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SCOTTISH STATUTORY INSTRUMENTS

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**2004 No. 317**

**The Oil and Fibre Plant Seed (Scotland) Regulations 2004**

**PART I  
GENERAL**

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Oil and Fibre Plant Seed (Scotland) Regulations 2004, and shall come into force on 26th September 2004.

(2) These Regulations extend to Scotland only.

**Interpretation**

2.—(1) In these Regulations—

“the Act” means the Plant Varieties and Seeds Act 1964;

“Annex V(C) document” means a document of the type specified in the second indented sub paragraph of the first paragraph of Article 19(2) (packing and labelling of not yet finally certified seed harvested in another EEA State or third country) of the Oil and Fibre Plant Seed Directive containing the particulars specified in Part C (document to be provided in the case of not yet finally certified seed harvested in another EEA State or third country) of Annex V of that Directive issued by the relevant competent seed certification authority;

“black mustard” means plants of the species specified in column 2 of Schedule 1 in relation to black mustard;

“blended seed lot” means a seed lot obtained by mixing seed where—

(a) the seed that goes into the seed lot—

(i) is of the same variety;

(ii) has come from different sources; and

(iii) either—

(aa) is fully certified seed;

(bb) is not fully certified seed, but is seed which has been harvested from seed crops for which official field inspection reports have been issued showing that the relevant crops met the conditions for the relevant category of seed specified in Part I of Schedule 4 or Annex I (crop conditions) of the Oil and Fibre Plant Seed Directive; or

(cc) is made up of seed which falls within sub paragraph (aa) and seed which falls within sub paragraph (bb); and

(b) a National Authority has been notified that the seed which goes into the seed lot is intended to be included in a blended seed lot;

“breeder”—

(a) in relation to a variety which has not been accepted on to a UK National List or the Common Catalogue, includes any person lawfully multiplying (on their own account) seed bred by another; and

(b) in relation to a variety which has been so accepted, means the person who is indicated in the relevant UK National List or in the Common Catalogue as responsible for maintaining the plant variety in accordance with the characteristics to which regard was had when the plant variety was accepted on to the relevant UK National List or Common Catalogue;

“breeder’s confirmation” means a document issued by the Scottish Ministers in accordance with Part II of Schedule 2 containing in respect of the seed to which it relates the particulars specified in paragraph 2 of Schedule 3;

“brown mustard” means plants of the species specified in column 2 of Schedule 1 in relation to brown mustard;

“bulked seed lot” means a seed lot obtained by mixing seed where–

(a) the seed that goes into the seed lot is–

(i) of the same variety;

(ii) has come from different sources; and

(iii) has been harvested from seed crops for which official field inspection reports have been issued showing that the relevant crops met the conditions for the relevant category of seed specified in Part I of Schedule 4 or Annex I (crop conditions) of the Oil and Fibre Plant Seed Directive; and

(b) a National Authority has been notified that the seed which goes into the seed lot is intended to be included in a bulked seed lot;

“Common Catalogue” means the Common Catalogue of varieties of species of agricultural plants published in the Official Journal of the European Communities;

“the Common Catalogue Directive” means Council Directive [2002/53/EC](#)(1) on the common catalogue of varieties of agricultural plant species, as amended by the Food and Feed Regulation;

“component” means–

(a) in the case of Pre basic Seed, a component used in the production of a hybrid variety; and

(b) in the case of Basic Seed, a component of a hybrid variety;

“control plot” means a plot sown by a European Authority with seed from a submitted sample taken–

(a) by a European Authority; or

(b) by a licensed seed sampler;

“the 1990 Deliberate Release Directive” means Council Directive [90/220/EEC](#)(2) on the deliberate release into the environment of genetically modified organisms, as amended by Commission Directive [94/15/EC](#)(3) and Commission Directive [97/35/EC](#)(4);

“the 2001 Deliberate Release Directive” means Directive [2001/18/EC](#) of the European Parliament and of the Council(5) on the deliberate release into the environment of genetically modified organisms and repealing Council Directive [90/220/EEC](#), as amended by Commission

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(1) O.J. No. L 193, 20.7.02, p.1.

(2) O.J. No. L 117, 8.5.90, p.15.

(3) O.J. No. L 103, 22.4.94, p.20.

(4) O.J. No. L 169, 27.6.97, p.72.

(5) O.J. No. L 106, 17.4.01, p.1.

Decision 2002/623(6), the Food and Feed Regulation and Regulation (EC) No 1830/2003 of the European Parliament and of the Council(7);

“Department of Agriculture and Rural Development” means the Department of Agriculture and Rural Development in Northern Ireland;

“dioecious hemp” means hemp of dioecious hemp varieties;

“early movement seed” means seed marketed under regulation 12;

“EEA State” means a Member State, Norway, Iceland or Lichtenstein;

“Equivalence Decision” means Council Decision 2003/17/EC(8) 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, as amended by Council Decision 2003/403/EC(9) and Council Regulation (EC) No 885/2004(10);

“European Authority” means a National Authority or a competent seed certification authority of an EEA State other than the United Kingdom and “by a European Authority” means–

- (a) by or on behalf of the Department of Agriculture and Rural Development;
- (b) by or on behalf of the National Assembly for Wales;
- (c) by the Scottish Ministers;
- (d) by or on behalf of the Secretary of State; or
- (e) by a competent seed certification authority of an EEA State other than the United Kingdom;

“first buyer by way of trade” has the same meaning as for the purposes of the Oil and Fibre Plant Seed Directive;

“flax” means plants of the species specified in column 2 of Schedule 1 in relation to flax, commonly known as flax;

“the Food and Feed Regulation” means Regulation (EC) No 1829/2003 of the European Parliament and of the Council(11) on genetically modified food and feed;

“fully certified” means–

- (a) officially certified; or
- (b) certified by a European Authority other than the Scottish Ministers,

as satisfying the conditions specified for the relevant category of seed in regulation 3 and in Annexes I (crop conditions) and II (seed conditions) of the Oil and Fibre Plant Seed Directive;

“genetically modified” has the same meaning as for the purposes of the 2001 Deliberate Release Directive;

“hemp” means plants of the species specified in column 2 of Schedule 1 in relation to hemp;

“homogeneous seed lot” means a seed lot in which the seed has been so mixed or blended that it is as uniform as practicable and, as far as is practicable, the seed lot shows no evidence of heterogeneity;

“inbred line” means a sufficiently uniform and stable line obtained either by artificial self-fertilisation with selection over several successive generations or by equivalent operations;

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(6) O.J. No. L 200, 30.7.02, p.22.

(7) O.J. No. L 268, 18.10.03, p.24.

(8) O.J. No. L 8, 14.1.03, p.10.

(9) O.J. No. L 141, 7.6.03, p.23.

(10) O.J. No. L 168, 1.5.04, p.1.

(11) O.J. No. L 268, 18.10.03, p.1.

“licensed crop inspector” means a person who holds a current licence to be a crop inspector granted by–

- (a) the Scottish Ministers under regulation 10(1) (licensing of seed samplers and crop inspectors) of the Seeds (Registration, Licensing and Enforcement) Regulations 1985<sup>(12)</sup>; or
- (b) a National Authority other than the Scottish Ministers under provisions equivalent to that regulation;

“licensed EC crop inspector” means a person authorised by a competent seed certification authority in an EEA State other than the United Kingdom, pursuant to Article 2(5)(a)(iii) (licensed crop inspectors) of the Oil and Fibre Plant Seed Directive, to carry out field inspections of crops in that EEA State;

“licensed seed sampler” means a person who holds a current licence to be a seed sampler granted by–

- (a) the Scottish Ministers under regulation 10(1) (licensing of seed samplers and crop inspectors and licensed seed samplers) of the Seeds (Registration, Licensing and Enforcement) Regulations 1985; or
- (b) a National Authority other than the Scottish Ministers under provisions equivalent to that regulation;

“licensed seed testing station” means an establishment which holds a current licence for testing of seed granted by–

- (a) the Scottish Ministers under regulation 9(1) (licensing of seed testing stations) of the Seeds (Registration, Licensing and Enforcement) Regulations 1985; or
- (b) a National Authority other than the Scottish Ministers under provisions equivalent to that regulation;

“linseed” means plants of the species specified in column 2 of Schedule 1 in relation to linseed, commonly known as linseed;

“lower germination seed” means seed marketed under regulation 11;

“monoecious hemp” means hemp of monoecious hemp varieties;

“National Authority” means the Department of Agriculture and Rural Development, the National Assembly for Wales, the Scottish Ministers or the Secretary of State;

“official certificate” means a certificate issued by the Scottish Ministers in accordance with Part I of Schedule 2 containing in respect of the seed to which it relates the particulars specified in paragraph 1 of Schedule 3 and “officially certified” shall be construed accordingly;

“official examination” means–

- (a) in relation to Seed of a Certified Generation or Commercial Seed–
  - (i) an examination or a test carried out by the Scottish Ministers;
  - (ii) if the seed has undergone official post control the results of which have been satisfactory, a field examination carried out by a licensed crop inspector; or
  - (iii) a test carried out by a licensed seed testing station; and
- (b) in relation to Pre basic Seed and Basic Seed–
  - (i) an examination or a test carried out by the Scottish Ministers; or
  - (ii) a test carried out by a licensed seed testing station;

“official field inspection” means a field examination of a crop carried out–

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(12) S.I.1985/980, as relevantly amended by S.I. 1987/1098, 1990/611 and 1993/2530.

- (i) by a European Authority; or
- (ii) in the case of seed which, if it were fully certified would be Seed of a Certified Generation, or Commercial Seed, and which has been harvested from a crop which has been produced from seed that has undergone official post-control the results of which have been satisfactory, by a field examination of the crop carried out by a licensed crop inspector or a licensed EC crop inspector;

“official label” means a label issued by a European Authority;

“official post control” means a control plot has been sown with seed from the relevant seed lot and has produced plants which have been examined by the relevant European Authority; and  
“official post control the results of which have been satisfactory” means official post control has been carried out for the relevant seed lot and the relevant European Authority has found, having regard to–

- (a) the conditions specified in–
  - (i) in the case of the Scottish Ministers–
    - (aa) paragraphs 4, 8 and 9 of Part I of Schedule 4;
    - (bb) paragraphs 10, 11 and 15(1) of Part II of Schedule 4; and
  - (ii) in the case of a European Authority other than the Scottish Ministers–
    - (aa) Annex I (crop conditions) of the Oil and Fibre Plant Seed Directive; and
    - (bb) Annex II (seed conditions) of the Oil and Fibre Plant Seed Directive; and
- (b) the category of the seed to be produced,

that the plants produced in the control plot indicate that the corresponding plants in the field are satisfactory plants from which to harvest the relevant category of seed;

“Oil and Fibre Plant Seed Directive” means Council Directive [2002/57/EC](#) on the marketing of seed of oil and fibre plants<sup>(13)</sup> as amended by Council Directive [2002/68/EC](#)<sup>(14)</sup>, Commission Directive [2003/45/EC](#)<sup>(15)</sup> and Council Directive [2003/61/EC](#)<sup>(16)</sup>;

“Secretary of State” means the Secretary of State for Environment, Food and Rural Affairs;

“seed lot” means an identifiable consignment of seed of a weight not exceeding that specified in column 2 of the table in paragraph 24 of Part II of Schedule 5 for the species specified in column 1 of that table by more than 5%, including a blended seed lot and a bulked seed lot, which bears a unique seed lot reference number;

“small package” means a package containing a net weight of not more than 15 kilograms of fully certified Pre basic Seed, fully certified Basic Seed, Seed of a Certified Generation or Commercial Seed;

“soya bean” means plants of the species specified in column 2 of Schedule 1 in relation to soya bean;

“submitted sample” means a sample of at least the minimum weight of a sample specified in paragraph 24 of Part II of Schedule 5, or in the case of a sample to be submitted to a licensed seed testing station, double the minimum weight of a sample specified in paragraph 24 of Part II of Schedule 5, taken from a seed lot in accordance with the provisions of Part I of Schedule 5;

“sunflower” means plants of the species specified in column 2 of Schedule 1 in relation to sunflower;

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(13) O.J. No. L 193, 20.7.02, p.74.

(14) O.J. No. L 195, 24.7.02, p.32.

(15) O.J. No. L 138, 5.6.03, p.40.

(16) O.J. No. L 165, 3.7.03, p.23.

“swede rape” means plants of the species specified in column 2 of Schedule 1 in relation to swede rape, including plants commonly known as swede fodder rape and swede oilseed rape;

“third country” means a country listed in Annex I (countries, authorities and species) to the Equivalence Decision or Switzerland;

“turnip rape” means plants of the species specified in column 2 of Schedule 1 in relation to turnip rape, including plants commonly known as turnip fodder rape and turnip oilseed rape;

“UK National List ” means a list of varieties of species of oil and fibre plants for the time being published in accordance with the Seeds (National Lists of Varieties) Regulations 2001(17);

“white mustard” means plants of the species specified in column 2 of Schedule 1 in relation to white mustard.

(2) In these Regulations–

- (a) any reference to a numbered regulation, to a numbered Part or to a numbered Schedule is a reference to the regulation, Part or Schedule in these Regulations so numbered; and
- (b) any reference to a numbered paragraph is a reference to the paragraph so numbered in the regulation or Schedule in which that reference occurs.

### **Definitions of seed categories**

3. In these Regulations–

“Breeder’s Seed” means seed of a generation prior to Basic Seed which has been produced by or under the responsibility of the breeder and is intended for the production of Pre-basic Seed or Basic Seed;

“Pre-basic Seed” means seed of a generation prior to Basic Seed which–

- (a) other than in relation to a component used in the production of a hybrid variety–
  - (i) has been produced by or under the responsibility of the breeder according to accepted practices for the maintenance of the variety; and
  - (ii) is intended to be used for the production of more Pre-basic Seed, Basic Seed, or with the written authority of the breeder–
    - (aa) in the case of black mustard, brown mustard, dioecious hemp, sunflower, swede rape, turnip rape or white mustard, Certified Seed;
    - (bb) in the case of flax, linseed, monoecious hemp or soya bean, Certified Seed of the First Generation;
    - (cc) in the case of flax, linseed, monoecious hemp or soya bean, Certified Seed of the Second Generation; or
    - (dd) in the case of flax or linseed, Certified Seed of the Third Generation; or
- (b) in relation to a component of a hybrid variety seed is intended to be used for the production of–
  - (i) more Pre-basic Seed of the component;
  - (ii) Basic Seed; or
  - (iii) with the written authority of the breeder, Certified Seed of a hybrid variety; and
- (c) has been–
  - (i) officially certified, or certified by the Scottish Ministers by means of a breeder’s confirmation, as satisfying the conditions specified in paragraph (a) or (b) and the requirements for Basic Seed specified in Schedule 4; or

- (ii) certified by a European Authority other than the Scottish Ministers as satisfying the conditions specified in paragraph (a) or (b) and the requirements for Basic Seed specified in Annexes I (crop conditions) and II (seed conditions) of the Oil and Fibre Plant Seed Directive;

“Basic Seed” means seed which–

- (a) in relation to black mustard, brown mustard, flax, hemp, linseed, soya bean, sunflower, swede rape, turnip rape and white mustard, other than a hybrid variety–
  - (i) has been produced by or under the responsibility of the breeder according to accepted practices for the maintenance of the variety; and
  - (ii) is intended to be used for the production of–
    - (aa) in the case of black mustard, brown mustard, dioecious hemp, sunflower, swede rape, turnip rape or white mustard, Certified Seed;
    - (bb) in the case of flax, linseed, monoecious hemp or soya bean, Certified Seed of the First Generation;
    - (cc) in the case of flax, linseed, monoecious hemp or soya bean, Certified Seed of the Second Generation; or
    - (dd) in the case of flax or linseed, Certified Seed of the Third Generation; or
- (b) in relation to a component of a hybrid variety, or an inbred line which is a component of a hybrid variety, seed which is intended to be used for the production of Certified Seed of a hybrid variety; or
- (c) in relation to a simple hybrid which is a component of a hybrid variety, seed which is intended to be used for the production of Certified Seed of a double cross hybrid variety or three way cross hybrid variety, where–
  - (i) “single cross hybrid” means the first generation of a cross between two inbred lines, defined by the breeder;
  - (ii) “double cross hybrid” means the first generation of a cross between two single cross hybrids, defined by the breeder; and
  - (iii) “three way cross hybrid” means the first generation of a cross between an inbred line and a single cross hybrid, defined by the breeder; and
- (d) has been–
  - (i) officially certified, or certified by the Scottish Ministers by means of a breeder’s confirmation, as satisfying the conditions specified in paragraphs (a), (b) or (c) and the requirements for Basic Seed specified in Schedule 4; or
  - (ii) certified by a European Authority other than the Scottish Ministers as satisfying the conditions specified in paragraph (a), (b) or (c) and the requirements for Basic Seed specified in Annexes I (crop conditions) and II (seed conditions) of the Oil and Fibre Plant Seed Directive;

“Certified Seed” means seed which, in relation to black mustard, brown mustard, dioecious hemp, sunflower, swede rape, turnip rape and white mustard including hybrids–

- (a) has been produced directly from Basic Seed or, with the breeder’s written authority, from Pre basic Seed;
- (b) is intended for purposes other than the production of oil and fibre plant seed; and
- (c) has been–
  - (i) officially certified as satisfying the conditions specified in paragraphs (a) and (b) and the requirements for Certified Seed specified in Schedule 4; or

- (ii) certified by a European Authority other than the Scottish Ministers as satisfying the conditions specified in sub paragraphs (a) and (b) and the requirements for Certified Seed specified in Annexes I (crop conditions) and II (seed conditions) of the Oil and Fibre Plant Seed Directive;

“Certified Seed of the First Generation” means seed of flax, linseed, monoecious hemp or soya bean which—

- (a) has been produced directly from Basic Seed or, with the written authority of the breeder, from Pre basic Seed;
- (b) is intended—
  - (i) for the production of Certified Seed of the Second Generation;
  - (ii) in the case of flax or linseed for the production of Certified Seed of the Third Generation; or
  - (iii) for purposes other than the production of oil and fibre plant seed; and
- (c) has been
  - (i) officially certified as meeting the conditions specified in paragraphs (a) and (b) and the requirements for Certified Seed of the First Generation specified in Schedule 4; or
  - (ii) certified by a European Authority other than the Scottish Ministers as satisfying the conditions specified in paragraphs (a) and (b) and the requirements for Certified Seed of the First Generation specified in Annexes I (crop conditions) and II (seed conditions) of the Oil and Fibre Plant Seed Directive;

“Certified Seed of the Second Generation” means seed of flax, linseed, monoecious hemp or soya bean which—

- (a) in the case of flax, linseed or soya bean—
  - (i) has been produced directly from the Basic Seed, Certified Seed of the First Generation or, with the written authority of the breeder, from Pre basic Seed;
  - (ii) is intended—
    - (aa) in the case of flax or linseed, for the production of Certified Seed of the Third Generation; or
    - (bb) in the case of flax, linseed or soya bean for purposes other than the production of oil and fibre plant seed; and
  - (iii) has been—
    - (aa) officially certified as satisfying the conditions specified in sub paragraphs (i) and (ii) and the requirements for Certified Seed of the Second Generation specified in Schedule 4; or
    - (bb) certified by a European Authority other than the Scottish Ministers as satisfying the conditions specified in sub paragraphs (i) and (ii) and the requirements for Certified Seed of the Second Generation specified in Annexes I (crop conditions) and II (seed conditions) of the Oil and Fibre Plant Seed Directive;
- (b) in the case of monoecious hemp—
  - (i) has been produced directly from Certified Seed of the First Generation which has been established and officially controlled with a special view to the production of Certified Seed of the Second Generation;
  - (ii) is intended for the production of hemp to be harvested in flower; and



- (iii) has been—
  - (aa) officially certified as satisfying the conditions specified in sub paragraphs (i) and (ii) and the requirements of Certified Seed of the Second Generation specified in Schedule 4; or
  - (bb) certified by a European Authority other than the Scottish Ministers as satisfying the conditions specified in sub paragraphs (i) and (ii) and the requirements for Certified Seed of the Second Generation specified in Annexes I (crop conditions) and II (seed conditions) of the Oil and Fibre Plant Seed Directive;

“Certified Seed of the Third Generation” means seed of flax or linseed which—

- (a) has been produced directly from Basic Seed, Certified Seed of the First Generation or Certified Seed of the Second Generation or, with the written authority of the breeder, from Pre basic Seed;
- (b) is intended for purposes other than the production of oil and fibre plant seed; and
- (c) has been—
  - (i) officially certified as satisfying the conditions specified in paragraphs (a) and (b) and the requirements for Certified Seed of the Third Generation specified in Schedule 4; or
  - (ii) certified by a European Authority other than the Scottish Ministers as satisfying the conditions specified in paragraphs (a) and (b) and the requirements for Certified Seed of the Third Generation specified in Annexes I (crop conditions) and II (seed conditions) of the Oil and Fibre Plant Seed Directive;

“Commercial Seed” means seed of black mustard which—

- (a) is identifiable as to its species; and
- (b) has been—
  - (i) officially certified as satisfying the conditions specified in paragraph (a) and the requirements for Certified Seed specified in Part II of Schedule 4; or
  - (ii) certified by a European Authority other than the Scottish Ministers as satisfying the conditions specified in paragraph (a) and the requirements for Certified Seed specified in Annex II (seed conditions) of the Oil and Fibre Plant Seed Directive;

“Seed of a Certified Generation” means Certified Seed, Certified Seed of the First Generation, Certified Seed of the Second Generation and Certified Seed of the Third Generation.

### **Definition of marketing**

4.—(1) In these Regulations “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 to third parties,

whether or not for consideration, and “market” and “marketed” shall be construed accordingly.

(2) Trade in seed not aimed at commercial exploitation of the variety, such as the following operations:—

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

shall not be treated as marketing of seed of that variety.

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*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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**Seed to which the Regulations apply**

5.—(1) Subject to paragraph (2), these Regulations apply to oil and fibre plant seed of the species specified in Schedule 1, being seed intended to be used only for the production of agricultural crops other than for ornamental purposes.

(2) These Regulations shall not apply to seed which is shown to be intended for export to a country which is not an EEA State.