

2002 No. 787

AGRICULTURE

The Hemp (Third Country Imports) Regulations 2002

Made - - - - - 25th March 2002

Laid before Parliament 25th March 2002

Coming into force - - - - - 1st May 2002

The Secretary of State, being designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to the common agricultural policy of the European Community, acting in exercise of the powers conferred on her by virtue of the said section 2(2), and of all other powers enabling her in that behalf, hereby makes the following Regulations:

Title and commencement

1. These Regulations may be cited as the Hemp (Third Country Imports) Regulations 2002 and shall come into force on 1st May 2002.

Interpretation

- 2.—(1) In these Regulations, unless the context otherwise requires—
- “applicant” means any person who has made an application for—
 - (a) a licence; or
 - (b) an authorisation;
 - “the appropriate authority” means, in respect of an import of hemp from a third country into—
 - (a) England, the Secretary of State for Environment, Food and Rural Affairs;
 - (b) Wales, the National Assembly for Wales;
 - (c) Scotland, the Scottish Ministers; and
 - (d) Northern Ireland, the Department of Agriculture and Rural Development;
 - “attestation” means the attestation made in relation to the use of hemp seeds other than for sowing following their import from a third country pursuant to the second subparagraph of Article 17a(2) of Commission Regulation 245/2001;
 - “authorisation” means an authorisation granted by the appropriate authority pursuant to the third indent of the first sub-paragraph of Article 5(2) of Council Regulation 1673/2000 to import from third countries hemp seeds other than for sowing;
 - “authorised importer” means any person to whom an authorisation has been granted;
 - “authorised person” means—

(a) The power of the Secretary of State, as a Minister designated by virtue of S.I. 1972/1811 in relation to the common agricultural policy of the European Community, to make regulations which extend to Scotland remains exercisable by virtue of section 57(1) of the Scotland Act 1998 (1998 c. 46). The Secretary of State’s power, as a Minister so designated, to make regulations which extend to Wales is confirmed by article 3(4) of the European Communities (Designation) (No. 3) Order 1999 (S.I. 1999/2788).

(b) 1972 c. 68.

(a) a person (whether or not an officer of the appropriate authority) who is authorised by the appropriate authority, either generally or specifically, to act in matters arising under these Regulations; or

(b) an officer of Customs and Excise;

“Commission Regulation 245/2001” means Commission Regulation (EC) No. 245/2001 laying down detailed rules for the application of Council Regulation (EC) No. 1673/2000 on the common organisation of the markets in flax and hemp grown for fibre(a) (as amended by Commission Regulation 1093/2001 and Commission Regulation 52/2002);

“Commission Regulation 1093/2001” means Commission Regulation (EC) No. 1093/2001 amending Regulation (EC) No. 245/2001 laying down detailed rules for the application of Council Regulation (EC) No. 1673/2000 on the common organisation of the markets in flax and hemp grown for fibre(b);

“Commission Regulation 52/2002” means Commission Regulation (EC) No. 52/2002 amending Regulation (EC) No. 245/2001 laying down detailed rules for the application of Council Regulation (EC) No. 1673/2000 on the common organisation of the markets in flax and hemp grown for fibre(c);

“Council Regulation 1673/2000” means Council Regulation (EC) No. 1673/2000 on the common organisation of the markets in flax and hemp grown for fibre(d);

“Council Regulation 1251/1999” means Council Regulation (EC) No. 1251/1999 establishing a support system for producers of certain arable crops(e);

“electronic communication” has the same meaning as in the Electronic Communications Act 2000(f);

“hemp” means one or more of the following—

(a) true hemp;

(b) hemp seeds for sowing;

(c) hemp seeds other than for sowing;

“hemp seeds for sowing” means seeds of varieties within the terms of the second indent of the first sub-paragraph of Article 5(2) of Council Regulation 1673/2000;

“hemp seeds other than for sowing” means seeds within the terms of the third indent of the first sub-paragraph of Article 5(2) of Council Regulation 1673/2000;

“import”, when used as a noun, means an import into that part of the United Kingdom for which the appropriate authority concerned has responsibility under these Regulations;

“licence” means a licence to import hemp from one or more third countries granted by the appropriate authority pursuant to the first sub-paragraph of Article 5(2) of Council Regulation 1673/2000;

“licensed importer” means any person to whom a licence has been granted;

“relevant consignment documentation” means—

(a) a licence permitting the import of the consignment in question by the importer concerned, or a copy of that licence; and

(b) in the case of an import of hemp seeds other than for sowing, the authorisation granted to that importer, or a copy of that authorisation.

“subsequent user” means—

(a) any person who uses imported hemp seeds other than for sowing in any of the operations specified in the second sub-paragraph of Article 17a(2) of Commission Regulation 245/2001; or

(b) any person taking delivery of hemp seeds other than for sowing from—

(i) an authorised importer; or

(ii) any other person.

“THC content” means the tetrahydrocannabinol content of hemp, based on quantitative determination by gas chromatography after extraction with a suitable solvent;

(a) OJ No. L35, 6.2.2001, p.18.

(b) OJ No. L150, 6.6.2001, p.17.

(c) OJ No. L10, 12.1.2002, p.10.

(d) OJ No. L193, 29.7.2000, p.16.

(e) OJ No. L160, 26.6.1999, p.1, as last amended by Council Regulation (EC) No. 1038/2001 (OJ No. L145, 31.5.2001, p.16).

(f) 2000 c. 7.

“third country” means a country other than a Member State of the European Community; and

“true hemp” means harvested plant material of the species *Cannabis sativa L.* within the terms of the first indent of the first sub-paragraph of Article 5(2) of Council Regulation 1673/2000, whether or not the leaves and seeds have been removed, which is either—

(a) raw; or

(b) retted,

and “retted” means a state where the fibres are still attached to the plant but have been loosened.

(2) Other expressions used in these Regulations have, in so far as the context admits, the same meanings as in Council Regulation 1673/2000, Commission Regulation 245/2001 and Commission Regulation 1093/2001.

(3) In these Regulations any reference to anything done in writing or produced in written form includes a reference to an electronic communication which has been recorded and is subsequently capable of being reproduced.

(4) In these Regulations any reference to a numbered regulation shall be construed as a reference to the regulation so numbered in these Regulations.

Imports of hemp from third countries

3. No person shall import hemp from a third country—

(a) except under authority of—

(i) a licence; and

(ii) in the case of the import of hemp seeds other than for sowing, an authorisation;

(b) unless the consignment of hemp imported is accompanied by the relevant consignment documentation; and

(c) in the case of true hemp or hemp seeds for sowing, where the variety of hemp imported has a THC content of more than 0.2 per cent.

Issue and use of licences

4. For the purposes of the second sub-paragraph of Article 17a(1) of Commission Regulation 245/2001, applications for, and the issue and use of, licences shall be in accordance with the requirements of regulations 5 to 8 below.

Applications for licences

5. An application for a licence shall—

(a) be made to the appropriate authority;

(b) be in writing;

(c) contain such information as is necessary for the completion of the boxes numbered 4, 14, 15, 16, 17, 18, 20 and 24 of the licence replicated in the Annex to Commission Regulation 1093/2001; and

(d) contain such other information, and be accompanied by such documents, as the appropriate authority may reasonably require.

Grant and variation of licences

6.—(1) The appropriate authority may—

(a) grant a licence either unconditionally or subject to such conditions as it may determine; or

(b) refuse to grant a licence.

(2) The appropriate authority may vary a licence by varying any conditions to which it is subject, or by imposing conditions.

(3) Before the appropriate authority decides to—

(a) refuse to grant a licence pursuant to paragraph (1); or

(b) vary a licence pursuant to paragraph (2),

it shall—

- (i) give the applicant or licensed importer, as the case may be, notice in writing of its proposed decision with a statement of its reasons;
 - (ii) give that applicant or licensed importer an opportunity to make written representations within such time as the appropriate authority considers reasonable; and
 - (iii) consider any such representations.
- (4) A licence or variation under this regulation shall be in writing.

Scope of licences

7. A licence shall permit the import from one or more third countries of—
- (a) a particular consignment of hemp; or
 - (b) all consignments of hemp for a specified period, which period shall not exceed nine months.

THC content of licensed imports

8.—(1) For the purposes of the first and second indents of the first sub-paragraph of Article 5(2) of Council Regulation 1673/2000, an import of true hemp or hemp seeds for sowing from a third country shall be deemed to be an import of a variety of hemp having a THC content of not more than 0.2 per cent if the variety of true hemp or hemp seeds for sowing imported is a variety in respect of which area payments are capable of being made pursuant to Article 5a of Council Regulation 1251/1999.

(2) Where an import of true hemp or hemp seeds for sowing from a third country does not fall within the scope of paragraph (1), it shall be deemed to be an import of a variety of hemp having a THC content of not more than 0.2 per cent if the consignment of true hemp or hemp seeds for sowing imported is accompanied by other evidence which demonstrates, in the reasonable opinion of the appropriate authority, that the consignment comprises a variety of true hemp or hemp seeds for sowing which has such a THC content.

Information

9.—(1) A licensed importer shall supply to the appropriate authority such information about an import of hemp from a third country as the appropriate authority may reasonably require.

(2) Any information supplied pursuant to paragraph (1) shall be supplied within such period as the appropriate authority may reasonably determine.

Record keeping

10.—(1) Subject to paragraphs (2) and (3), a licensed importer shall keep any contract, bill, invoice, account, receipt or any other document relating to an import of hemp from a third country for—

- (a) four years, in the case of an import of hemp seeds other than for sowing; and
- (b) three years, in the case of an import of any other class of hemp, beginning from the end of the year in which it was drawn up.

(2) If the licensed importer transfers the original of any such document to another person in the normal course of business, he shall instead keep a copy of that document for that period.

(3) Paragraph (1) shall not apply where the document has been removed by any person lawfully authorised to remove it.

Authorisations

11.—(1) An application for an authorisation shall—

- (a) be made to the appropriate authority;
- (b) be in writing; and
- (c) contain such information, and be accompanied by such documents, as the appropriate authority may reasonably require.

- (2) Subject to paragraph (3), the appropriate authority may—
 - (a) grant an authorisation either unconditionally or subject to such conditions as it may determine; or
 - (b) refuse to grant an authorisation.
- (3) The appropriate authority shall not grant an authorisation unless it is satisfied that the applicant—
 - (a) has sufficient experience in carrying out the business of importing hemp seeds other than for sowing; or
 - (b) has demonstrated, by producing documentary or other evidence, that any hemp seeds other than for sowing to be imported under that authorisation will undergo a legitimate operation.
- (4) For the purposes of paragraph (3)—
 - “sufficient experience” means experience gained over a period of at least two years;
 - and
 - “legitimate operation” means one or more of the operations specified in the three indents of the second sub-paragraph of Article 17a(2) of Commission Regulation 245/2001.
- (5) The appropriate authority may vary an authorisation by varying any conditions to which it is subject, or by imposing conditions.
- (6) Before the appropriate authority decides to—
 - (a) refuse to grant an authorisation pursuant to paragraph (2); or
 - (b) vary an authorisation pursuant to paragraph (3),
 it shall—
 - (i) give the applicant or authorised importer, as the case may be, notice in writing of its proposed decision with a statement of its reasons;
 - (ii) give that applicant or authorised importer an opportunity to make written representations within such time as the appropriate authority considers reasonable; and
 - (iii) consider any such representations.
- (7) An authorisation or variation under this regulation shall be in writing.

Attestations

12. For the purposes of the fourth sub-paragraph of Article 17a(2) of Commission Regulation 245/2001, the information provided in an attestation shall include the reference number of any licence under which the hemp seeds other than for sowing to which the attestation relates were imported.

Powers of authorised persons

13.—(1) An authorised person may at all reasonable hours and on producing, if so required, a duly authenticated document showing his authority, exercise the powers specified in this regulation for the purposes of ascertaining whether—

- (a) the use of hemp seeds other than for sowing is in accordance with the attestation made in respect of them;
- (b) an offence under regulation 16 has been or is being committed;
- (c) any obligation relating to the import of hemp from a third country imposed by Council Regulation 1251/1999, Council Regulation 1673/2000, or Commission Regulation 245/2001 is not being fulfilled.

(2) An authorised person may enter any land, other than land used only as a dwelling, which is, or which such person has reasonable cause to believe to be land occupied by, or in the possession of—

- (a) an applicant;
- (b) a licensed importer; or
- (c) a subsequent user.

- (3) An authorised person who has entered any land by virtue of paragraph (2) may—
 - (a) inspect that land for the purpose of determining whether or not—

- (i) it has been planted with hemp seeds for sowing; and
 - (ii) imported hemp is being stored there.
 - (b) examine any imported hemp found on that land;
 - (c) seize and remove that imported hemp.
- (4) An authorised person entering any land by virtue of this regulation may take with him such other persons as he considers necessary.
- (5) An authorised person may—
- (a) require an applicant, licensed importer or subsequent user, or any employee, servant or agent of that applicant, licensed importer or subsequent user, to produce any relevant consignment documentation and to supply any record or such additional information in that person's possession or under his control relating to an application for a licence or authorisation or an import of hemp as the authorised person may reasonably request;
 - (b) inspect any relevant consignment document or any such record and, where any such documentation or record is kept by means of a computer, have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been used in connection with that documentation or record;
 - (c) require that copies of, or extracts from, any relevant consignment documentation or any such record be produced; and
 - (d) seize and retain any relevant consignment documentation or any such record which he has reason to believe may be required as evidence in proceedings under these Regulations and, where any such documentation or record is kept by means of a computer, require it to be produced in a form in which it may be taken away.

Assistance to authorised persons

14. An applicant, licensed importer or subsequent user, or any employee, servant or agent of that applicant, licensed importer or subsequent user, shall give to an authorised person such assistance as the authorised person may reasonably request so as to enable the authorised person to exercise any power conferred by regulation 13.

Suspension or revocation of licences or authorisations

15.—(1) Where a licensed importer or authorised importer is guilty of an offence under regulation 16, the appropriate authority may—

- (a) suspend or revoke any licence granted pursuant to regulation 6 to that licensed importer; and
- (b) suspend or revoke any authorisation granted pursuant to regulation 11 to that authorised importer.

(2) Before the appropriate authority decides to revoke a licence or authorisation pursuant to paragraph (1) it shall—

- (i) give the licensed importer or authorised importer, as the case may be, notice in writing of its proposed decision with a statement of its reasons;
- (ii) give that licensed importer or authorised importer an opportunity to make written representations within such time as the appropriate authority considers reasonable; and
- (iii) consider any such representations.

(3) A suspension or revocation under this regulation shall be in writing.

Offences

16. It shall be an offence for any person—

- (a) without reasonable excuse, to fail to comply with the provisions of regulation 3, 9 or 10, or any obligation imposed by Article 17a of Commission Regulation 245/2001;
- (b) intentionally to obstruct an authorised person in the exercise of a power conferred by regulation 13;
- (c) without reasonable excuse, to fail to comply with a request made under regulation 14; or

- (d) knowingly or recklessly to make a statement or furnish any information which is false or misleading in a material particular where the statement is made or the information is furnished in purported compliance with—
 - (i) any requirement imposed by regulation 9; or
 - (ii) any request made pursuant to regulation 14.

Punishment of offences

17.—(1) A person guilty of an offence under regulation 16(a), (b) or (c) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) A person guilty of an offence under regulation 16(d) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Time limit for prosecutions

18.—(1) Proceedings for an offence under regulation 16 may, subject to paragraph (2) below, be brought within the period of six months from the date on which evidence sufficient in the opinion of the prosecutor to warrant proceedings comes to his knowledge.

(2) No such proceedings shall be brought by virtue of this regulation more than two years after the commission of the offence.

(3) For the purpose of this regulation, a certificate signed by or on behalf of the prosecutor and stating the date on which evidence sufficient in his opinion to warrant the proceedings came to his knowledge shall be conclusive evidence, and in relation to proceedings in Scotland shall be sufficient evidence, of that fact.

(4) A certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.

Offences by bodies corporate

19.—(1) Where a body corporate is guilty of an offence under regulation 16, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar officer of the body corporate, or
- (b) any person who was purporting to act in any such capacity,

he, as well as the body corporate, shall be guilty of the offence and be liable to be proceeded against and punished accordingly.

(2) For the purposes of paragraph (1) above, “director”, in relation to a body corporate whose affairs are managed by its members, means a member of that body corporate.

(3) For the purposes of paragraph (1), references to a “body corporate” include references to a partnership in Scotland, and, in relation to such a partnership, any reference to a director or other officer of a body corporate is a reference to a partner.

25th March 2002

Whitty
Parliamentary Under Secretary,
Department for Environment,
Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 1st May 2002, introduce provisions concerning the import into the United Kingdom of true hemp, hemp seeds for sowing and hemp seeds other than for sowing (“hemp”) from countries other than Member States of the European Community (“third countries”). The Regulations implement the requirements of Article 17a of Commission Regulation (EC) No. 245/2001 concerning imported hemp (OJ No. L35, 6.2.2001, p.18. Article 17a was inserted by Commission Regulation (EC) No. 1093/2001 (OJ No. L150, 6.6.2001, p.17) and amended by Commission Regulation (EC) No. 52/2002 (OJ No. L10, 12.1.2002, p.10)) in implementation of the requirements in respect of trade with third countries contained in Title II of Council Regulation (EC) No. 1673/2000 on the common organisation of the markets in flax and hemp grown for fibre (OJ No. L193, 29.7.2000, p.16).

The Regulations require that hemp from third countries be imported under a licence, and, in the case of hemp seeds other than for sowing, under an authorisation, issued by the Secretary of State for Environment, Food and Rural Affairs in respect of imports into England, the National Assembly for Wales in respect of imports into Wales, the Scottish Ministers in respect of imports into Scotland, and the Department of Agriculture and Rural Development in respect of imports into Northern Ireland (“the appropriate authority”) (regulation 3). The Regulations establish procedures for the application for, and the grant and variation of, import licences as well as specifying the scope of those licences (regulations 4 to 7), and introduce similar procedures for authorisations (regulation 11). They also introduce requirements in relation to the tetrahydrocannabinol (“THC”) content of the variety of true hemp or hemp seeds for sowing imported (regulation 8) and the content of attestations provided by importers or subsequent users on the use made of hemp seeds other than for sowing (regulation 12). The Regulations introduce information and record keeping requirements (regulations 9 and 10) and establish provisions on enforcement (regulations 13 and 14), the suspension and revocation of licences and authorisations (regulation 15) and on offences and penalties (regulations 16 to 19).

A Regulatory Impact Assessment has been prepared in respect of these Regulations. Copies of this assessment can be obtained from the Organics, Forestry and Industrial Crops Division of the Department for Environment, Food and Rural Affairs, Ergon House, 17 Smith Square, London SW1P 3JR. A copy has been placed in the library of both Houses of Parliament.

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