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STATUTORY INSTRUMENTS

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**2002 No. 3173**

**The Cereal Seed (England) Regulations 2002**

**PART I**

*General*

**Title, extent and commencement**

1. These Regulations may be cited as the Cereal Seed (England) Regulations 2002, shall extend to England and shall come into force on 31st January 2003.

**General interpretation**

2.—(1) In these Regulations—

“the Act” means the Plant Varieties and Seeds Act 1964;

“Annex V(C) document” means an official document of the type specified in the second indented sub-paragraph of Article 15(2) of the Cereal Seed Directive containing the particulars specified in paragraph C of Annex V to the Directive;

“another member State” means an EEA State other than the United Kingdom;

“approved seed certification authority” means an authority specified in column 2 of the table set out in Part I of the Annex to the Third Country Equivalence Decision;

“approved species” means—

- (a) subject to paragraphs (b) and (c), any of the species referred to in Schedule 2;
- (b) any of the species referred to in Schedule 2 except maize in the case of seed officially certified by an approved seed certification authority in Australia or Poland; and
- (c) maize in the case of seed officially certified by an approved seed certification authority in Slovenia and South Africa;

“authorised officer” means an officer authorised for the purposes of these Regulations by the Secretary of State, the Scottish Ministers, the National Assembly for Wales or the Department of Agriculture and Rural Development;

“blended seed lot” means a seed lot obtained by blending seed where the seed that goes into the blend is—

- (a) of the same variety;
- (b) has come from different sources; and
- (c) either—
  - (i) has been officially certified;
  - (ii) has not been officially certified but has been harvested from a seed crop for which a field inspection report has been issued showing that the crop met the Directive crop conditions for the relevant category of seed; or

- (iii) is made up of seed that has been officially certified and seed that has not but for which a field inspection report of the type specified in sub-paragraph (ii) has been issued;

“breeder”—

- (a) in relation to a variety that has not been entered in a National List or the Common Catalogue, includes any person lawfully multiplying (on his own account) seed bred by another, and
- (b) in relation to a variety that has been so entered, means the maintainer of the variety;

“breeder’s seed” means seed which has been produced by or under the responsibility of the breeder and that is intended for the production of pre-basic or basic seed;

“the Cereal Seed Directive” means Council Directive [66/402/EEC\(1\)](#) on the marketing of cereal seed as last amended by Council Directive [2001/64/EC\(2\)](#);

“Common Catalogue” means the Common Catalogue of varieties of species of agricultural plants published in the Official Journal of the European Communities;

“the Common Catalogue Directive” means Council Directive [2002/53/EC\(3\)](#) on the common catalogue of varieties of agricultural plant species;

“component” means—

- (a) in the case of pre-basic seed, a component that is used in the production of a listed hybrid variety, and
- (b) in the case of basic seed, a component of a hybrid variety;

“control plot” means a plot sown with seed from an official sample of seed from a seed lot (whether the official sample of the seed submitted in accordance with regulation 6(2) or another official sample of the seed);

“Department of Agriculture and Rural Development” means the Department of Agriculture and Rural Development in Northern Ireland;

“Directive crop conditions” means the conditions laid down in Annex I to the Cereal Seed Directive;

“Directive seed conditions” means the conditions laid down in Annex II to the Cereal Seed Directive;

“the EC minimum percentage of germination” means the appropriate percentage of germination specified in column 2 of the table in paragraph 13 of Schedule 4;

“EEA State” means a State that is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992(4) as adjusted by the Protocol signed at Brussels on 17th March 1993(5);

“entered seed lot” means a seed lot in respect of which an application has been made under regulation 6 in accordance with regulation 6(2)(a), (b)(i) and (c);

“ergot” means *Claviceps purpurea*;

“equivalent third country” means a country specified in column 1 of the table set out in Part I of the Annex to the Third Country Equivalence Decision;

(1) O.J. No. L125, 11.7.66, p.2309.

(2) O.J. No. L234, 1.9.2001, p.60.

(3) O.J. No. L096, 13.4.2002, p.28.

(4) Cmnd 2073.

(5) Cmnd 2847.

“genetically modified” has the same meaning as for the purposes of Council Directive [2001/18/EC](#)(6) on the deliberate release into the environment of genetically modified organisms and repealing Council Directive [90/220/EEC](#);

“germination condition” means the condition in paragraph 13 of Schedule 4;

“Higher Voluntary Standards” means the standards specified in Schedules 3 and 4 as being HVS standards and the abbreviation “HVS” shall be construed accordingly;

“homogeneous seed lot” means a seed lot that has been subject to appropriate mixing and blending techniques so that the seed in the lot is as uniform as practicable;

“HVS level basic seed” means officially certified basic seed that has been verified by the Secretary of State as—

(a) having been harvested from a crop that met the higher voluntary standards for a crop to produce basic seed specified in Schedule 3, and

(b) having met the higher voluntary standards for basic seed laid down in Schedule 4;

“HVS level C1 seed” means officially certified C1 seed that has been verified by the Secretary of State as—

(a) having been harvested from a crop that met the higher voluntary standards for a crop to produce C1 seed specified in Schedule 3, and

(b) having met the higher voluntary standards for C1 seed laid down in Schedule 4;

“HVS level C2 seed” means officially certified C2 seed that has been verified by the Secretary of State as—

(a) having been harvested from a crop that met the higher voluntary standards for C2 seed specified in Schedule 3, and

(b) having met the higher voluntary standards for C2 seed laid down in Schedule 4;

“ISTA” means the International Seed Testing Association;

“late entered seed lot” means a seed lot in respect of which an application has been made under regulation 6(1) in accordance with regulation 6(2)(a), (b)(ii) and (c);

“licensed crop inspector” means a person who has been granted a licence under regulation 11 of the Seed (Registration, Licensing and Enforcement)(England) Regulations 2002(7) or by the Scottish Ministers, the National Assembly for Wales or the Department of Agriculture and Rural Development under provisions equivalent to that regulation;

“licensed EC crop inspector” means a person authorised by a competent seed certification authority in another member State, pursuant to Article 2(3)(i)(c) of the Cereal Seed Directive, to carry out field inspections of crops in that member State;

“licensed EC seed testing station” means a seed testing laboratory authorised by the competent seed certification authority in another member State, pursuant to Article 3 of Commission Decision [98/320/EC](#)(8) on the organisation of a temporary experiment on seed sampling and seed testing pursuant to Council Directives [66/400/EEC](#), [66/401/EEC](#), [66/402/EEC](#) and [69/208/EEC](#) as last amended by Commission Decision [2002/280/EC](#)(9), to carry out seed testing in that member State;

“licensed seed sampler” means a person who has been granted a licence under regulation 18 of the Seed (Registration, Licensing and Enforcement)(England) Regulations 2002 or by the Scottish Ministers, the National Assembly for Wales or the Department of Agriculture and Rural Development under provisions equivalent to that regulation;

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(6) O.J. No.L106, 17.4.2001, p.1

(7) S.I.2002/3176.

(8) O.J. No. L140, 12.5.98, p.14.

(9) O.J. No. L99, 16.4.2002, p.22.

“licensed seed testing station” means a laboratory in respect of which a licence has been granted under regulation 25 of the Seed (Registration, Licensing and Enforcement)(England) Regulations 2002 or by the Scottish Ministers, the National Assembly for Wales or the Department of Agriculture and Rural Development under provisions equivalent to that regulation;

“licensed third country crop inspector” means a person authorised by an approved seed certification authority in an equivalent third country pursuant to—

- (a) in the case of seed other than maize, Rule 6(2)(3) of, and Appendix 8 to, the OECD Cereal Seed Scheme, and
- (b) in the case of maize, Rule 6(2)(3) of, and Appendix 8 to, the OECD Maize and Sorghum Seed Scheme, to carry out field inspections of crops in that country;

“licensed third country seed testing station” means a seed testing laboratory authorised by the approved seed certification authority in an equivalent third country, pursuant to the provisions of the second paragraph of Article 2(4) of, and Annex V to, the OECD Decision, to carry out seed testing in that country;

“listed variety” means a plant variety that is entered in a National List or the Common Catalogue;

“listing” means the entry of a variety on a National List or the Common Catalogue and “listed” shall be construed accordingly;

“loose smut infection” means infection with harmful organisms of the family Ustilaginaceae;

“maintainer” means a person who is indicated in a National List or in the Common Catalogue as responsible for maintaining a plant variety in accordance with the characteristics to which regard was had when the plant variety was entered in the List or the Common Catalogue;

“marketing extension” means an extension granted by the Secretary of State, the Scottish Ministers, the National Assembly for Wales, the Department of Agriculture and Rural Development or the competent seed certification authority in another member State pursuant to Article 15 of the Common Catalogue Directive allowing an extended period for the certification and marketing of seed of a variety that has been deleted from its catalogue and the Common Catalogue;

“member State” means an EEA State;

“minimum level basic seed” means officially certified basic seed that has not been verified by the Secretary of State as—

- (a) having been harvested from a crop that met the higher voluntary standards for a crop to produce basic seed specified in Schedule 3, and
- (b) having met the higher voluntary standards for basic seed laid down in Schedule 4;

“minimum level C1 seed” means officially certified C1 seed that has not been verified by the Secretary of State as—

- (a) having been harvested from a crop that met the higher voluntary standards for a crop to produce C1 seed specified in Schedule 3, and
- (b) having met the higher voluntary standards for C1 seed laid down in Schedule 4;

“minimum level C2 seed” means officially certified C2 seed that has not been verified by the Secretary of State as—

- (a) having been harvested from a crop that met the higher voluntary standards for C2 seed specified in Schedule 3, and
- (b) having met the higher voluntary standards for C2 seed laid down in Schedule 4;

“a National List” means a list of varieties of cereal species for the time being published in accordance with the Seeds (National Lists of Varieties) Regulations 2001<sup>(10)</sup>;

“OECD” means the Organisation for Economic Co-operation and Development;

“OECD Cereal Seed Scheme” means the OECD Scheme for the varietal certification of cereal seed moving in international trade in Annex VIII to the OECD Decision;

“OECD Certificate” means a certificate issued by an approved seed certification authority in an equivalent third country under, in the case of seed other than maize, the OECD Cereal Seed Scheme, and, in the case of maize, the OECD Maize and Sorghum Seed Scheme;

“OECD Decision” means the Decision of the OECD Council revising the OECD Schemes for Varietal Certification of the Control of Seed Moving in International Trade<sup>(11)</sup>;

“OECD List” means the OECD List of Varieties Eligible for Certification;

“OECD Maize and Sorghum Seed Scheme” means the OECD Scheme for the varietal certification of maize and sorghum seed moving in international trade in Annex XI to the OECD Decision;

“official label” means a label issued or authorised by or on behalf of the Secretary of State, the Scottish Ministers, the National Assembly for Wales or the Department of Agriculture and Rural Development;

“official measures” includes—

- (a) the disposal and determination, where applicable, of applications made in accordance with regulation 6, 8, 9, 10, 11, 12, 13, 16, 19, and 20, including the growing and assessment of control plots and the carrying out of field inspections and seed testing in connection with the disposal and determination of such applications; and
  - (b) the receipt and acknowledgement of notifications given under regulation 7,
- and such other activities as may be necessary for those purposes;

“official sample” means a sample of seed taken from a seed lot in accordance with regulation 23 and “official sampling” shall be construed accordingly;

“official UK field inspection” means a field inspection carried out by or on behalf of the Secretary of State, the Scottish Ministers, the National Assembly for Wales or the Department of Agriculture and Rural Development;

“official UK seed test” means a seed test carried out by or on behalf of the Secretary of State, the Scottish Ministers, the National Assembly for Wales or the Department of Agriculture and Rural Development;

“a Part II.A(3) official certificate” means an official certificate of the type specified in subparagraph 3 of paragraph A of Part II of the Annex to the Third Country Equivalence Decision;

“previously listed variety” means a plant variety that was previously entered in—

- (a) a National List or, in the case of another member State, the catalogue maintained by that State pursuant to Article 3 of the Common Catalogue Directive, and
- (b) the Common Catalogue,

but which has been removed from both of them;

“registered person” means a person registered under regulation 5 of the Seed (Registration, Licensing and Enforcement)(England) Regulations 2002 as a person who may engage in a relevant seed industry activity;

“regulation 19 authorisation” means an authorisation granted in accordance with regulation 19;

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<sup>(10)</sup> S.I. 2001/3510.

<sup>(11)</sup> C(2000)146/Final.

“regulation 20 authorisation” means an authorisation granted in accordance with regulation 20;

“Schedule 4 germination test” means a test to determine whether the seed being tested attains the percentage of germination specified in column 2 of the table in paragraph 13 of Schedule 4 for the appropriate category of seed;

“the Secretary of State” means the Secretary of State for Environment, Food and Rural Affairs;

“seed industry activity” has the same meaning as in regulation 2 of the Seed (Registration, Licensing and Enforcement)(England) Regulations 2002;

“seed lot” means an identifiable consignment of seeds of a weight that does not exceed the weight specified in column 3 of the table in Schedule 7 for the species specified in column 1 of that table by more than 5% and that bears a unique seed lot reference number, and includes a blended seed lot and a seed lot that contains seed from different crops of the same variety grown on the same holding and combined on the grower’s holding prior to processing;

“seed that has been subject to satisfactory official post control” means seed taken from a seed lot for which a control plot has been sown by or on behalf of the Secretary of State, the Scottish Ministers, the National Assembly for Wales or the Department of Agriculture and Rural Development and which has produced plants which have been examined by or on behalf of the Secretary of State, the Scottish Ministers, the National Assembly for Wales or the Department of Agriculture and Rural Development, as the case may be, and has been found, having regard to—

(a) the conditions laid down in—

- (i) paragraphs 4 to 10, 11(4) to (7), 12(4) to (6), 14 and 16 of Schedule 3, and
- (ii) paragraphs 1 to 5, 7, 10, 17, 18 and 20 of Schedule 4, and

(b) the category and, where appropriate, level of the seed to be produced,

to be satisfactory seed from which to produce that category and, where applicable, level of seed;

“small package” means—

(a) a package of officially certified seed of any category and, where applicable, level, or

(b) a package of a mixture of seeds to which regulation 22 applies,

not exceeding 15 kilograms in weight;

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

“the Third Country Equivalence Decision” means Council Decision [95/514/EC\(12\)](#) on the equivalence of field inspections carried out in third countries on seed producing crops and on the equivalence of seed produced in third countries as last amended by Commission Decision [2002/276/EC\(13\)](#);

“a UK field inspection carried out under official supervision” means an examination of a crop carried out under official supervision by a licensed crop inspector;

“a UK seed test carried out under official supervision” means a seed test carried out under official supervision by a licensed seed testing laboratory;

“unlisted variety” means a variety that is not a listed variety; and

“whenever carried out”—

(a) in relation to an official UK field inspection of a crop being grown to produce seed of a listed variety or a component of a listed hybrid variety, means an inspection carried out before or after the listing of the variety or hybrid variety;

(12) O.J. No. L296, 9.12.95, p.34.

(13) O.J. No. L096, 13.4.2002, p.28.

- (b) in relation to an official UK field inspection of a crop being grown to produce seed of a previously listed variety or a component of a previously listed hybrid variety, means an inspection carried out while the variety or hybrid variety was listed or after it became unlisted;
  - (c) in relation to an official UK seed test or a UK seed test carried out under official supervision of seed of a listed variety or a component of a listed hybrid variety, means a test carried out before or after the listing of the variety or hybrid variety; and
  - (d) in relation to an official UK seed test or a UK seed test carried out under official supervision of seed of a previously listed variety or a component of a previously listed hybrid variety, means a test carried out while the variety or hybrid variety was listed or after it became unlisted.
- (2) In these Regulations, in relation to varieties, hybrids and inbred lines of maize—
- “open pollinated variety” means a sufficiently uniform and stable variety;
  - “inbred line” means a sufficiently uniform and stable line, obtained either by artificial self-fertilisation accompanied by selection over several successive generations or by equivalent operations;
  - “simple hybrid” means the first generation of a cross, defined by the breeder, between two inbred lines;
  - “double hybrid” means the first generation of a cross, defined by the breeder, between two simple hybrids;
  - “triple-cross hybrid” means the first generation of a cross, defined by the breeder, between an inbred line and a simple hybrid;
  - “top cross hybrid” means the first generation of a cross, defined by the breeder, between an inbred line or a simple hybrid and an open-pollinated variety; and
  - “intervarietal hybrid” means the first generation of a cross, defined by the breeder, between plants grown from basic seed of two open-pollinated varieties.
- (3) All applications, approvals, authorisations, notices, notifications and statements to which these Regulations apply shall be made in writing.
- (4)
- “Writing” in paragraph (3) shall include an electronic communication within the meaning of the Electronic Communications Act 2000<sup>(14)</sup> provided that—
- (a) any document of the type referred to in paragraph (3) shall only be sent to the Secretary of State by an electronic communication if the Secretary of State has represented that electronic communication is a means by which persons can send such a document to her, and
  - (b) notifications required to be made by the Secretary of State to any person shall only be made by an electronic communication if the intended recipient has himself used the same form of electronic communication in communicating with the Secretary of State for the purpose of these Regulations or has otherwise represented that that form of electronic communication is a means by which the Secretary of State can communicate with him.
- (5) Expressions in these Regulations which are not defined in this regulation or elsewhere in these Regulations or in a Schedule to these Regulations and which appear in the Cereal Seed Directive have the same meaning in these Regulations as they have in that Directive.

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(14) 2000 c. 7.

(6) Schedule 1, which contains definitions of pre-basic seed and similar expressions, basic seed and similar expressions, CS, C1 and C2 seed and similar expressions and expressions relating to imported not finally certified seed, shall apply to the interpretation of these Regulations.

### **Definitions relating to plant species**

3. In these Regulations—

“barley” means plants of the species *Hordeum vulgare* L.;

“durum wheat” means plants of the species *Triticum durum* Desf.;

“maize” means plants of the species *Zea mays* L. (partim) except for *Zea mays* convar. *microsperma* Koern. (commonly known as popcorn) and *Zea mays* convar. *saccharata* Koern (commonly known as sweetcorn);

“oats” means plants of the species *Avena sativa* L.;

“rye” means plants of the species *Secale cereale* L.;

“spelt wheat” means plants of the species *Triticum spelta* L.;

“triticale” means plants of the species *x Triticosecale* Wittm.;

“wheat” means plants of the species *Triticum aestivum* L. emend. Fiori et Paol.; and

“wild oats” means plants of the species *Avena fatua*, *Avena sterilis* and *Avena ludoviciana*.

### **Definition of marketing**

4.—(1) Subject to paragraph (2), in these Regulations “marketing” means—

(a) selling, holding with a view to sale or offering for sale, or

(b) any disposal, supply or transfer for the purpose of commercial exploitation of seed to third parties,

whether or not for consideration, and “market” and “marketed” shall be construed accordingly.

(2) Trade in seed not aimed at commercial exploitation of the variety, such as the following operations—

(a) the supply of seed to official testing and inspection bodies, and

(b) the supply of seed to a person who provides processing or packaging services but who does not thereby acquire title to the seed supplied,

shall not be regarded as marketing of seed of that variety.

### **Seed to which these Regulations apply**

5.—(1) Subject to paragraph (2), these Regulations apply to cereal seed of the species specified in Schedule 2 that are intended to be used for agricultural or horticultural production other than production for ornamental purposes.

(2) These Regulations shall not apply to seed that is intended for export to a third country.