
SCOTTISH STATUTORY INSTRUMENTS

2017 No. 177

**The Marketing of Fruit Plant and Propagating
Material (Scotland) Regulations 2017**

PART 1

Introduction

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017 and come into force on 1st July 2017.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

“accompanying document” has the meaning given in regulation 9(3);

“basic material” means propagating material which—

- (a) is intended for the production of certified material;
- (b) has been produced in a vegetative way from pre-basic material; and
- (c) has been officially certified as basic material;

“body corporate” includes a limited liability partnership;

“breeder’s reference” means the reference allocated to a breeder following an application for plant variety rights;

“CAC material” means *Conformitas Agraria Communitatis* material which—

- (a) in relation to propagating material and fruit plants produced in Scotland, is material and plants that meet the requirements for CAC material in schedule 3; and
- (b) in relation to propagating material and fruit plants produced outside Scotland, is material and plants that meet the requirements in Articles 23 to 27 of Commission Implementing [Directive 2014/98/EU](#);

“category”, in relation to plant material, means pre-basic material, basic material, certified material or CAC material;

“certified material” means—

(a) propagating material which—

- (i) is intended for the production of fruit plants;
- (ii) has been produced in a vegetative way from basic material or pre-basic material or, if intended to be used for the production of rootstocks, by certified seeds from basic or certified material of rootstocks; and

- (iii) has been officially certified; or
- (b) fruit plants which have been—
 - (i) produced directly from pre-basic material, basic material or certified material; and
 - (ii) officially certified;

“Council [Directive 2008/90/EC](#)” means Council [Directive 2008/90/EC](#) on the marketing of fruit plant propagating material and fruit plants intended for fruit production⁽¹⁾;

“Commission Implementing [Directive 2014/96/EU](#)” means Commission Implementing [Directive 2014/96/EU](#) on the requirements for the labelling, sealing and packaging of fruit plant propagating material and fruit plants intended for fruit production, falling within the scope of Council [Directive 2008/90/EC](#)⁽²⁾;

“Commission Implementing [Directive 2014/97/EU](#)” means Commission Implementing [Directive 2014/97/EU](#) implementing Council [Directive 2008/90/EC](#) as regards the registration of suppliers and of varieties and the common list of varieties⁽³⁾;

“Commission Implementing [Directive 2014/98/EU](#)” means Commission Implementing [Directive 2014/98/EU](#) implementing Council [Directive 2008/90/EC](#) as regards specific requirements for the genus and species of fruit plants referred to in Annex I thereto, specific requirements to be met by suppliers and detailed rules concerning official inspections⁽⁴⁾;

“[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](#)⁽⁵⁾;

“fruit plants” means plants of the genera and species listed in schedule 1 and their hybrids which are intended to be planted or replanted, after marketing;

“genetically modified organism” has the meaning given in Article 2 of [Directive 2001/18/EC](#);

“inspector” means a person appointed by the Scottish Ministers under regulation 18;

“lot” means a number of units of a single commodity, identifiable by its homogeneity of composition and origin;

“marketing” means the sale, holding with a view to sale, offer for sale or any disposal, supply or transfer aimed at commercial exploitation of propagating material or fruit plants to third parties whether or not for consideration;

“official description” means the description of a variety provided on—

- (a) registration in respect of a registered variety; or
- (b) the grant of plant variety rights;

“official inspection” has the meaning given in paragraph 1 of schedule 2;

“official label”—

- (a) in the case of pre-basic material, basic material or certified material originating in Scotland, means a label issued or approved by the Scottish Ministers which has not previously been used and which meets the requirements of the relevant paragraphs of Part 1 of schedule 5;
- (b) in the case of pre-basic material, basic material or certified material originating elsewhere in the European Union, means a label issued or approved by the responsible official body

(1) OJ L 267, 8.10.2008, p.8, as last amended by Regulation (EU) No 652/2014 (OJ L 189, 27.6.2014, p.1).

(2) OJ L 298, 16.10.2014, p.12.

(3) OJ L 298, 16.10.2014, p.16.

(4) OJ L 298, 16.10.2014, p.22.

(5) OJ L 106, 17.4.2001, p.1, as last amended by Directive (EU) 2015/412 (OJ L 68, 13.3.2015, p.1).

and which meets the applicable requirements in relation to that material contained in Article 2 of Commission Implementing [Directive 2014/96/EU](#);

“officially certified”—

- (a) in the case of plant material originating in Scotland, means certified by the Scottish Ministers in accordance with the relevant provisions of schedule 2;
- (b) in the case of plant material originating elsewhere in the European Union, means certified for the purposes of Article 3 of Council [Directive 2008/90/EC](#) by the responsible official body;

“officially recognised description” means a description of the key morphological features that enable a variety which was marketed in the European Union prior to 30th September 2012 to be identified;

“plant material” means the plants and materials described in regulation 3(1);

“plant variety rights” means rights granted under Part 1 of the Plant Varieties Act 1997⁽⁶⁾ or under Council Regulation [\(EC\) No 2100/94](#) on Community plant variety rights⁽⁷⁾;

“pre-basic material” means propagating material which—

- (a) has been produced, according to generally accepted methods, for the maintenance of the identity of the variety including the relevant pomological characteristics and for the prevention of diseases;
- (b) is intended for the production of basic or certified material; and
- (c) has been officially certified as pre-basic material;

“propagating material” means seeds, parts of plants and all plant material, including rootstocks, intended for the propagation and production of fruit plants;

“registered variety” means a variety which is—

- (a) registered in Scotland accordance with schedule 4; or
- (b) in the case of varieties registered elsewhere in the European Union, a variety which is registered in accordance with Article 7(4) of Council [Directive 2008/90/EC](#);

“Regulation [\(EC\) No 1829/2003](#)” means Regulation [\(EC\) No 1829/2003](#) of the European Parliament and of the Council on genetically modified food and feed⁽⁸⁾;

“responsible official body” means in relation to functions imposed on a responsible official body under, or for the purposes of, Council [Directive 2008/90/EC](#)—

- (a) the Scottish Ministers, where those functions require to be performed in Scotland; or
- (b) an authority established or designated by the member State for the territory concerned, in accordance with Article 2(11) of Council [Directive 2008/90/EC](#), where those functions require to be performed outside Scotland;

“third country” means a country which is not a member State of the European Union;

“supplier” means a person who is involved professionally in the reproduction, production, preservation, treatment, importation or marketing of plant material;

“supplier’s document” means a document that meets the requirements of Part 2 of schedule 5;

“variety” means a plant grouping within a single botanical taxon of the lowest known rank, which can be—

- (a) defined by the expression of the characteristics resulting from a given genotype or combination of genotypes;

⁽⁶⁾ [1997 c.66](#).

⁽⁷⁾ OJ L 227, 1.9.1994, p.1, as last amended by Council Regulation [\(EC\) No 15/2008](#) (OJ L 8, 11.1.2008, p.2).

⁽⁸⁾ 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).

- (b) distinguished from any other plant grouping by the expression of at least one of those characteristics; and
- (c) considered as an entity in view of its ability to be propagated unchanged; and

“working day” means a day which is not a Saturday, Sunday, a bank holiday in Scotland (as specified in section 1 and paragraph 2 of schedule 1 of the Banking and Financial Dealings Act 1971⁽⁹⁾) or other public holiday.

(2) Except in the context of accompanying documents, official labels and supplier’s documents, any reference to writing in these Regulations includes an electronic communication within the meaning of section 15(1) (general interpretation) of the Electronic Communications Act 2000⁽¹⁰⁾.

(3) Any other words or expressions used in these Regulations that are also used in Council Directive 2008/90/EC have the meaning they bear in that Directive.

Application of these Regulations

3.—(1) Subject to paragraph (2) and regulation 4, these Regulations apply in relation to the marketing in Scotland of—

- (a) fruit plants and propagating material of the genera and species listed in schedule 1 and their hybrids; and
- (b) parts of plants, including rootstocks, of other genera or species or their hybrids, if material from fruit plants listed in schedule 1 (or any hybrid of such fruit plants) is, or is to be, grafted on to them.

(2) These Regulations do not apply in relation to plant material intended for export from Scotland to a third country provided that the plant material is identified as such and kept sufficiently isolated.

Marketing of plant materials for trials etc.

4.—(1) These Regulations do not apply to the marketing of plant material in Scotland which is intended for any of the purposes listed in paragraph (2), provided that the marketing is in accordance with an authorisation granted by an inspector.

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

- (a) trials or scientific purposes;
- (b) selection work; or
- (c) measures aimed at the conservation of genetic diversity.

(3) The authorisation referred to in paragraph (1)—

- (a) must be in writing;
- (b) may be amended, suspended or revoked by an inspector by notice; and
- (c) may be subject to such conditions as the inspector considers necessary.

⁽⁹⁾ 1971 c.80.

⁽¹⁰⁾ 2000 c.7, as amended by the Communications Act 2003 (c.21), section 406 and schedule 17, paragraph 158.