

POLICY NOTE

THE SEED (LICENSING AND ENFORCEMENT ETC.) (SCOTLAND) REGULATIONS 2016

SSI 2016/68

1. The above instrument was made in exercise of the powers conferred by sections 16(1) to (5A), 24(5), 26(2) and (3) and 36 of the Plant Varieties and Seeds Act 1964 (“the 1964 Act”). The instrument is subject to negative resolution procedure.

Policy Objectives

2. The purpose of this instrument is to:

- Revoke and replace the Seeds (Registration, Licensing and Enforcement) Regulations 2006 (S.S.I. 2006/313) (“the 2006 Regulations”). The 2006 Regulations regulated the use of licensed personnel under official supervision in the certification of true seeds for marketing. The Seed (Licensing and Enforcement etc.) (Scotland) Regulations 2016, (“the 2016 Regulations”) update the legislation in this area.
- Implement Commission Implementing Directive (EU) 2015/1955 amending Annexes I and II to Council Directive 66/402/EEC on the marketing of cereal seed (O.J. No. L 284, 30.10.2015, p.142).

Consultation

3. To comply with the requirements of section 16(1) of the Plant Varieties and Seeds Act 1964, the consultation documents were placed on the SG website, and as well as our three major stakeholders, over 150 individuals were informed of the proposed changes to the licencing and enforcement legislation. At the end of 12 weeks, we received 2 responses to the consultations. Neither of which opposed any of the proposals.

4. A separate consultation exercise was undertaken to inform the industry about the change to the varietal purity standard for hybrid barleys produced by means of cytoplasmic male sterility (CMS). NFU Scotland, AIC Scotland and the Scottish Seed Trade Association (SSTA) were contacted directly. They have no objections to the varietal purity standard being reduced as required by the EU. The information was cascaded more widely by way of a Seed Certification information letter sent to the seed industry in Scotland.

Purpose of The Seed (Licensing and Enforcement etc.) (Scotland) Regulations 2016 (“the 2016 Regulations”)

5. The marketing of seed is regulated by five EU Directives and these are transposed into domestic legislation by the Seed Marketing Regulations, namely, the Beet Seed (Scotland) (No 2) Regulations 2010; the Cereal Seed (Scotland) Regulations 2005; the Fodder Plant Seed (Scotland) Regulations 2005; the Oil and

Fibre Plant Seed (Scotland) Regulations 2004 and the Vegetable Seeds Regulations 1993.

6. The Seed Marketing Regulations require that certified seed meets certain statutory standards before it may be marketed. That certification process includes the inspection of crops, the sampling of seed, the testing of seed lots and the observation of control plots. Whilst the system could operate using only official personnel (that is with government officials) and indeed does operate that way in some countries, for many years now Member States have taken advantage of the flexibility provided in the EU Directives to license crop inspectors, seed samplers and seed testing stations, which have operated in most parts of the UK, including throughout Scotland.

7. The Seed Marketing Regulations recognise the involvement of licensed personnel in the certification process. The 2016 Regulations support the Seed Marketing Regulations by making provision for licensed personnel and regulating the manner in which they operate. It is a requirement of EU law that all licensed activity of this type takes place under official supervision, hence the continuing need to regulate such activities.

8. The 2006 Regulations are intended to bring greater consistency and flexibility to the regulation of licensed seed personnel. The 2016 Regulations will bring regulation of all the certification / marketing functions undertaken by the industry in Scotland in line with each other. Although similar in format, each licence will provide clear indications as to what functions the holder is permitted to undertake and the conditions that apply. The new format of licences also allows for consistency in language and cover a five year period rather than the current three.

Main changes introduced by the 2016 Regulations

Registration to Licence

9. Previously, Scottish Government licenced the following seed activities –

- crop inspecting;
- seed sampling and;
- seed testing

10. By contrast, seed merchants, seed processors and seed packers were subject to registration which although it allowed for termination and revocation, it did not expire. The new Professional Seed Operator' licence allows more flexibility with regards to functions, conditions and crop species and is to be granted for a period of five years (which can be renewed) in-line with the other licences. This is also consistent with changes made elsewhere in the UK.

Changes to Licences

11. In light of the 2016 Regulations, the opportunity has been taken to revise the format of licences so that they are, broadly similar and therefore providing a clearer and more informative text as to what each individual / company licence enables the holder to do. Original licence and registration numbers are retained by the holders.

At the moment, existing licences run for a period of 3 years. However, in light of the 2016 Regulations, all new licences will run for a period of 5 years (which can be renewed). Transitional arrangements are made in relation to existing licences by regulation 23 of the 2016 Regulations so that those will be varied to reflect the new format of the licence (though without altering their existing expiry date). With no changes to licence fees expected until 2017, there will be no new or unexpected costs for licence holders. In relation to existing registrations, those will continue to apply for a transitional period (31 December 2016), subject to approval during that period of new licences for professional seed operators.

Variation, Suspension and revocation of licences

12. As well as applying consistent variation, suspension and revocation provisions in relation to all four licensed activities, provision is also made (see regulation 7 of the 2016 Regulations) to enable the suspension or revocation of licences in whole or in part. The latter introduces a further degree of flexibility to deal with a failure to comply with licence conditions or other relevant legal requirements on licence holders as set out in the 2016 Regulations.

13. As was the case under the 2006 Regulations, regulation 7(4) of the 2016 Regulations enables the suspension of a licence (in whole or, now, in part) with immediate effect. This will allow a person to be stopped immediately from undertaking any further work in relation to specific species or functions, where continuing to do so is causing, or likely to cause, prejudice to the administration or enforcement of the seeds regulations.

14. As with the 2006 Regulations, regulations 15 and 16 respectively provide licence holders with the right to make representations or to appeal in relation to enforcement decisions taken by the Scottish Ministers in relation to licences.

Minor Amendments

15. Whilst drafting the 2016 Regulations, we have also taken the opportunity to make some amendments to take account of changes to the Seed Marketing Regulations over the years, which have impacted on the 2006 Regulations such as –

- The inclusion of new categories within licences (i.e. Preservation and conservation mixtures);
- Changes to seeds forms and the introduction of My SEEDS (a new online application system for seed certification and seed testing) brings about changes to some of the seed forms (see Schedules 1 and 2 to the 2016 Regulations which prescribes new forms in relation to the sampling and testing of seeds) improving the administration of the regulations.
- Consequential amendments to the Seed Marketing Regulations (see Schedule 3 to the 2016 Regulations)
- Paragraph 5 of Schedule 3 to the 2016 Regulations also amends regulation 18(1) of the Seed Potatoes (Scotland) Regulations 2015 (S.S.I. 2015/395) to correct a drafting error identified during the Parliamentary scrutiny of that instrument by the Delegated Powers and Law Reform Committee which we have taken the opportunity to correct at the earliest available opportunity.

Financial Effects

16. A business and regulatory impact assessment has not been prepared as the changes in the Seed (Licensing and Enforcement) (Scotland) Regulations do not bring about any increased costs.

Transposition Note

17. A transposition note has been prepared in relation to this instrument.

Timing

18. This instrument will come into force on the 1 July 2016.

Scottish Government
Agriculture, Food and Rural Communities Directorate
Agriculture and Rural Development Division
CAP Reform & Crop Policy