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SCOTTISH STATUTORY INSTRUMENTS

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**2015 No. 395**

**The Seed Potatoes (Scotland) Regulations 2015**

**PART I**

**PRELIMINARY**

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Seed Potatoes (Scotland) Regulations 2015 and come into force on 1st January 2016.

(2) 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(1);

“agricultural unit” has the meaning given to it by section 86(2) of the Agriculture (Scotland) Act 1948(2);

“applicable Union grade”—

(a) in relation to seed potatoes produced in Scotland, means the Union grade determined in respect of those seed potatoes under regulation 8(2)(a) or, as the case may be, under regulation 15(2); and

(b) in relation to seed potatoes produced outside Scotland, means—

(i) in the case of pre-basic seed potatoes, either Union grade PBTC or PB, the minimum conditions for which are set out in Articles 2 and 3 of, and the Annex to, Commission Implementing Directive 2014/21/EU; or

(ii) in the case of basic seed potatoes, either Union grade S, SE or E, the minimum conditions for which are set out in Article 1 of and Annex I to, Commission Implementing Directive 2014/20/EU,

and in relation to both cases as mentioned in paragraph (a) and (b), references in these Regulations to “Union grade PBTC”, “Union grade PB”, “Union grade S”, “Union grade SE” and “Union grade E” are to be construed accordingly;

“authorised officer” means an officer of the Scottish Ministers or a person authorised by the Scottish Ministers for the purposes of Part II of the Act;

“basic seed potatoes”—

(a) in relation to seed potatoes produced in Scotland, means seed potatoes which have satisfied the applicable conditions for the issue of an official label or an official document

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(1) 1964 c.14.

(2) 1948 c.45.

specified in regulation 10(3), in respect of seed potatoes intended to be marketed as basic seed potatoes; and

- (b) in relation to seed potatoes produced outside Scotland, means seed potatoes, being a lot or part of a lot in a package or container to, or in, which a label or document approved by the relevant authority has been attached or placed in accordance with Article 13(1) of Council [Directive 2002/56/EC](#), stating that on examination of the potatoes they were certified as basic seed potatoes and that they have fulfilled the conditions of an applicable Union grade;

“Commission Decision 2004/842/EC” means Commission [Decision 2004/842/EC](#) concerning implementing rules whereby Member States may authorise the placing on the market of seed belonging to varieties for which an application for entry in the national catalogue of varieties of agricultural plant species or vegetable species has been submitted(3);

“Commission Implementing Directive 2014/20/EU” means Commission Implementing Directive 2014/20/EU determining Union grades of basic and certified seed potatoes, and the conditions and designations applicable to such grades(4);

“Commission Implementing Directive 2014/21/EU” means Commission Implementing Directive 2014/21/EU determining minimum conditions and Union grades for pre-basic seed potatoes(5);

“Common Catalogue” means the catalogue provided for in Council [Directive 2002/53/EC](#) on the common catalogue of varieties of agricultural plant species(6);

“conservation variety” has the meaning given to it by regulation 2(1) of the National Lists Regulations;

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

“Council Directive 2002/56/EC” means Council [Directive 2002/56/EC](#) on the marketing of seed potatoes(7);

“crop inspection report” means the crop inspection report issued in accordance with regulation 8 and Schedules 1 and 2;

“declared net weight” means the net weight of seed potatoes contained in a package or container, as declared by the person applying for an official label or official document under regulation 10;

“[Directive 2001/18/EC](#)” means [Directive 2001/18/EC](#) of the European Parliament and of the Council on the deliberate release into the environment of genetically modified organisms and repealing Council [Directive 90/220/EEC](#)(8);

“field generation” means the number of growing cycles since the first introduction of the seed potatoes in the field after micro-propagation or selection;

“genetically modified” means a genetically modified organism as defined in Article 2(2) of [Directive 2001/18/EC](#);

“grade” includes the applicable Union grade;

“higher grade” means any grade above the grade determined in respect of the seed potatoes by or on behalf of the relevant authority, according to the hierarchy of grades used by that authority;

(3) OJ L 362, 9.12.2004, p.21.

(4) OJ L 38, 7.2.2014, p.32.

(5) OJ L 38, 7.2.2014, p.39.

(6) OJ L 193, 20.7.2002, p.1, as last amended by Regulation [\(EC\) No 1829/2003](#) (OJ L 268, 18.10.2003, p.1).

(7) OJ L 193, 20.7.2002, p.60, as last amended by Commission Implementing Decision 2014/367/EU (OJ L 178, 18.6.2014, p.26).

(8) OJ L 106, 17.4.2001, p.1, as last amended by Directive (EU) 2015/412 (OJ L 68, 12.3.2015, p.1).

“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 12;

“lower grade” means any grade below the grade determined in respect of the seed potatoes by or on behalf of the relevant authority, according to the hierarchy of grades used by that authority;

“marketing” means—

- (a) selling, holding with a view to sale or offering for sale; and
- (b) any disposal, supply or transfer to third parties for the purpose of commercial exploitation of seed potatoes,

whether or not for consideration; and for these purposes “commercial exploitation” does not include the supply of seed potatoes to official testing and inspection bodies, or the supply of seed potatoes to any person for the purpose of processing or packaging them provided that the person does not acquire title to the seed potatoes supplied; and “market” and “marketed” are to be construed accordingly;

“National List” means the list of agricultural crop varieties prepared and published in accordance with regulation 3 of, and paragraph 1 of Part I of Schedule 1 to, the National Lists Regulations;

“National Lists Regulations” means the Seeds (National Lists of Varieties) Regulations 2001<sup>(9)</sup>;

“nuclear stock” means the initial propagating material which is tested and found free from pathogens in a manner approved in writing by the Scottish Ministers;

“official document” means the document which is required for the purposes of Article 13(1) (b) of Council Directive 2002/56/EC;

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

“official label”—

- (a) in the case of seed potatoes produced in Scotland, means a wear and tear resistant label supplied by or on behalf of the Scottish Ministers and which meets the applicable requirements referred to in regulation 10 and Schedule 5; and
- (b) in the case of seed potatoes produced outside Scotland, a label approved by the relevant authority and which meets, as appropriate to the seed potatoes to which the label relates, the requirements of Article 13(1)(a) or Article 18(f) of Council Directive 2002/56/EC, or of Article 9 of Commission Decision 2004/842/EC;

“outside Scotland”, in relation to the place of production of seed potatoes means—

- (a) any part of the British Islands other than Scotland;
- (b) any member State other than the United Kingdom; and
- (c) Switzerland;

“package” includes a bag, box, or sack;

“potato” means any tuber, or part thereof, and any plant, or part thereof, of—

- (a) *Solanum tuberosum* L; and
- (b) any other tuber-forming species or hybrid of *Solanum* L;

“pre-basic seed potatoes”—

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(9) S.I. 2001/3510. Regulation 2(1) of S.I. 2001/3510 was amended by S.I. 2011/464, regulation 2(2)(b). Regulation 3 was amended by S.I. 2004/2949, regulation 2(3)(b) and (c) and by S.I. 2011/464, regulation 2(3). Schedule 1, Part 1, paragraph 1 was substituted by S.I. 2010/1195.

- (a) in relation to seed potatoes produced in Scotland, means seed potatoes which have satisfied the applicable conditions for the issue of an official label or an official document specified in regulation 10(3) in respect of seed potatoes intended to be marketed as pre-basic seed potatoes; and
- (b) in relation to seed potatoes produced outside Scotland, means seed potatoes brought into Scotland in a package or container which bears an official label for pre-basic seed potatoes in accordance with Article 18(f) of Council [Directive 2002/56/EC](#);

“premises” includes any land or building, vehicle, vessel, aircraft, hovercraft or freight container but does not include a private dwellinghouse;

“Regulation 1829/2003” means Regulation [\(EC\) No 1829/2003](#) of the European Parliament and of the Council on genetically modified food and feed **(10)**;

“relevant authority” means the authority concerned with the certification of seed potatoes for the purposes of Council [Directive 2002/56/EC](#) in the country or place where the seed potatoes are produced;

“scientific and selection seed potatoes”—

- (a) in relation to seed potatoes produced in Scotland, means 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 and which are authorised for such use or selection by the Scottish Ministers in accordance with regulation 6; and
- (b) in relation to seed potatoes produced outside Scotland, means seed potatoes which have been authorised for marketing by the relevant authority in accordance with Article 6(1) (a) of Council [Directive 2002/56/EC](#);

“seed potatoes” means—

- (a) 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
- (b) any potatoes that are intended to be used for planting and propagation.

“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; and

“test and trial seed potatoes”—

- (a) in relation to seed potatoes produced in Scotland, means seed potatoes which have been authorised for use as test and trial seed potatoes by the Scottish Ministers in accordance with regulation 5 and which have satisfied the applicable conditions for the issue of an official label or an official document specified in regulation 10(3), in respect of seed potatoes intended to be marketed as test and trial seed potatoes; and
- (b) in relation to seed potatoes produced outside Scotland, seed potatoes which have been brought into Scotland in a closed package or container, which bears an official label meeting the requirements of Article 9 of Commission [Decision 2004/842/EC](#).

(2) Unless the context otherwise requires, any reference in any Schedule to a numbered paragraph or Table is a reference to the paragraph or Table so numbered in that Schedule.

(3) In the case of seed potatoes produced in Switzerland any requirement in these Regulations which is expressed by reference to any provision of Council [Directive 2002/56/EC](#) or Commission [Decision 2004/842/EC](#) is to be construed as a reference to the requirement of the legislation of the Swiss Confederation having equivalent effect, in accordance with the Agreement

**(10)** OJ L 268, 18.10.2003, p.1, as last amended by Regulation [\(EC\) No 298/2008](#) (OJ L 97, 9.4.2008, p.64).

between the European Community and the Swiss Confederation on trade in agricultural products<sup>(11)</sup>, as amended by Commission Decision 2010/724/EU<sup>(12)</sup>.

(4) In these Regulations, references to “writing” and “written” include electronic communications within the meaning of section 15 (general interpretation) of the Electronic Communications Act 2000<sup>(13)</sup>.

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(11) OJ L 114, 30.4.2002, p.132. This Agreement was one of 7 agreements with the Swiss Confederation, approved in Council and Commission Decision 2002/309/EC, Euratom, (OJ L 114, 30.4.2002, p.1).

(12) OJ L 312, 27.11.2010, p.31.

(13) 2000 c.7, as amended by the Communications Act 2003, Schedule 17, paragraph 158.