

## SCHEDULE 4

Regulation 9(2)

### Exceptions

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### PART 1

#### Supply of seed other than by way of marketing

##### **Early multiplication of seed**

1.—(1) Seed of an unlisted variety may be supplied by a person licensed to market seed for multiplication for progression through the different generation categories of seed.

(2) Each generation of seed supplied must have reached the standard required for certification.

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*Changes to legislation: There are currently no known outstanding effects for the The Seed Marketing Regulations 2011, SCHEDULE 4. (See end of Document for details)*

(3) The seed produced must remain the property of the licensed person, and may not be marketed.

#### **Seed as grown**

2. Seed as grown may be sent by the grower for cleaning prior to certification, and to a testing or inspection body for the purposes of certification.

#### **Farm saved seed**

3. Farm-saved seed may only be used by the person who grew it, and may not be marketed or supplied to any other person, but it may be sent for cleaning provided that the person who cleans it returns all the seed to the holding where it was grown.

## **PART 2**

### **Marketing seed that does not comply with Schedule 2**

#### **Seed with a declared lower germination**

4.—(1) Pre-basic and basic seed with a minimum percentage germination standard lower than required in the Directive relating to that seed specified in Schedule 2 may be marketed provided that the supplier guarantees a specific minimum percentage germination.

(2) The germination must be stated on the official label together with the supplier's name and address and the reference number of the seed lot.

#### **Early movement of seed**

5.—(1) To ensure the early availability of seed, pre-basic, basic and certified seed may be marketed before the official germination result has been received if—

- (a) a seed test report has been issued under these Regulations, indicating that the seed has achieved the required minimum analytical purity standard set out in the Directive relating to that seed specified in Schedule 2, and
- (b) the supplier guarantees the minimum germination for that seed.

(2) This does not apply in the case of—

- (a) vegetable seed; or
- (b) seed imported from a third country.

#### **Tetrazolium testing for cereal seed**

6. Cereal seed may be marketed if it has been subjected to a tetrazolium test approved by the Secretary of State to establish the viability of the seed instead of the tests specified in Council Directive [66/402/EEC](#) on the marketing of cereal seed<sup>(1)</sup>.

#### **Marketing seed of conservation varieties**

7.—(1) The Secretary of State may authorise the marketing of seed of a conservation variety in accordance with this paragraph.

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(1) OJ No L 125, 11.7.1966, p. 2309, as last amended by Commission Directive [2009/74/EC](#) (OJ No L 166, 27.6.2009, p. 40).

(2) The seed must be of a variety listed as a conservation variety in the United Kingdom National List.

(3) The seed must be produced from a crop grown in the region of origin specified for the variety in the United Kingdom National List or as authorised by the Secretary of State.

(4) The seed may only be marketed and used in the stated region of origin.

(5) The total amount of seed marketed in any year must be limited in accordance with Article 14 of Commission Directive [2008/62/EC](#)(2) (which relates to agricultural conservation varieties) and Article 15 of and Annex I to Commission Directive [2009/145/EC](#)(3) (which relates to vegetable conservation varieties).

(6) Except in the case of seed of a vegetable conservation variety which is verified as standard seed, the seed must descend from seed produced according to well-defined practices for maintenance of the variety.

(7) In the case of beet seed, cereal seed, fodder plant seed and oil and fibre seed, the seed must comply with the requirements for certification of certified seed set out in Council Directive [2002/54/EC](#)(4) (beet seed), Council Directive [66/402/EEC](#) (cereal seed), Council Directive [66/401/EEC](#)(5) (fodder plant seed) or Council Directive [2002/57/EC](#)(6) (oil and fibre plant seed) (as the case may be), except the requirements in respect of minimal varietal purity and examination.

(8) Vegetable seed must comply with—

(a) the requirements for certification of certified seed set out in Council Directive [2002/55/EC](#)(7) on the marketing of vegetable seed, except the requirements in respect of minimal varietal purity and examination; or

(b) the requirements for marketing of standard seed set out in that Directive, except the requirements in respect of minimal varietal purity.

(9) Seed of a conservation variety must have sufficient varietal purity.

(10) The seed must not be sold as loose seed under paragraph 26 of Schedule 3.

(11) The seed must be labelled with a supplier's label or a printed or stamped notice which, in addition to complying with the applicable provisions of the paragraph of Part 4 of Schedule 3 which applies to the type of seed in question (except provisions specifying a colour of label)—

(a) contains—

(i) in the case of an agricultural conservation variety, the words “conservation variety”,  
or

(ii) in the case of a vegetable conservation variety, the words “certified seed of a conservation variety” or “standard seed of a conservation variety”;

(b) states the region of origin; and

(c) is coloured brown.

(12) In this regulation “conservation variety” has the meaning given by regulation 2(1) of the Seeds (National Lists of Varieties) Regulations 2001(8).

(2) OJ No L 162, 21.6.2008, p. 13.

(3) OJ No L 312, 27.11.2009, p. 44.

(4) OJ No L 193, 20.7.2002, p. 12, as last amended by Council Directive [2004/117/EC](#) (OJ No L 14, 18.1.2005, p. 18).

(5) OJ No L 125, 11.7.1966, p. 2298, as last amended by Commission Directive [2009/74/EC](#).

(6) OJ No L 193, 20.7.2002, p. 74, as last amended by Commission Directive [2009/74/EC](#).

(7) OJ No L 193, 20.7.2002, p. 33, as last amended by Commission Directive [2009/74/EC](#).

(8) [S.I. 2001/3510](#); the definition of “conservation variety” was inserted by [S.I. 2009/1273](#) and substituted by [S.I. 2011/464](#).

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*Changes to legislation: There are currently no known outstanding effects for the The Seed Marketing Regulations 2011, SCHEDULE 4. (See end of Document for details)*

### **Marketing preservation mixtures that include uncertified fodder seed**

8.—(1) The Secretary of State may authorise the marketing of a preservation mixture of uncertified fodder species to which these Regulations apply (whether or not the mixture also contains seed to which these Regulations do not apply) if satisfied the mixture contains only seed of native plants and that using the seed will assist in the conservation of a genetic resource, avoid loss of genetic diversity or natural habitat and improve species distribution.

(2) An authorisation—

- (a) may only be granted if the preservation mixture comprises exclusively of seed native to England;
- (b) may specify the amount of seed that may be marketed under it;
- (c) may impose conditions relating to the retention and production of samples of the preservation mixture;
- (d) must specify the natural environments and the regions in England for which the mixture is suitable;
- (e) must impose conditions relating to—
  - (i) the keeping and production of records in respect of the collection, preparation and marketing of the preservation mixture; and
  - (ii) labelling for the purposes of ensuring proper identification and traceability of the seed.

(3) It must have a pink supplier's label.

### **Marketing unlisted varieties (other than vegetable seed) for tests and trials**

9.—(1) The Secretary of State may authorise the marketing of seed for which an application for entry in the United Kingdom National List has been submitted but not yet granted.

(2) This paragraph does not apply in relation to vegetable seed (for which see the following paragraph).

(3) An applicant must be a producer established in England.

(4) An authorisation is valid for one year and is renewable.

(5) An authorisation becomes invalid once the variety is added to the United Kingdom National List or the application to be listed is withdrawn or rejected.

(6) The authorisation may only be requested by the person who has submitted an application for entry of the varieties concerned in the United Kingdom National List.

(7) An authorisation may only be granted for tests or trials carried out at agricultural enterprises to gather information on the cultivation or use of the variety.

(8) The quantities authorised for each variety must not exceed the following percentages of seed of the same species used annually in the United Kingdom—

- (a) in the case of durum wheat: 0.05 %,
- (b) in the case of field pea, field bean, oats, barley and wheat: 0.3 %,
- (c) in all other cases: 0.1 %,

except that, if such quantities are not sufficient to sow 10 hectares, the quantity needed for such an area may be authorised.

(9) Fodder plant seed must comply with the conditions for—

- (a) certified seed (all species other than field peas and field beans); or
- (b) certified seed, second generation (field peas and field beans).

- (10) Cereal seed must comply with the conditions for—
- (a) certified seed (rye, maize and hybrids of oats and red oats, barley, wheat, durum wheat, spelt wheat and triticale other than self-pollinating varieties); or
  - (b) certified seed, second generation oats and red oats, barley, wheat, durum wheat, spelt wheat and self-pollinating varieties of triticale, other than hybrids in each case.
- (11) Beet seed must comply with the conditions for certified seed.
- (12) Seed of oil and fibre plants must comply with the conditions for—
- (a) certified seed (all species other than flax and linseed);
  - (b) certified seed, second and third generation (flax and linseed).
- (13) The package must be labelled with an orange label which must include the words “variety not yet officially listed; for tests and trials only” and, where applicable “genetically modified variety” in addition to the other labelling requirements in these Regulations.

#### **Marketing unlisted varieties of vegetable seed**

**10.**—(1) For the purpose of gaining knowledge and practical experience of a variety during cultivation, the Secretary of State may authorise the marketing of vegetable seed not listed on the United Kingdom National List provided an application has been made for entry into the National List of at least one member State.

(2) An authorisation is valid for one year and is renewable twice for a period not exceeding one year at each renewal.

(3) There are no quantitative restrictions on the amount that may be authorised.

(4) The authorisation may only be requested by the person who has submitted an application for entry of the varieties concerned on to the relevant National List.

(5) The package must have an orange label and include the words “Variety not yet officially listed” in addition to the other labelling requirements of these Regulations (except that the name of the certifying authority and the country of origin need not appear).

(6) The person marketing the seed must—

(a) retain a sample of each seed lot marketed and keep it for at least two years;

(b) record for each sale the name and address of the buyer and keep the record for at least three years.

#### **Marketing for scientific or selection purposes**

**11.**—(1) The Secretary of State may authorise a producer to place on the market small quantities of seed (other than vegetable seed) for scientific or selection purposes.

(2) The Secretary of State may grant an authorisation whether or not the variety is listed on the United Kingdom National List or the Common Catalogue.

(3) An applicant must be a producer established in England.

(4) The package must have an orange label and include the words “Variety not yet officially listed” (if this is the case) in addition to the other labelling requirements of these Regulations.

(5) The person marketing the seed must—

(a) retain a sample of each seed lot marketed and keep it for at least two years;

(b) record for each sale the name and address of the buyer and keep the record for at least three years.

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### Restrictions relating to genetically modified seed

**12.** The Secretary of State may only grant an authorisation in respect of seed of a genetically modified variety under paragraphs 8 to 11 if the marketing and release of the genetically modified material by the applicant have been authorised for cultivation under either—

- (a) Directive [2001/18/EC](#) of the European Parliament and of the Council (on the deliberate release into the environment of genetically modified organisms<sup>(9)</sup>), or
- (b) Regulation (EC) No [1829/2003](#) (on genetically modified food and feed<sup>(10)</sup>).

### Marketing imported seed to be labelled as HVS

**13.—**(1) Seed certified in another member State or third country may be marketed as meeting a higher voluntary standard in accordance with this paragraph.

(2) A sample must be submitted to the Secretary of State for testing, and the Secretary of State, if satisfied that the sample meets the higher voluntary standard, must issue a certificate confirming this.

(3) The seed must be re-labelled using —

- (a) an official label issued by the Secretary of State if the seed is from another member State, or
- (b) an OECD label if the seed is from a third country,

and in both cases the country of production must be stated on the label.

(4) Seed imported pending inclusion in the United Kingdom National List or not finally certified in the country of production may be verified as being of a higher voluntary standard and re-graded after listing or final certification.

### Marketing seed certified in another member State

**14.** Seed fully certified and labelled in another member State may be marketed without further certification under these Regulations.

### Marketing seed of amateur vegetable varieties

**15.—**(1) The Secretary of State may authorise the marketing of seed of an amateur vegetable variety in accordance with this paragraph.

(2) The seed must be of a variety listed as an amateur vegetable variety in the United Kingdom National List.

(3) The seed must comply with the requirements for marketing of standard seed set out in Council Directive [2002/55/EC](#)<sup>(11)</sup> on the marketing of vegetable seed, except the requirements in respect of minimal varietal purity.

(4) The seed must have sufficient varietal purity.

(5) The seed must be marketed in small packages not exceeding the net weight specified in Annex II to Commission Directive [2009/145/EC](#)<sup>(12)</sup> (which relates to amateur vegetable varieties).

(6) The seed must be labelled with a supplier's label or a printed or stamped notice which, in addition to complying with the applicable provisions of paragraph 25 of Schedule 3, contains the words "amateur variety".

<sup>(9)</sup> OJ No L 106, 17.4.2001, p. 1, as last amended by Directive [2008/27/EC](#) (OJ No L 81, 20.3.2008, p. 45).

<sup>(10)</sup> OJ No L 268, 18.10.2003, p. 1, as last amended by Regulation (EC) No [298/2008](#) (OJ No L 97, 9.4.2008, p. 64).

<sup>(11)</sup> OJ No L 193, 20.7.2002, p. 33, as last amended by Commission Directive [2009/74/EC](#) (OJ No L 166, 27.6.2009, p. 40).

<sup>(12)</sup> OJ No L 312, 27.11.2009, p. 44.

(7) In this regulation “amateur vegetable variety” has the meaning given by regulation 5A(5) of the Seeds (National Lists of Varieties) Regulations 2001(13).

## PART 3

### Certifying seed that does not fully comply with these Regulations

#### Seed not finally certified, harvested in another member State

**16.—(1) Seed—**

- (a) that has been produced—
  - (i) directly from basic seed or certified seed of the first generation officially certified either in another member State or in a third country that has been granted equivalence under the Directive relating to that seed specified in Schedule 2, or
  - (ii) from the crossing of basic seed certified in a member State with basic seed certified in such a third country, and
- (b) that has been harvested in another member State,

may be certified if that seed has undergone field inspection for that category of seed and if official examination has shown that the conditions for seed of that category are satisfied.

(2) Where the seed has been produced directly from officially certified seed of generations prior to basic seed, it may be certified as basic seed if the conditions laid down for that category are satisfied.

(3) It must be labelled with a grey label bearing the following information—

- (a) the authority responsible for field inspection and the name or initials of the member State;
- (b) the species, indicated at least under its botanical name, which may be given in abridged form and without the author’s names;
- (c) the variety (in the case of inbred lines and hybrids intended solely as components for hybrid varieties, the word ‘component’ must be added);
- (d) the category;
- (e) in the case of hybrid varieties, the word ‘hybrid’;
- (f) the declared net or gross weight;
- (g) the words ‘seed not finally certified’.

(4) It must be accompanied by an official document stating—

- (a) the authority issuing the document;
- (b) the species, indicated at least under its botanical name, which may be given in abridged form and without the authorities’ names;
- (c) the variety;
- (d) the category;
- (e) the reference number of the seed used to sow the field and name of the country that certified that seed;
- (f) the reference number of the seed lot or field;
- (g) the area cultivated for the production of the seed lot covered by the document;
- (h) the quantity of seed harvested and number of packages;

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(13) [S.I. 2001/3510](#); regulation 5A was inserted by [S.I. 2011/464](#).

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- (i) the number of generations after basic seed, in the case of certified seed;
- (j) an attestation that the conditions to be satisfied by the crop from which the seed comes have been fulfilled;
- (k) where appropriate, the results of a preliminary seed analysis.

#### **Seed not finally certified, harvested in a third country**

17.—(1) Seed harvested in a third country may be certified if—

- (a) it has been produced directly from—
    - (i) basic seed or certified seed of the first generation certified either in a member State or in a third country that has been granted equivalence under Council Decision [2003/17/EC](#) 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<sup>(14)</sup>; or
    - (ii) the crossing of basic seed officially certified in a member State with basic seed certified in such a third country;
  - (b) it has undergone field inspection in accordance with Council Decision [2003/17/EC](#);
  - (c) examination has shown that the conditions for seed of that category are satisfied;
  - (d) it is accompanied by a certificate from the competent authority of the country of origin certifying its status.
- (2) The label must be grey.

#### **Marketing extensions**

18. The Secretary of State may grant a marketing extension allowing an extended period for the certification and marketing of seed of a variety that has been deleted from the United Kingdom National List or the Common Catalogue.

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(14) OJ No L 8, 14.1.2003, p. 10, as last amended by Council Decision [2007/780/EC](#) (OJ No L 314, 1.12.2007, p. 20).



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