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WELSH STATUTORY INSTRUMENTS

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**2005 No. 1207**

**The Fodder Plant Seed (Wales) Regulations 2005**

**PART I**  
**GENERAL**

**Title, application and commencement**

1. These Regulations may be cited as the Fodder Plant Seed (Wales) Regulations 2005, they apply to Wales and come into force on 30 April 2005.

**General interpretation**

2.—(1) In these Regulations —

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

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

“Annex V(C) document” means an official document of the type specified in the second indented sub-paragraph of Article 15(2) of the Fodder Plant Seed Directive containing the particulars specified in Part 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 Annex 1 to the Third Country Equivalence Decision;

“authorised officer” means an officer authorised for the purposes of these Regulations by the National Assembly for Wales, the Secretary of State, the Scottish Ministers 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 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 or her 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 which is intended for the production of pre-basic or basic seed;

“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\(1\)](#) on the common catalogue of varieties of agricultural plant species, as last amended by the Food and Feed Regulation;

“component” means 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 with an application made under regulation 6(1) or another official sample of the seed);

“the Deliberate Release Directive” means Council Directive [2001/18/EC\(2\)](#) on the deliberate release into the environment of genetically modified organisms, as last amended by Council Regulation (EC) No. [1830/2003\(3\)](#) concerning the traceability and labelling of genetically modified organisms and the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms;

“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 Fodder Plant Seed Directive;

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

“the EC minimum percentage of germination” means the appropriate percentage of germination specified in column 2 of the table in paragraph 14 of Schedule 4;

“EEA State” means —

(a) a State which is a member of the Communities; and

(b) Iceland, Liechtenstein and Norway;

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“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);

“equivalent third country” means Argentina, Australia, Bulgaria, Canada, Chile, Croatia, Israel, Morocco, New Zealand, Romania, Serbia and Montenegro, South Africa, Turkey, the United States of America, and Uruguay;

“the Fodder Plant Seed Directive” means Council Directive [66/401/EEC\(4\)](#) on the marketing of fodder plant seed, to which the relevant amendments are Commission Decision [2004/266/EC\(5\)](#); Commission Decision [2004/55/EC\(6\)](#) and Commission Decision [2004/371/EC\(7\)](#); “the

(1) O.J. No. L193, 20.7.2002, p.1.

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

(3) O.J. No. L268, 18.10.2003, p.24.

(4) (1) O.J. No. L125, 11.7.66, p.2298.

(5) O.J. No. L83, 20.3.2004, p.23.

(6) O.J. No. L114, 21.4.2004, p.18.

(7) O.J. No. L116, 22.4.2004, p.39.

Food and Feed Regulation” means Council Regulation (EC) No. 1829/2003<sup>(8)</sup> on genetically modified food and feed;

“genetically modified” has the same meaning as for the purposes of the Deliberate Release Directive; “germination condition” means the condition in paragraph 14 of Schedule 4;

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

“an HVS species of seed” means seed of any of the following species —

- (a) cocksfoot;
- (b) festulolium;
- (c) hybrid ryegrass;
- (d) Italian ryegrass;
- (e) lucerne;
- (f) meadow fescue;
- (g) perennial ryegrass;
- (h) red clover;
- (i) red fescue;
- (j) sainfoin;
- (k) small Timothy;
- (l) smooth-stalked meadowgrass;
- (m) tall fescue;
- (n) Timothy; and
- (o) white clover;

“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;

“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<sup>(9)</sup> or by the National Assembly for Wales, the Scottish Ministers 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)(A)(a)(iii) of the Fodder Plant 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<sup>(10)</sup> 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<sup>(11)</sup>, to carry out seed testing in that member State;

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<sup>(8)</sup> O.J. No. L268, 18.10.2003.

<sup>(9)</sup> S.I.2002/3176.

<sup>(10)</sup> O.J. No. L140, 12.5.98, p.14.

<sup>(11)</sup> O.J. No. L99, 16.4.2002, p.22.

“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 National Assembly for Wales, the Scottish Ministers or the Department of Agriculture and Rural Development under provisions equivalent to that regulation;

“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 National Assembly for Wales, the Scottish Ministers 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 fine grasses, fodder grasses, small seeded legumes and large seeded legumes, the OECD Grass and Legume Seed Scheme, and
- (b) in the case of crucifers, the OECD Crucifer and Oil and Fibre 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;

“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 National Assembly for Wales, the Secretary of State, the Scottish Ministers, the Department for 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, in addition to a State which is a member of the Communities, any other EEA State and Switzerland;

“a National List” means a list of varieties of fodder species for the time being published in accordance with the Seeds (National Lists of Varieties) Regulations 2001(12);

“a non-fodder grass variety” means a variety that has not been examined for value for cultivation and use;

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

“OECD Certificate” means a certificate issued by or on behalf of an approved seed certification authority in an equivalent third country under —

- (a) in the case of fine grasses, fodder grasses, small seeded legumes and large seeded legumes, the OECD Grass and Legume Seed Scheme, and
- (b) in the case of crucifers, the OECD Crucifer and Oil and Fibre Seed Scheme;

“OECD Crucifer and Oil and Fibre Seed Scheme” means the OECD Scheme for the varietal certification of crucifer seed and other oil and fibre species seed moving in international trade in Annex VII to the OECD Decision;

“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(13);

“OECD Grass and Legume Seed Scheme” means the OECD Scheme for the varietal certification of grass and legume seed moving in international trade in Annex VI to the OECD Decision;

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

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

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

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

“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 name”, in relation to a mixtures of seeds to which regulation 22(1) or (2) applies means the name under which such a mixture has been registered under regulation 22(5);

“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; “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 14 of Schedule 4;

“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 2 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 National Assembly for Wales, the Secretary of State, the Scottish or the Department of Agriculture and Rural Development and which has produced plants which have been examined by or on behalf of the National Assembly for Wales, the Secretary of State, the Scottish Ministers 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 8, 10 and 12 of Schedule 3, and
  - (ii) paragraphs 1 to 3 of Schedule 4, and
- (b) the category of the seed to be produced,

to be satisfactory seed from which to produce that category of seed;

“small EC A package of seed” means a package containing a mixture of seeds to which regulation 22(1) applies with a net weight of not more than 2 kilograms excluding any granulated pesticides, pelleting substances or other solid additives that may be in the mixture;

“small EC B package of seed” means —

- (a) a package containing basic, CS, C1, C2 or commercial seed with a net weight of not more than 10 kilograms excluding any granulated pesticides, pelleting substances or other solid additives in the seed;
- (b) a package, other than a small EC A package of seed, containing a mixture of seeds to which regulation 22(1) applies with a net weight of not more than 10 kilograms excluding any granulated pesticides, pelleting substances or other solid additives in the seed; or
- (c) a package containing a mixture of seeds to which regulation 22(2) applies with a net weight of not more than 10 kilograms excluding any granulated pesticides, pelleting substances or other solid additives in the seed;

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

“the Third Country Equivalence Decision” means Council Decision [2003/17/EC\(14\)](#) 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 Council Regulation [\(EC\) No 885/2004\(15\)](#);

“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;

“whenever carried out” —

(14) O.J. No. L8, 14.1.2003, p 10.

(15) O.J. L168, 1.5.2004, p.1.

- (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;
  - (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) All applications, approvals, authorisations, notices, notifications and approvals and statements to which these Regulations apply shall be made in writing.
- (3) “Writing” in paragraph (2) shall include an electronic communication within the meaning of the Electronic Communications Act 2000(16) provided that —
- (a) any document of the type referred to in paragraph (2) shall only be sent to the National Assembly for Wales by an electronic communication if the National Assembly for Wales has represented that electronic communication is a means by which persons can send such a document to it, and
  - (b) notifications required to be made by the National Assembly for Wales to any person shall only be made by an electronic communication if the intended recipient has himself or herself used the same form of electronic communication in communicating with the National Assembly for Wales for the purpose of these Regulations or has otherwise represented that that form of electronic communication is a means by which the National Assembly for Wales can communicate with him or her.
- (4) Expressions in these Regulations which are not defined in this regulation or elsewhere in these Regulations, or in the Schedules to these Regulations, and which appear in the Fodder Plant Seed Directive have the same meaning in these Regulations as they have in that Directive.
- (5) 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, commercial 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—

- “Alaska brome-grass” means plants of the species *Bromus sitchensis* Trin.;
- “Alsike clover” means plants of the species *Trifolium hybridum* L.;
- “annual meadowgrass” means plants of the species *Poa annua* L.;
- “birdsfoot trefoil” means plants of the species *Lotus corniculatus* L.;
- “blue lupin” means plants of the species *Lupinus angustifolius* L. which is also commonly known as “narrow-leaved lupin”;
- “brown top” means plants of the species *Agrostis capillaris* L.;

- “cocksfoot” means plants of the species *Dactylis glomerata* L.;
- “common vetch” means plants of the species *Vicia sativa* L.;
- “creeping bent grass” means plants of the species *Agrostis stolonifera* L.;
- “crucifers” means fodder kale, fodder radish and swede;
- “dodder” means plants of the species *Cuscuta*;
- “festulolium” means plants of the species *Festuca arundinacea* Schreber; *Festuca ovina* L.; *Festuca pratensis* Hudson; or *Festuca rubra* L. x *Lolium multiflorum* Lam.; *Lolium multiflorum* Lam.; *Lolium perenne* L.; or *Lolium x boucheanum* Kunth;
- “field bean” means plants of the species *Vicia faba* L. (partim);
- “field pea” means plants of the species *Pisum sativum* L. (partim);
- “fine grasses” means grasses of the species specified in paragraph 1 of Schedule 2;
- “fodder grasses” means grasses of the species specified in paragraph 2 of Schedule 2;
- “fodder kale” means plants of the species *Brassica oleracea* L. convar. *acephala* (DC) Alef. var. *medullosa* Thell + var. *viridis* L.;
- “fodder radish” means plants of the species *Raphanus sativus* L. var. *Oleiformis* Pers.;
- “hairy vetch” means plants of the species *Vicia villosa* Roth;
- “Hungarian vetch” means plants of the species *Vicia pannonica* Crantz;
- “hybrid ryegrass” means plants of the species *Lolium x boucheanum* Kunth;
- “Italian ryegrass” means plants of the species *Lolium multiflorum* Lam. including Westerwolds ryegrass;
- “large seeded legumes” means large seeded legumes of the species specified in paragraph 4 of Schedule 2;
- “lucerne” means plants of the species *Medicago sativa* L. and *Medicago x varia* T. Martyn;
- “lupins” means blue, white and yellow lupins;
- “meadow fescue” means plants of the species *Festuca pratensis* Hudson;
- “perennial ryegrass” means plants of the species *Lolium perenne* L.;
- “red clover” means plants of the species *Trifolium pratense* L.;
- “red fescue” means plants of the species *Festuca rubra* L. including chewings fescue;
- “red top” means plants of the species *Agrostis gigantea* Roth;
- “rescue grass” means plants of the species *Bromus catharticus* Vahl.;
- “rough stalked meadowgrass” means plants of the species *Poa trivialis* L.;
- “sainfoin” means plants of the species *Onobrychis viciifolia* Scop.;
- “sheep’s fescue” means plants of the species *Festuca ovina* L. including the plants commonly known as fine-leaved fescue and hard fescue;
- “small seeded legumes” means small seeded legumes of the species specified in paragraph 3 of Schedule 2;
- “small Timothy” means plants of the species *Phleum bertolonii* DC.;
- “smooth-stalked meadowgrass” means plants of the species *Poa pratensis* L.;
- “swede” means plants of the species *Brassica napus* L. var. *napobrassica* (L.) Rchb.;
- “tall fescue” means plants of the species *Festuca arundinacea* Schreber;
- “tall oatgrass” means plants of the species *Arrhenatherum elatius* (L.) J. and C. Presl;



- “Timothy” means plants of the species *Phleum pratense* L.;
- “trefoil, black medick” means plants of the species *Medicago lupulina* L.;
- “velvet bent” means plants of the species *Agrostis canina* L.;
- “vetches” means common, hairy and Hungarian vetches;
- “white clover” means plants of the species *Trifolium repens* L.;
- “white lupin” means plants of the species *Lupinus albus* L.;
- “wood meadowgrass” means plants of the species *Poa nemoralis* L.; and
- “yellow lupin” means plants of the species *Lupinus luteus* L.

#### **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 fodder plant seed of the species specified in Schedule 2.

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