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STATUTORY INSTRUMENTS

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## 1995 No. 2651

### The Marketing of Ornamental Plant Material Regulations 1995

#### **Title, commencement and extent**

1.—(1) These Regulations may be cited as the Marketing of Ornamental Plant Material Regulations 1995 and shall come into force on 1st December 1995.

(2) These Regulations extend to Great Britain.

#### **Interpretation**

2.—(1) In these Regulations, unless the context otherwise requires—

“Directive 93/49/EEC” means Commission Directive 93/49/EEC(1) setting out the schedule indicating the conditions to be met by ornamental plant propagating material and ornamental plants pursuant to Council Directive 91/682/EEC(2);

“inspector” means any person authorised by the Minister to be an inspector for the purposes of these Regulations;

“marketing” means the delivery, offer for sale, exposure for sale, sale and possession with a view to sale of plant material, and “market” and “marketed” shall be construed accordingly;

“the Minister” means, as respects England, the Minister of Agriculture, Fisheries and Food and, as respects Scotland or Wales, the Secretary of State;

“ornamental plant” means a plant, other than a pot plant, intended, after marketing, to be planted or replanted;

“plant material” means ornamental plants and seeds, parts of plants and all vegetative material intended for the propagation and production of ornamental plants;

“producer” means a supplier engaged in the production or reproduction of plant material;

“responsible official body” means, as respects England and Wales, the Ministry of Agriculture, Fisheries and Food and, as respects Scotland, the Scottish Office Agriculture and Fisheries Department;

“supplier” means any person professionally engaged in the production, reproduction, preservation, treatment or marketing of plant material.

(2) Any reference in these Regulations to a numbered regulation or a numbered schedule is a reference to the regulation or schedule so numbered in these Regulations.

#### **Plant material to which these Regulations apply**

3.—(1) Subject to paragraph (2) below, these Regulations shall apply to plant material of the genera and species set out in Schedule 1 and to rootstocks of other genera or species if plant material from a genus or species set out in Schedule 1 is grafted on to them.

(2) These Regulations shall not apply to plant material intended for—

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(1) OJNo. L250, 7.10.93, p.9.

(2) Council Directive 91/682/EEC on the marketing of ornamental plant propagating material and ornamental plants (OJ No. L376, 31.12.91, p.21), as amended by Commission Decision 95/19/EC (OJ No. L28, 7.2.95, p.10).

- (a) export to countries outside the European Community, if identified as such and kept sufficiently isolated from plant material not intended for such export;
- (b) trials or scientific purposes; or
- (c) selection work.

### **Small producers**

4. These Regulations shall not apply to a small producer all of whose production and sales of plant material are intended for final use by persons on the local market who are not professionally involved in plant production.

### **Quality requirements for plant material**

5. No supplier shall market any plant material unless—
- (a) it is substantially free on visual inspection from any harmful organisms and diseases impairing quality which reduce its usefulness as plant material and in particular from the organisms and diseases listed in the Annex to Directive 93/49/EEC in respect of its genus or species;
  - (b) it is substantially free from any defects, including unsatisfactory vigour and dimensions and imbalances between roots, stems and leaves, likely to impair its usefulness as plant material;
  - (c) either—
    - (i) where the plant material is marketed with reference to the group of plants to which it belongs, it has adequate identity and purity relative to its genus or species or group; or
    - (ii) where the plant material is marketed with reference to the variety to which it belongs, it has identity and purity as to variety;
  - (d) in the case of seeds, it possesses a satisfactory germination capacity; and
  - (e) it is in lots of sufficiently homogeneous composition and origin.

### **Measures to be taken by producers**

6. A producer shall—
- (a) treat or, where appropriate, remove any plant material showing visible signs or symptoms of any of the harmful organisms and diseases referred to in regulation 5(a) at the stage of the growing crop;
  - (b) report to an inspector any plant material that fails to comply with the requirements of regulation 5(a) as a result of the presence of organisms and diseases listed in the Annex to Directive 93/49/EEC; and
  - (c) keep plant material in lots of homogeneous composition and origin during growing and lifting or removal from parent material.

### **Special provisions relating to the marketing of flower bulbs**

7. No producer shall market flower bulbs other than flower bulbs derived directly from plant material which was checked at the stage of the growing crop and found to satisfy the requirements of regulation 5(a).

### **Description of plant material**

8.—(1) No supplier shall market plant material except with reference to either the group of plants or the variety to which it belongs.

(2) Where a supplier markets plant material with reference to the group of plants to which it belongs, the reference shall be made in such a way as to avoid confusion with any of the references to variety described in paragraph (3) below.

(3) Where a supplier markets plant material with reference to the variety to which it belongs, the reference shall be—

- (a) in the case of a commonly known variety which is the subject of a grant of plant breeders' rights, to the official denomination of the variety;
- (b) in the case of a variety which is the subject of an application for plant breeders' rights, to the breeders' reference or proposed name of the variety;
- (c) subject to paragraph (4) below, in the case of any other variety, based on the description of the variety on a written list kept by a supplier which includes—
  - (i) the name of the variety and, where appropriate, its commonly known synonyms;
  - (ii) a description of the variety, having regard to the Annex to Commission Directive [93/78/EEC](#)(3);
  - (iii) indications as to the maintenance of the variety and the propagation system applied; and
  - (iv) any indications as to how the variety differs from the other varieties most closely resembling it.

(4) Sub-paragraphs (3)(c)(iii) and (iv) above shall not apply to a supplier engaged only in the marketing of plant material.

### **Information to accompany plant material**

9.—(1) Subject to paragraphs (2) and (3) below, no supplier shall market any plant material unless it is accompanied by a supplier's document on which appears the appropriate information prescribed in Part A of Schedule 2.

(2) Where plant material is accompanied by a plant passport issued in accordance with Council Directive [77/93/EEC](#)(4), the plant passport may constitute the supplier's document for the purposes of paragraph (1) above if accompanied by the appropriate additional information prescribed in Part B of Schedule 2.

(3) Paragraph (1) above shall not apply to plant material, accompanied by appropriate product information, which is marketed to a non-professional final consumer.

### **Records to be kept by suppliers**

10.—(1) Subject to paragraphs (2) and (3) below, a supplier other than a producer shall keep—

- (a) written records, or records registered in an indelible fashion, on the buying, selling or delivery by him of plant material; and

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(3) Commission Directive [93/78/EEC](#) setting out additional implementing provisions for lists of varieties of ornamental plant propagating material and ornamental plants, as kept by suppliers under Council Directive [91/682/EEC](#) (OJ No. L256, 14.10.93, p.19).

(4) Council Directive [77/93/EEC](#) on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community (OJ No. L26, 31.1.77, p.20), as last amended by Commission Directive [95/41/EC](#) (OJ No. L182, 2.8.95, p.17).

- (b) records on the composition and origin of any plant material of different origins mixed by him during packaging, storage or transport or at delivery.
- (2) Paragraph (1) above shall not apply to a supplier engaged only in the marketing of small quantities of plant material to non-professional final consumers.
- (3) Sub-paragraph (1)(b) above shall not apply to a supplier engaged only in the marketing of plant material to non-professional final consumers.
- (4) A producer shall keep—
  - (a) the records specified in item 2 of Schedule 3;
  - (b) records on the composition and origin of any plant material of different origins mixed by him during packaging, storage or transport or at delivery; and
  - (c) records on all occurrences on his premises of the harmful organisms referred to in regulation 5(a) and on any measures taken in relation to such occurrences.

### **Accreditation of producers**

- 11.—(1) No producer shall market plant material unless he is accredited.
- (2) The Minister shall accredit a producer if he is satisfied that the producer complies with the requirements set out in Schedule 3.
- (3) The Minister may, by notice in writing served on an accredited producer who fails to comply with the requirements set out in Schedule 3, suspend or revoke accreditation, and in such notice shall state the grounds for suspension or revocation.
- (4) Applications for accreditation shall be made to the Minister in such form as the Minister may from time to time require.

### **Powers of inspectors**

- 12.—(1) An inspector, upon producing, if required to do so, some duly authenticated document showing his authority, may at any reasonable time enter any premises of a supplier where he reasonably suspects that any activity which is governed by these Regulations is being carried on for the purposes of ascertaining whether there is or has been any contravention of these Regulations.
- (2) An inspector on entering any premises under paragraph (1) above may take with him representatives of the European Commission and such other persons as he considers to be necessary.
- (3) An inspector may carry out all reasonable checks and examinations necessary to ensure compliance with these Regulations, and in particular may—
  - (a) take any plant material or sample from any plant material and send it for analysis;
  - (b) require the production of any relevant records, lists and other documents;
  - (c) inspect any relevant records, lists and other documents;
  - (d) take any relevant records, lists and other documents for copying.
- (4) An inspector may by notice in writing served on a supplier in respect of any plant material on the supplier's premises that the inspector has reasonable grounds for suspecting fails to comply with the requirements of regulation 5(a) require the supplier not to market or to move from his premises or to permit or cause to be marketed or moved from his premises the plant material until the supplier has carried out such reasonable measures as the notice may specify.

### **Service of notices**

**13.**—(1) A notice under these Regulations shall be deemed to have been served on a supplier 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 addressed to him at his last known place of abode or business.

(2) A notice under these Regulations may—

- (a) in the 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;
- (b) in the case of a partnership, be served on a partner or on a person having the control or management of the partnership business or, in Scotland, the firm at the principal office of the partnership.

### **Offences**

**14.**—(1) A person who contravenes or fails to comply with any provision of these Regulations without reasonable excuse, proof of which shall lie on him, shall be guilty of an offence.

(2) A person guilty of an offence under paragraph (1) above shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

29th September 1995

*Tim Boswell*  
Parliamentary Secretary Ministry of Agriculture,  
Fisheries and Food

25th September 1995

*Raymond Robertson*  
Parliamentary Under Secretary of State Scottish  
Office