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STATUTORY INSTRUMENTS

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**1999 No. 1801**

**PLANT HEALTH SEEDS**

**The Marketing of Ornamental Plant  
Propagating Material Regulations 1999**

<i>Made</i>	- - - -	<i>23rd June 1999</i>
<i>Laid before Parliament</i>		<i>25th June 1999</i>
<i>Coming into force</i>		
<i>(a) in the case of all provisions other than regulation 7 and regulation 9</i>		<i>1st July 1999</i>
<i>(b) in the case of regulation 7</i>		<i>1st August 1999</i>
<i>(c) in the case of regulation 9</i>		<i>31st December 1999</i>

The Minister of Agriculture, Fisheries and Food and the Secretary of State, acting jointly, being Ministers designated for the purposes of section 2(2) of the European Communities Act 1972(1) in relation to the common agricultural policy of the European Community(2), in exercise of the powers conferred on them by the said section 2(2) hereby make the following Regulations:

**Title, commencement and extent**

1.—(1) These Regulations may be cited as the Marketing of Ornamental Plant Propagating Material Regulations 1999 and shall come into force on—

- (a) in the case of all provisions other than regulation 7 and regulation 9, 1st July 1999;
- (b) in the case of regulation 7, 1st August 1999;
- (c) in the case of regulation 9, 31st December 1999.

(2) These Regulations extend to Great Britain.

**Interpretation**

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

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(1) 1972 c. 68.  
(2) S.I.1972/1811.

“Directive 77/93/EEC” means 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(3);

“Directive 98/56/EC” means Council Directive 98/56/EC on the marketing of propagating material of ornamental plants(4);

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

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

“marketing” means holding available or in stock, display with a view to sale, offering for sale, sale or delivery by a supplier to another person;

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

“propagating material” means plant material intended for—

- (a) the propagation of ornamental plants; or
- (b) the production of ornamental plants; however, in the case of production from complete plants, the material used shall only be considered to be propagating material if the resulting ornamental plant is intended for further marketing;

“propagation” means reproduction by vegetative or other means;

“Regulation 2100/94” means Council Regulation 2100/94/EC on Community Plant Variety Rights(5);

“supplier” means any person professionally engaged in the marketing or in the importation from third countries of propagating material; and

“third country” means a country other than a member State.

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

### **Marketing requirements and exceptions**

3.—(1) Subject to paragraph (2) below, no supplier shall market any propagating material unless it complies with the requirements of these Regulations.

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

- (a) export to third countries, if identified as such and kept sufficiently isolated from plant material not intended for such export;
- (b) trials or scientific purposes;
- (c) selection work;
- (d) use in the conservation of genetic diversity.

### **Quality requirements for propagating material**

4. Propagating material shall, when marketed—

- (a) be substantially free from any defects likely to impair its quality as propagating material and in particular, at least on visual inspection, be substantially free from any harmful

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(3) O.J. No. L26, 31.1.77, p. 20, as last amended by Commission Directive 98/2/EC (O.J. No. L15, 21.1.98, p. 34).

(4) O.J. No. L226, 13.8.98, p. 16.

(5) O.J. No. L227, 1.9.94, p. 1, as last amended by Council Regulation 2506/95/EC (O.J. No. L258, 28.10.95, p. 3).

- organisms impairing quality, or any signs or symptoms of such organisms, which reduce its usefulness;
- (b) have satisfactory vigour and dimensions in respect of its usefulness as propagating material;
  - (c) in the case of seeds, have a satisfactory germination capacity;
  - (d) have satisfactory identity and purity relative to the genus or species or group of plants to which it belongs; and
  - (e) if marketed with reference to a variety pursuant to regulation 11, have satisfactory varietal identity and purity.

#### **Further provisions relating to citrus propagating material**

5. In addition to meeting the requirements of regulation 4, citrus propagating material shall—
- (a) have been derived from initial source material which has been checked and found to show no symptoms of any viruses, virus-like organisms or diseases;
  - (b) have been checked and found to be substantially free of viruses, virus-like organisms and diseases since the beginning of the last cycle of vegetative growth; and
  - (c) where grafting has taken place, have been grafted on to rootstocks of a kind which are not susceptible to viroids.

#### **Further provision relating to flower bulbs**

6. In addition to meeting the requirements of regulation 4, flower bulbs shall have been derived directly from material which, at the time the crop of bulbs concerned was growing, was checked and found to be substantially free from any harmful organisms and diseases or any signs or symptoms of such organisms and diseases.

#### **Registration**

7.—(1) Subject to paragraph (2) below, no person shall carry on business as a supplier unless he is registered as such by the Minister.

(2) Paragraph (1) above shall not apply to a supplier marketing only to persons who are not professionally engaged in the production or sale of ornamental plants or propagating material.

(3) An application for registration as a supplier shall be made in writing and shall be accompanied by the following information—

- (a) the name of the applicant;
- (b) the address of the main premises at which the applicant carries on or intends to carry on business as a supplier;
- (c) the activities which the applicant carries on or intends to carry on which are or will be covered by these Regulations.

(4) Registration of a supplier on the register referred to in regulation 15 of the Plant Health (Great Britain) Order 1993<sup>(6)</sup> is deemed to constitute registration for the purposes of paragraph (1) above.

(5) A supplier registered in accordance with this regulation shall keep records of his sales and purchases of propagating material and shall retain them for a period of not less than 12 months.

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(6) S.I. 1993/1320; amended by S.I. 1993/3213, 1995/1358 and 2929, 1996/25, 1165 and 3242, 1997/1145 and 2907 and 1998/349, 1121 and 2245.

### Measures to be taken by suppliers

- 8.—(1) Suppliers engaged in the production of propagating material shall—
- (a) identify and monitor critical points in their production process which influence the quality of the material;
  - (b) keep records on the monitoring required in sub-paragraph (a) above;
  - (c) take samples where necessary and send them to be analysed in a laboratory with suitable facilities and expertise;
  - (d) ensure that during production lots of propagating material remain separately identifiable.

(2) Without prejudice to paragraph (3) below, a supplier shall treat or, where appropriate, remove any propagating material which, on the basis of visible signs or symptoms, is not substantially free of harmful organisms impairing quality.

(3) If a supplier engaged in the production of propagating material finds on his premises a plant pest of a description specified in Schedule 6 to the Plant Health (Great Britain) Order 1993 he shall, if he would not otherwise be required to notify it under article 20 of that Order (notification of the presence or suspected presence of certain plant pests), report it to the Minister and shall carry out any measures laid down by him.

### Information on propagating material

9.—(1) Subject to paragraphs (2) and (3) below, no supplier shall market any propagating material unless it is accompanied by a label or other document made out by him on which appears the appropriate information prescribed in the Schedule to these Regulations.

(2) Where propagating material is accompanied by a plant passport issued in accordance with Council Directive [77/93/EEC](#), the plant passport may constitute the label or other document for the purposes of paragraph (1) above if it contains the appropriate information prescribed in the Schedule to these Regulations.

(3) Paragraph (1) above shall not apply to propagating material which is marketed to persons who are not professionally engaged in the production or sale of ornamental plants or propagating material.

### Marketing in lots

10.—(1) Subject to paragraph (2) below, no supplier shall market any propagating material unless it is in lots.

- (2) Paragraph (1) above shall not apply to—
- (a) the sale of different lots in a single consignment provided the supplier keeps records of the composition and origin of the different lots;
  - (b) propagating material which is marketed to persons who are not professionally engaged in the production or sale of ornamental plants or propagating material.

### Description of propagating material

11.—(1) Without prejudice to paragraph (2), no supplier shall market propagating material with reference to a variety unless—

- (a) it is the subject of Community plant variety rights pursuant to Regulation 2100/94 or national plant variety rights under any jurisdiction; or
- (b) the existence of that variety is a matter of common knowledge as defined in section 38 of the Plant Varieties Act 1997(7); or

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(7) [1997 c. 66](#).

- (c) that variety is entered on a list kept by a supplier which includes:
- (i) the name of the variety together with its commonly known synonyms, where appropriate;
  - (ii) information as to how the varietal identity and purity of the variety is being maintained and as to the propagation system used;
  - (iii) a description of the variety which shall include, where appropriate, the characteristics of the variety which would be relevant for the purpose of an application for a Community plant variety right in respect of the variety under Regulation 2100/94;
  - (iv) an explanation of how the variety differs from other varieties most closely resembling it.

(2) Sub-paragraphs (c)(ii) and (c)(iv) of paragraph (1) above shall not apply to a supplier engaged only in the marketing of propagating material.

(3) The list referred to at paragraph (1)(c) above shall be made available to the Minister on request.

(4) Where a supplier markets propagating material with reference to the group of plants to which it belongs, the supplier shall indicate the group of plants in such a way as to avoid confusion with any varietal denomination.

### **Propagating material produced in third countries**

**12.**—(1) No supplier shall import propagating material from a third country unless he has ensured prior to import that the material to be imported is of an equivalent standard to propagating material produced in accordance with Directive [98/56/EC](#).

(2) A supplier shall notify the Minister in writing of the importation of a consignment of propagating material from a third country within one month of its importation.

(3) A supplier shall be deemed to have complied with paragraph (2) above if he delivers a phytosanitary certificate or reforwarding phytosanitary certificate in respect of the consignment in accordance with article 12(5) of the Plant Health (Great Britain) Order 1993.

(4) A supplier shall retain documentary evidence of every contract relating to the import of propagating material from a third country during the subsistence of the contract and for at least twelve months after its termination.

### **Powers of inspectors**

**13.**—(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 covered 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 such other persons as he reasonably 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 propagating material or sample from any propagating 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 propagating material on the supplier's premises that the inspector has reasonable grounds for suspecting fails to comply with the requirements of these Regulations 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 propagating material until the supplier has carried out such reasonable measures as the notice may specify.

### **Service of notices**

**14.**—(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**

**15.**—(1) A person who contravenes or fails to comply with any provision of these Regulations without reasonable excuse 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.

### **Revocations and transitional provisions**

**16.**—(1) Subject to paragraphs (2) and (3) below, the Marketing of Ornamental Plant Material Regulations 1995<sup>(8)</sup> are revoked.

(2) Regulation 9 of those Regulations, and regulations 2, 3, 4, 12(1) to 12(3) and 14 of those Regulations to the extent that they apply for the purposes of regulation 9 of those Regulations, shall continue to have effect until 31st December 1999.

(3) Regulation 11 of those Regulations, and regulations 2, 3, 4, 12(1) to 12(3), 13 and 14 of those Regulations to the extent that they apply for the purposes of regulation 11 of those Regulations, shall continue to have effect until 1st August 1999.

(4) For the purposes of paragraph 4 of Schedule 2 to those Regulations (registration or accreditation number) an accreditation number in existence on 31st July 1999 shall be deemed to continue to exist until 31st December 1999, notwithstanding paragraph (3) above.

23rd June 1999

*Jeff Rooker*  
Minister of State, Ministry of Agriculture,  
Fisheries and Food

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(8) S.I. 1995/2651.

22nd June 1999

*Sewel*  
Parliamentary Under Secretary of State, Scottish  
Office

## SCHEDULE

Regulation 9

### INFORMATION TO APPEAR ON A SUPPLIER'S LABEL OR OTHER DOCUMENT

1. Indication that the material is of "EC quality".
2. Indication of EC Member State code.
3. Indication of responsible official body or its distinguishing code.
4. Supplier's registration number.
5. Individual serial, week or batch number.
6. Botanical name.
7. Where appropriate, denomination of the variety or, in the case of rootstock, denomination of the variety or its designation.
8. Where appropriate, denomination of the group of plants.
9. Quantity.
10. In the case of propagating material imported from a third country the name of the country of production.

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### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations revoke and replace the Marketing of Ornamental Plant Material Regulations 1995. The Regulations implement:

(1) Council Directive [98/56/EC](#) on the marketing of propagating material of ornamental plants (O.J. No. L226, 13.8.98, p. 16);

(2) a Commission Directive setting out additional provisions for lists of varieties of ornamental plants as kept by suppliers under Directive 98/56;

(3) a Commission Directive setting out requirements as to the label or other document made out by the supplier pursuant to Council Directive 98/56; and

(4) a Commission Directive amending Commission Directive [93/49/EEC](#) 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](#); those provisions of Directive 93/49 which remain in force are re-enacted in the Regulations.

The bulk of the Regulations come into force on 1st July 1999; regulation 7 will come into force on 1st August 1999 and regulation 9 will come into force on 31st December 1999. The Regulations set quality standards to be met by ornamental plant propagating material when marketed and prescribe conditions to be satisfied by suppliers. They introduce the following principal changes—

- (1) The Regulations apply to the propagating material of all ornamental plants (regulations 2 and 3).
- (2) Propagating material intended for use in the conservation of genetic diversity is exempted from the Regulations (regulation 3).

- (3) The quality requirements for propagating material, including citrus material and flower bulbs, are modified (regulations 4, 5 and 6).
- (4) The system of accreditation for those who market plant material is ended with effect from 1st August and a system of registration is introduced with effect from that date, although accreditation numbers can continue in use until 31st December (regulations 1, 7 and 16).
- (5) Suppliers must notify the Minister of the appearance on their premises of any plant pest which is listed in the Plant Health (Great Britain) Order 1993 (regulation 8).
- (6) The information to appear in suppliers' documentation is modified with effect from 31st December 1999, when the form of documentation prescribed under the 1995 Regulations ceases to have effect (regulations 1, 9, 16 and the Schedule).
- (7) Importers of propagating material from third countries are required to ensure that it is equivalent to material produced in accordance with Directive 98/56 and to notify the responsible official body (regulation 12).

A Regulatory Impact Assessment has been prepared and placed in the library of each House of Parliament. Copies can be obtained from the Plant Health Division of the Ministry of Agriculture, Fisheries and Food, Foss House, Kings Pool, 1-2 Peasholme Green, York YO1 7PX.