

TRANSPOSITION NOTE

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

The Seed (Licensing and Enforcement etc.) (Scotland) Regulations 2016 (“the 2016 Regulations” implement aspects of the following Directives (“the Seed Marketing Directives” as defined in regulation 2(1)):

- (a) Council Directive 66/401/EEC on the marketing of fodder plant seed(1);
- (b) Council Directive 66/402/EEC on the marketing of cereal seed(2);
- (c) Council Directive 2002/54/EC on the marketing of beet seed(3);
- (d) Council Directive 2002/55/EC on the marketing of vegetable seed(4); and
- (e) Council Directive 2002/57/EC on the marketing of seed of oil and fibre plants(5)).

However, the Seed Marketing Directives are principally implemented by the following Regulations (“the Seed Marketing Regulations” as also defined in regulation 2(1) of the 2016 Regulations):

- (a) in relation to vegetable seed, the Vegetable Seeds Regulations 1993(6);
- (b) in relation to oil and fibre plant seed, the Oil and Fibre Plant Seed (Scotland) Regulations 2004(7);
- (c) in relation to cereal seed, the Cereal Seed (Scotland) Regulations 2005(8);
- (d) in relation to fodder plant seed, the Fodder Plant Seed (Scotland) Regulations 2005(9); and
- (e) in relation to beet seed, the Beet Seed (Scotland) (No. 2) Regulations 2010(10).

This transposition note (see **A** below) covers only those aspects of the Seed Marketing Directives as implemented by the 2016 Regulations and not those aspects as implemented by the Seed Marketing Regulations.

As also indicated in this transposition note (see **B** below), the 2016 Regulations implement Commission Implementing Directive (EU) 2015/1955(11) amending Council Directive 66/402/EEC on the marketing of cereal seed (as included in the definition of the Seed Marketing Directives – see above). This is to include provisions in relation to the production of hybrids of barley by means of cytoplasmic male sterility.

(1) OJ L 125, 11.7.1966, p.2298 as last amended by Commission Implementing Directive 2012/37/EU (OJ L 325, 23.11.2012, p.13).

(2) OJ L 125, 11.7.1966, p.2309 as last amended by Commission Implementing Directive (EU) 2015/1955 (OJ L 284, 30.10.2015, p.142).

(3) OJ L 93, 20.7.2002, p.12 as last amended by Council Directive 2004/117/EC (OJ L 14, 18.1.2005, p.18).

(4) OJ L 193, 20.7.2002, p.33 as last amended by Commission Implementing Directive 2013/45/EU (OJ L 213, 8.8.2013, p.20).

(5) OJ L 193, 20.7.2002, p.74 as last amended by Commission Directive 2009/74/EC (OJ L 166, 27.6.2009, p.40).

(6) S.I. 1993/2008, amended by S.I. 1996/1452, S.I. 1997/616, S.I. 1999/1863, S.S.I. 2000/250, S.I. 2001/3510, S.S.I. 2007/305, S.S.I. 2010/219, S.S.I. 2010/425 and S.S.I. 2013/326.

(7) S.S.I. 2004/317, amended by S.S.I. 2006/313, S.S.I. 2007/224, S.S.I. 2007/536, S.S.I. 2009/223 and S.S.I. 2010/219.

(8) S.S.I. 2005/328, amended by S.S.I. 2006/313, S.S.I. 2006/448, S.S.I. 2007/224, S.S.I. 2007/536, S.S.I. 2009/223 and S.S.I. 2010/219.

(9) S.S.I. 2005/329, amended by S.S.I. 2006/313, S.S.I. 2006/448, S.S.I. 2007/224, S.S.I. 2007/536, S.S.I. 2009/223, S.S.I. 2009/330, S.S.I. 2010/219, S.S.I. 2012/5 and S.S.I. 2013/326.

(10) S.S.I. 2010/148, amended by S.S.I. 2011/413.

(11) OJ L 25, 30.10.2015, p.142.

A. Transposition of the Seed Marketing Directives

Articles of the relevant Directive(12)	Implementing provision in the 2016 Regulations
<p>(1) Council Directive 66/401/EEC (fodder plant seed):-</p> <p>Article 2(1)(B)(1)(d) and (2)(d), (C)(d), (Ca)(d), (Cb)(d), (D)(d) and E (carrying out examinations of seeds under official supervision and official measures subject to no private gain).</p> <p>Article 2(3)(A) – field inspections, including by inspectors having the necessary technical qualifications; deriving no private gain; being officially licensed; carrying out inspections under official inspection (including at least 5% of seed crops); and penalties for infringements (including withdrawal of licences).</p> <p>Article 2(3)(B) - seed testing, including authorisation of seed testing laboratories with a seed analyst-in-charge and seed analysts with the necessary technical qualifications; laboratories with satisfactory premises and equipment; carrying out testing under appropriate supervision (including at least 5% check testing of seed lots); and penalties for infringements (including withdrawal of authorisations).</p> <p>Article 7 - seed sampling by authorised seed samplers having the necessary technical qualifications; carrying out sampling under proper supervision (including at least 5% check sampling); and penalties for infringements (including withdrawal of authorisations).</p> <p>(2) Council Directive 66/402/EEC (cereal seed):-</p> <p>Article 2(1)(C)(d), (Ca)(c), (D)(1)(d), (2)(b) and (3)(c), (E)(d), (F)(d), (G)(d)</p>	<p>Official supervision</p> <p>Part II of the 2016 Regulations makes provision for the licensing, subject to appropriate conditions, of crop inspectors, seed samplers and seed testing stations exercising functions under official supervision by the Scottish Ministers for the purposes of the Seed Marketing Directives as implemented by the Seed Marketing Regulations.</p> <p>Licence conditions</p> <p>The relevant requirements of the Seed Marketing Directives as implemented by the Seed Marketing Regulations will also be reflected in licence conditions for crop inspectors, seed samplers and seed testing stations under regulation 4(1)(a) and (3).</p> <p>No private gain</p> <p>Regulation 11 requires licensed crop inspectors, seed samplers or a seed testing station to charge the fees prescribed in seeds regulations (currently the Seed (Fees) (Scotland) Regulations 2016) and to derive no private gain in charging reasonable fees for carrying out functions.</p> <p>Crop inspections</p> <p>Regulations 3 and 4 make provision for licensing (with appropriate conditions) of</p>

(12) The Seed Marketing Directives were principally amended by Council Directive 2004/117/EC (OJ L 14, 18.1.2005, p.18) in relation to personnel licensed/authorised for the purposes of exercising functions under official supervision under those Directives.

and (H) (carrying out examinations of seeds under official supervision and official measures subject to no private gain).

Article 2(3)(A) – field inspections, including by inspectors having the necessary technical qualifications; deriving no private gain; being officially licensed; carrying out inspections under official inspection (including at least 5% of seed crops); and penalties for infringements (including withdrawal of licences).

Article 2(3)(B) - seed testing, including authorisation of seed testing laboratories with a seed analyst-in-charge and seed analysts with the necessary technical qualifications; laboratories with satisfactory premises and equipment; carrying out testing under appropriate supervision (including at least 5% check testing of seed lots); and penalties for infringements (including withdrawal of authorisations).

Article 7 - seed sampling by authorised seed samplers having the necessary technical qualifications; carrying out sampling under proper supervision (including at least 5% check sampling); and penalties for infringements (including withdrawal of authorisations).

(3) Council Directive 2002/54/EC (beet seed):-

Article 2(1)(c)(iv), (d)(iv) and (g) (carrying out examinations of seeds under official supervision and official measures subject to no private gain).

Article 2(3)(A) – field inspections, including by inspectors having the necessary technical qualifications; deriving no private gain; being officially licensed; carrying out inspections under official inspection (including at least 5% of seed crops); and penalties for

crop inspectors (see definition of “licensed crop inspector in regulation 2(1)). Regulation 4(4)(b) applies a competence test in relation to crop inspectors. Regulation 8(a) enables the Scottish Ministers to require licensed crop inspectors to undertake further training and examinations. Regulations 12 and 13 make provision for supervision and checking of crop inspection results. Regulation 7(1) provides powers to suspend and revoke crop inspection licences.

Seed testing

Regulations 3 and 4 make provision for licensing (with appropriate conditions) of laboratories as seed testing stations. (see definition of “licensed seed testing station” in regulation 2(1)). Regulation 4(4)(c) applies a requirement that a testing station has adequate premises or equipment and requirements in relation to: (a) the Analyst in Charge (as defined in regulation 2(1) and regulation 9 also sets out the duties of an Analyst in Charge)); and (b) seed analysts (also as defined in regulation 2(1)). Regulation 8(b) enables the Scottish Ministers to require seed analysts to undertake further training and examinations. Regulations 12 and 13 make provision for supervision and checking of seed testing results. Regulations 7(1) and (2) provide powers to suspend and revoke seed testing station licences.

Seed sampling

Regulations 3 and 4 make provision for licensing (with appropriate conditions) of seed samplers (see definition of “licensed seed sampler” in regulation 2(1)). Regulation 4(4)(b) applies a competence test in relation to seed samplers. Regulation 8(a) enables the Scottish Ministers to require licensed seed samplers to undertake further training and examinations. Regulations

infringements (including withdrawal of licences).

Article 2(3)(B) - seed testing, including authorisation of seed testing laboratories with a seed analyst-in-charge and seed analysts with the necessary technical qualifications; laboratories with satisfactory premises and equipment; carrying out testing under appropriate supervision (including at least 5% check testing of seed lots); and penalties for infringements (including withdrawal of authorisations).

Article 9 - seed sampling by authorised seed samplers having the necessary technical qualifications; carrying out sampling under proper supervision (including at least 5% check sampling); and penalties for infringements (including withdrawal of authorisations).

(4) Council Directive 2002/55/EC (vegetable seed):- –

Article 2(1)(c)(iv),(d)(iv) and (f) (carrying out examination of seeds under official supervision and official measures subject to no private gain).

Article 2(4)(A) – field inspections, including by inspectors having the necessary technical qualifications; deriving no private gain; being officially licensed; carrying out inspections under official inspection (including at least 5% of seed crops); and penalties for infringements (including withdrawal of licences).

Article 2(4)(B) - seed testing, including authorisation of seed testing laboratories with a seed analyst-in-charge and seed analysts with the necessary technical qualifications; laboratories with satisfactory premises and equipment; carrying out testing under appropriate supervision (including at least 5% check testing of seed lots); and penalties for

12 and 13 make provision for supervision and checking of seed samples. Regulation 7(1) provides powers to suspend and revoke seed sampler's licences.

infringements (including withdrawal of authorisations).

Article 25 - seed sampling by authorised seed samplers having the necessary technical qualifications; carrying out sampling under proper supervision (including at least 5% check sampling); and penalties for infringements (including withdrawal of authorisations).

(5) Council Directive 2002/57/EC (oil and fibre plant seed):-

Article 2(1)(c)(iv),(d)(1)(ii) and (2)(iii), (e)(iv), (f)(iv), (g)(iv), (h)(iv), (i)(iv), (j)(iii) and (h) (carrying out examination of seeds under official supervision and official measures subject to no private gain);

Article 2(5)(A) – field inspections, including by inspectors having the necessary technical qualifications; deriving no private gain; being officially licensed; carrying out inspections under official inspection (including at least 5% of seed crops); and penalties for infringements (including withdrawal of licences).

Article 2(5)(B) - seed testing, including authorisation of seed testing laboratories with a seed analyst-in-charge and seed analysts with the necessary technical qualifications; laboratories with satisfactory premises and equipment; carrying out testing under appropriate supervision (including at least 5% check testing of seed lots); and penalties for infringements (including withdrawal of authorisations).

Article 9 - seed sampling by authorised seed samplers having the necessary technical qualifications; carrying out sampling under proper supervision (including at least 5% check sampling); and penalties for infringements (including withdrawal of authorisations).

B. Transposition of Commission Implementing Directive (EU) 2015/1955

Article of the Directive	Implementing provision in the 2016 Regulations
<p>Article 1 and Annex (1) (amendments to Annex I, Point 5 of, and inserting a new Point 5a into, Council Directive 66/402/EEC).</p>	<p>Schedule 3, Part II – amendments to the Cereal Seed (Scotland) Regulations 2005 (“the 2005 Regulations”), in particular:</p> <ul style="list-style-type: none"> - Paragraph 2(6)(a)(i) – amendment to Schedule 4, Part I, paragraph 7 of the 2005 Regulations to provide for minimum isolation distances for seeds, including hybrids of barley produced by means of cytoplasmic male sterility (“CMS”). - Paragraph 2(6)(a)(ii) – amendment to Schedule 4, Part I, paragraph 8 of the 2005 Regulations to make provision for varietal identity and purity for crops of hybrids of barley produced by means of CMS (see new paragraph 8(6)).
<p>Article 1 and Annex (2) (amendments to Annex II, Point 1.C and Point 1.E of Annex II to Council Directive 66/402/EEC).</p>	<p>Schedule 3, Part II – amendments to the Cereal Seed (Scotland) Regulations 2005 (“the 2005 Regulations”), in particular:</p> <ul style="list-style-type: none"> - Paragraph 2(6)(b)(i) – amendments to Schedule 4, Part II, paragraph 13 of the 2005 Regulations to make provision for the minimum varietal purity of seeds, including hybrids of barley produced by means of CMS. - Paragraph 2(6)(b)(ii) – amendment to Schedule 4, Part II, paragraph 15 of the 2005 Regulations to include references to hybrids of barley produced by means of CMS.
<p>Article 2</p>	<p>As per regulation 2(1), the amendments to the 2005 Regulations come into force on 1st July 2016.</p>