
SCOTTISH STATUTORY INSTRUMENTS

2004 No. 317

The Oil and Fibre Plant Seed (Scotland) Regulations 2004

**PART II
MARKETING**

Marketing of seed

- 6.—(1) Subject to the provisions of this Part, no person shall market any seed unless—
- (a) it is marketed in seed lots or in parts of seed lots; and
 - (b) it is—
 - (i) Commercial Seed; or
 - (ii) seed of a plant variety of a species specified in Part I of Schedule 1 (varieties of plant species on national lists) to the Seeds (National Lists of Varieties) Regulations 2001⁽¹⁾ accepted on to a UK National List or the Common Catalogue and which is fully certified Pre-basic Seed, fully certified Basic Seed or Seed of a Certified Generation; or
 - (iii) Breeder's Seed.
- (2) Paragraph (1) shall not apply to the marketing of seed which has not yet been fully certified if—
- (a) the seed is marketed for processing;
 - (b) the identity of the seed is ensured; and
 - (c) the seed has been harvested from a crop which has been found by an official field inspection to satisfy the conditions specified in Part I of Schedule 4 or Annex I (crop conditions) of the Oil and Fibre Plant Seed Directive for the relevant category of seed.
- (3) Where seed is sampled in an untreated state for either the official examination referred to in paragraph 2(c) of Part I of Schedule 2, or for an examination or test carried out by a European Authority other than the Scottish Ministers, and the seed is subsequently subjected to chemical treatment the seller shall, upon or before delivering the seed to the purchaser, provide the purchaser with a statement in writing that the seed has been subsequently subjected to chemical treatment and specifying the chemical nature of such treatment.
- (4) Notwithstanding paragraph (1), no person shall market seed of a genetically modified variety unless it is clearly indicated, in the sales catalogue of the person marketing the seed and in any other marketing information or marketing representations provided by that person, as having been genetically modified.
- (5) Any person marketing seed which has been imported from a country which is not an EEA State and which exceeds 2 kilograms of seed shall supply the Scottish Ministers, in such manner and at such time as the Scottish Ministers may require, with the particulars relating to the seed specified in paragraph 10 of Part V of Schedule 6.

(1) S.I.2001/3510.

Mixtures

7. Regulation 6(1) shall not prevent the marketing of a mixture of seed permitted by the Fodder Plant Seeds Regulations 1993(2) which includes seed of a species to which these Regulations apply which—

- (a) fell within regulation 6(1)(b)(i) or (ii); and
- (b) complied with the provisions of these Regulations,

before mixing with the fodder plant seed.

Exception for scientific selection work and for tests and trials

8.—(1) Regulation 6(1)(b) shall not apply to the marketing by a producer of—

- (a) small quantities of seed for scientific purposes or selection work; or
- (b) seed for test and trial purposes,

for which—

- (i) an authorisation has been granted to the producer by the Scottish Ministers in accordance with this regulation; or
- (ii) an authorisation has been granted to the producer by a European Authority other than the Scottish Ministers in respect of small quantities of seed for scientific purposes or selection work pursuant to Article 6(1)(a) (exemption for small quantities of seed for scientific purposes or selection work) of the Oil and Fibre Plant Seed Directive or in respect of seed for test and trial purposes, pursuant to Article 6(1)(b) (exemption for test and trial purposes) of the Oil and Fibre Plant Seed Directive.

(2) A producer in Scotland may apply to the Scottish Ministers for authorisation under this regulation.

(3) An application under this regulation shall be made in such form and manner and at such time as the Scottish Ministers shall require and shall be accompanied by such information as the Scottish Ministers may require for the purpose of determining whether to grant an authorisation.

(4) The Scottish Ministers shall not grant an authorisation under this regulation for scientific purposes and selection work in respect of seed of a genetically modified variety unless an authorisation is in force in respect of the variety concerned under the Food and Feed Regulation, or under Part B (deliberate release of GMOs for any other purpose than for placing on the market) or Part C (placing on the market of GMOs as or in products) of the 2001 Deliberate Release Directive, or under Part B (deliberate release of GMOs for any other purpose than for placing on the market) or Part C (placing on the market of GMOs as or in products) of the 1990 Deliberate Release Directive and then only if all appropriate measures, in accordance with the environmental risk assessment in respect of the genetically modified material carried out in accordance with Article 7(4) (environmental risk assessment for seed varieties) of the Common Catalogue Directive have been taken by the producer of the seed to avoid adverse effects on human health and the environment.

(5) The Scottish Ministers shall not grant an authorisation under this regulation in respect of seed for test and trial purposes unless—

- (a) they consider that the amount of seed that may be marketed under it is of an appropriate quantity for the test or trial; and
- (b) (i) either—
 - (aa) an application has been submitted to the relevant authority under regulation 4(1)(a) (applications in relation to national lists) of the Seeds

(2) S.I. 1993/2009, as relevantly amended by S.I. 1993/2529, 1996/1453, 1997/616, 1999/1864, S.S.I. 2000/247, S.I. 2001/3510 and S.S.I. 2002/564..

- (National Lists of Varieties) Regulations 2001(3) for acceptance of the variety concerned on to a UK National List and the application has not been withdrawn or finally determined; and
- (bb) in the case of seed of a genetically modified variety, an authorisation is in force in respect of the variety concerned under the Food and Feed Regulation or under Part C (placing on the market of GMOs as or in products) of the 2001 Deliberate Release Directive or under Part C (placing on the market of GMOs as or in products) of the 1990 Deliberate Release Directive; or
- (ii) in the case of seed of a genetically modified variety, an authorisation is in force in respect of the variety concerned under Part B (deliberate release of GMOs for any other purpose than for placing on the market) of the 2001 Deliberate Release Directive or under Part B (deliberate release of GMOs for any other purpose than for placing on the market) of the 1990 Deliberate Release Directive.
- (6) An authorisation under this regulation may—
- (a) and in the case of an authorisation in respect of seed for test and trial purposes shall, specify the amount of seed which may be marketed under it; and
- (b) impose such conditions as the Scottish Ministers may think necessary or desirable having regard to the nature of the scientific purpose or selection work involved in the case of an authorisation granted for scientific purposes and selection work and, in all cases, to the nature of the seed to which the authorisation relates, including a condition relating to the keeping of records in respect of the marketing of the seed.

Varietal associations

- 9.—(1) Regulation 6(1)(b) shall not apply to the marketing of a varietal association of seed—
- (a) to which these Regulations apply; and
- (b) the female and male components of which—
- (i) have been dressed using a different coloured dressing; and
- (ii) have been mechanically combined in proportions notified to a European Authority by the person responsible for the maintenance of the pollinator-dependent hybrid and pollinator within the varietal association.
- (2) Subject to paragraph (3), the person responsible for the maintenance of the pollinator-dependent hybrid and pollinator within a varietal association may notify the Scottish Ministers of the proportions of the pollinator-dependent hybrid and pollinator within the varietal association.
- (3) In a case where different persons are responsible for the maintenance of the pollinator-dependent hybrid and pollinator within a varietal association, those persons may notify the Scottish Ministers of the proportions of the pollinator-dependent hybrid and pollinator agreed by them within the varietal association.
- (4) A notification given under paragraph (2) or (3) shall be made in such form and manner as the Scottish Ministers may require and be accompanied by such information and other documents as the Scottish Ministers may require.
- (5) The Scottish Ministers shall acknowledge the receipt of each notification that they receive under paragraph (2) or (3).
- (6) In this regulation—

“pollinator-dependent hybrid” means a male-sterile component within a varietal association (female component);

“pollinator” means a component shedding pollen within a varietal association (male component); and

“varietal association” means an association of Certified Seed of a specified pollinator dependent hybrid accepted on to a UK National List or the Common Catalogue with Certified Seed of one or more specified pollinators similarly accepted.

General exemptions

10.—(1) Subject to paragraphs (2) and (3), the Scottish Ministers may, by a general licence, exempt any person or class of persons, or persons generally, from compliance with any provision of these Regulations.

(2) The Scottish Ministers shall not exercise the power to issue a general licence under paragraph (1) except—

- (a) to the extent that the provisions of the general licence are permitted in accordance with a temporary experiment organised under Article 16 (temporary experiments) of the Oil and Fibre Plant Seed Directive;
- (b) to the extent that the provisions of the general licence are permitted in accordance with Article 19(2) (waiving packing and labelling requirements for not yet fully certified seed imported from other EEA States) of the Oil and Fibre Plant Seed Directive;
- (c) to give effect to the provisions of a Council Decision made under Article 20 (checks on third country field inspections and quality control) of the Oil and Fibre Plant Seed Directive, including for the avoidance of doubt the Equivalence Decision, and amendments made to such a Decision; or
- (d) to the extent that the provisions of the general licence are permitted in accordance with measures taken pursuant to Article 21 (permission to market lower quality seed) of the Oil and Fibre Plant Seed Directive.

(3) A general licence issued under paragraph (1)—

- (a) shall have effect during the period specified in it unless the Scottish Ministers revoke it earlier; and
- (b) may impose such conditions as the Scottish Ministers may think necessary or desirable having regard to the marketing permitted by the general licence and the nature of the seed to which it relates, including a condition relating to the keeping of records in respect of the marketing of the seed.

Marketing of officially certified lower germination seed

11.—(1) Notwithstanding regulation 6(1)(b) and the requirement in regulation 3 that Pre-basic Seed and Basic Seed shall attain the minimum standards of germination specified for Basic Seed in Part II of Schedule 4 or Annex II (seed conditions) of the Oil and Fibre Plant Seed Directive, any person may, subject to paragraphs (2) and (3) and regulation 17(6) and the other provisions of these Regulations, market seed—

- (a) in respect of which an official certificate certifying that the seed is of the relevant category of seed has been issued in accordance with Part I of Schedule 2, although it attains a lower percentage of germination than that specified in paragraph 13 of Part II of Schedule 4 in relation to Basic Seed by virtue of exception (ii) of paragraph 2 of Part I of Schedule 2;
- (b) which has been certified as satisfying the conditions for the relevant category of seed by a European Authority other than the Scottish Ministers although the seed attains a lower

germination than that specified in Annex II (seed conditions) of the Oil and Fibre Plant Seed Directive in relation to Basic Seed, by virtue of Article 5(a) (marketing of lower germination seed) of the Oil and Fibre Plant Seed Directive; or

- (c) which the person marketing the seed knows does not satisfy the minimum standards of germination specified for Basic Seed—
 - (i) in the case of seed which has been officially certified as being Pre basic Seed or Basic Seed, in paragraph 13 of Part II of Schedule 4, irrespective of the findings of the Scottish Ministers; and
 - (ii) in the case of seed which has been fully certified as being Pre basic Seed or Basic Seed by a European Authority other than the Scottish Ministers, in Annex II (seed conditions) of the Oil and Fibre Plant Seed Directive, irrespective of the findings of the relevant European Authority.

(2) Paragraph (1) shall not apply unless the person marketing the seed guarantees a specific minimum percentage of germination of the seed.

(3) Paragraph (1) shall not apply to seed which has been imported into the United Kingdom from a country which is not an EEA State.

Marketing of early movement seed

12.—(1) In a case where—

- (a) the official examination in respect of the germination of any seed lot of seed of a plant variety of a species specified in Part I (varieties of plant species on national lists) of Schedule 1 to the Seeds (National Lists of Varieties) Regulations 2001 accepted on to a UK National List or the Common Catalogue has not been completed, but a provisional germination report has shown that the seed attains the appropriate minimum standard of germination specified in paragraph 13 of Part II of Schedule 4 and the seed in all other respects satisfies the appropriate requirements of Schedule 4; or
- (b) any seed lot has been certified by a European Authority other than the Scottish Ministers by virtue of Article 5(b) (early movement of seed) of the Oil and Fibre Plant Seed Directive, the seed lot or any part of the seed lot may, notwithstanding regulation 6(1)(b) but subject to paragraphs (2) to (5), regulation 17(7) and the other provisions of these Regulations, be marketed to the first buyer by way of trade.

(2) In the event of any marketing under paragraph (1), the seller of the seed shall—

- (a) upon or before delivery, provide the first buyer by way of trade with a written statement that the seed is marketed before the completion of the official germination test together with the result in the provisional germination report;
- (b) notify the Scottish Ministers in writing of the name and address of the first buyer by way of trade as soon as practicable after delivery and in any event not later than seven days after delivery;
- (c) guarantee a specific minimum percentage of germination, which shall be the percentage of the germination of the seed as ascertained in the provisional germination report; and
- (d) in the event of the official germination test showing the failure of the seed to comply with the minimum germination standard specified in paragraph 13 of Part II of Schedule 4 for seed of the relevant category, the seller shall provide the first buyer by way of trade with the result of the completed official germination test, in writing, as soon as practicable and in any event not later than seven days after being informed of it.

(3) The provisions of paragraph (1) shall not apply to the marketing of any seed lot or part of any seed lot in respect of which a previous official examination or an examination by a European

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Authority other than the Scottish Ministers has shown that the seed fails to meet the standards specified for the relevant category of seed in Part II of Schedule 4 or Annex II (seed conditions) of the Oil and Fibre Plant Seed Directive.

(4) A person who sells any seed in accordance with paragraph (1) shall make and, until the end of the period of two years after the date of delivery of the seed to the first buyer by way of trade, keep available for inspection by the Scottish Ministers a record of the date of such delivery, of the reference number of the seed lot or part of a seed lot delivered, of the name and address of the first buyer by way of trade, of the date on which the preliminary test of germination was carried out and of the result of that test in the provisional germination report and, if appropriate, of the date on which the first buyer by way of trade was informed of the result of the completed official germination test.

(5) Paragraph (1) shall not apply to seed which has been imported into the United Kingdom from a country which is not an EEA State.

Requirement for homogeneity

13. No person shall market seed in accordance with regulation 6(1)(b)(i) or (ii), 11 or 12 unless it is marketed in a homogeneous seed lot or in part of a homogeneous seed lot.