs) to the end shall be omitted.

(5) In section 26 of the Act (use of samples in criminal proceedings) subsections (2), (4), (5), (6), (7), (8) and (9) shall be omitted.

### Revocations and savings

22.—(1) The Regulations specified in Schedule 10 to these Regulations are revoked.

(2) Any classification or grading in Scotland of seed potatoes undertaken under regulations 7 or 7A of the 1991 Regulations and any application for classification made or certificate of classification issued in Scotland in pursuance of those Regulations shall be deemed to be undertaken, made or, as the case may be issued under and in accordance with these Regulations.

(3) Any official label or document issued in respect of an application under regulation 11(4) of the 1991 Regulations in relation to seed potatoes produced in Scotland shall be deemed to be an official label within the meaning of these Regulations.

St Andrew’s House,  
Edinburgh  
15th June 2000

*ROSS FINNIE*  
A member of the Scottish Executive

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(8) 1993/1320; to which there are amendments not relevant to these Regulations.

(9) Section 25 was amended by the European Communities Act 1972 (c. 68), Schedule 3, Part III and Schedule 4, paragraph 5; Criminal Justice Act 1982 (c. 48), Schedule 6, paragraph 16.