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SCOTTISH STATUTORY INSTRUMENTS

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**2010 No. 67**

**The Beet Seed (Scotland) Regulations 2010**

**PART II**  
**MARKETING**

**Definition of marketing**

5.—(1) In these Regulations “marketing” means—

- (a) selling, holding with a view to sale and offering for sale; and
- (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; or
- (b) the supply of seed to any person for the purposes of processing or packaging the seed provided that person does not acquire title to the seed supplied,

shall not be treated as marketing of seed of that variety.

**Marketing of seed**

6.—(1) Subject to the provisions of this Part, no person shall market any seed unless—

- (a) it is marketed in seed lots or in parts of seed lots; and
- (b) it is—
  - (i) seed of a plant variety of a species accepted on to a UK National List or the Common Catalogue and which is fully certified; or
  - (ii) Breeder’s Seed.

(2) Paragraph (1) shall not apply to the marketing of seed as grown if—

- (a) the seed is marketed for processing;
- (b) the identity of the seed is ensured; and
- (c) the seed—
  - (i) has been harvested from a crop which has been found by an official field inspection to satisfy the conditions specified in Part I of Schedule 4 or Annex I(A) of the Beet Seed Directive for the relevant category of seed; or
  - (ii) is seed of a Conservation Variety that has been harvested from a crop which has been found to satisfy the conditions specified in paragraph 2 of Part I of Schedule 4.

(3) Notwithstanding paragraph (1), no person shall market seed of a genetically modified variety unless it is clearly indicated, in the sales catalogue of the person marketing the seed and in any

other marketing information or marketing representations provided by that person, as having been genetically modified.

(4) Where seeds are sampled for the official examination referred to in Schedule 2 or any other examination or test carried out by a European Authority other than the Scottish Ministers in an untreated state and are subsequently subjected to chemical treatment, the seller shall, upon or before delivering the seeds to the purchaser, provide him with a statement in writing that the seeds have been subsequently subjected to chemical treatment and specifying the chemical nature of such treatment.

(5) Any person marketing seed which has been imported from a third country and which exceeds 2 kilograms of seed shall supply the Scottish Ministers in such manner and at such time as the Scottish Ministers may require the information in respect of the seeds specified in Part V of Schedule 6.

(6) Paragraph (1) shall not prevent the marketing of seeds of a variety intended for use solely as a component of a final variety where, by reason only of Article 3(2) of the Common Catalogue Directive, the component is not included on the UK National List and the seeds are not marketed under the names of the component.

### **General exemptions**

7.—(1) The Scottish Ministers may, by a general licence which may impose conditions and which shall have effect during the period specified in it unless the Scottish Ministers earlier revoke it—

- (a) authorise exemptions from any provision of these Regulations in accordance with a temporary experiment organised in terms of Article 19 of the Beet Seed Directive;
  - (b) waive the packing and labelling requirements if the relevant authorities listed in Article 22(2) of the Beet Seed Directive agree;
  - (c) give effect to the provisions of a Council Decision made under Article 23 of the Beet Seed Directive, including for the avoidance of doubt the Equivalence Decision, and amendments made to such a Decision;
  - (d) remove any temporary difficulties in the general supply of certain types of seed in terms of Article 24 of the Beet Seed Directive or by Commission Regulation 217/2006 or an authorisation granted thereunder; or
  - (e) give effect to the provisions of the Agreement between the European Community and the Swiss Confederation on Trade in Agriculture Products<sup>(1)</sup>.
- (2) A general licence issued under paragraph (1)—
- (a) may exempt any person or class of persons, or persons generally, from compliance with any provision of these Regulations; and
  - (b) may impose such conditions as the Scottish Ministers may think necessary or desirable having regard to the marketing permitted by the general licence and the nature of the seed to which it relates.

### **Exception for scientific purposes or selection work**

8.—(1) Regulation 6 shall not apply to the marketing by a producer of small quantities of seed for scientific purposes or selection work for which—

- (a) an authorisation has been granted to the producer by the Scottish Ministers in accordance with this regulation; or

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(1) O.J. No. L 114, 30.4.02, p.132, as adapted by Decision 2002/309/EC, Euratom of the Council and of the Commission as regards the Agreement on Scientific and Technological Co operation (O.J. No. L 114, 30.4.02, p.1) and as amended by Commission Decision 2004/660/EC on the Community position on the amendment of the Appendices to Annex 6 to the Agreement between the European Community and the Swiss Confederation on Trade in Agriculture Products (O.J. No. L 301, 28.9.04, p.55).

- (b) an authorisation has been granted to the producer by a European Authority other than the Scottish Ministers in respect of small quantities of seed for scientific purposes or selection work pursuant to Article 6(1) of the Beet Seed Directive.

(2) A producer established in Scotland may apply to the Scottish Ministers for authorisation under this regulation.

(3) An application under paragraph (2) shall be made in writing to the Scottish Ministers and shall be accompanied by such information as the Scottish Ministers may require.

(4) The Scottish Ministers shall not grant an authorisation under this regulation for scientific purposes or selection work in respect of seed of a genetically modified variety unless an authorisation is in force in respect of the variety concerned under—

- (a) the Food and Feed Regulation; or
- (b) Part C (placing on the market of GMOs as or in products) of the 2001 Deliberate Release Directive,

and then only if all appropriate measures, in accordance with the environmental risk assessment in respect of the genetically modified material carried out in accordance with Article 7(4) (environmental risk assessment for seed varieties) of the Common Catalogue Directive, have been taken by the producer of the seed to avoid adverse effects on human health and the environment.

#### **Exception for test and trial seed**

9.—(1) Regulation 6 shall not apply to the marketing by a producer of seed for test and trial purposes in accordance with—

- (a) a tests and trials authorisation; or
- (b) an authorisation which has been granted to the producer by a European Authority other than the Scottish Ministers pursuant to Article 6(1)(b) of the Beet Seed Directive,

which has been granted in accordance with Article 2(1) (authorisation) of the 2004 Commission Decision.

(2) A producer established in Scotland may apply to the Scottish Ministers for authority to market seed for the purposes of tests or trials to be carried out at an agricultural enterprise to gather information on the cultivation or use of a variety of a species specified in Part I of Schedule 1.

(3) An application under paragraph (2) shall be made in writing to the Scottish Ministers and shall be accompanied by such information as the Scottish Ministers may require.

(4) The Scottish Ministers shall not grant a tests and trials authorisation unless they are satisfied that—

- (a) the seed is of a variety for which an application has been made by the applicant for acceptance on to a UK National List and the application has not been withdrawn or finally determined;
- (b) in the case of seed of a genetically modified variety, an authorisation is in force in respect of the variety under either—
  - (i) the Food and Feed Regulation; or
  - (ii) Part C (placing on the market of GMOs as or in products) of the 2001 Deliberate Release Directive;
- (c) the marketing is for the purposes of tests or trials to be carried out at an agricultural enterprise to gather information on the cultivation or use of a variety of a species specified in Part I of Schedule 1;

- (d) an official field inspection has been carried out by the Scottish Ministers or by a licensed crop inspector and a report issued stating that the crop satisfies the conditions for Certified Seed set out in Part I of Schedule 4;
  - (e) an official examination of the seed has been undertaken and a report issued by the Scottish Ministers or by a licensed seed testing station stating that the seed satisfies the conditions for Certified Seed set out in Schedule 4; and
  - (f) such marketing would not contravene a prohibition on the use of the variety that complies with Article 14 of the 2004 Commission Decision and has been published by the Secretary of State in the gazette published under section 34(1) of the Act.
- (5) A tests and trials authorisation shall last for a period of one year or such shorter period as the Scottish Ministers may specify.
- (6) The Scottish Ministers shall not authorise marketing of an amount of seed in excess of that permitted by Article 7 of the 2004 Commission Decision.
- (7) A tests and trials authorisation may be made subject to such conditions as the Scottish Ministers think necessary or desirable having regard to the nature of the tests or trials and the nature of the seed to which the authorisation relates.
- (8) The Scottish Ministers may withdraw a tests and trials authorisation where they are satisfied that there has been a breach of a condition imposed under paragraph (7).
- (9) A tests and trials authorisation shall cease to have effect where the application referred to in paragraph (4)(a) is withdrawn or rejected or the variety is entered in a UK National List or the Common Catalogue.
- (10) The Scottish Ministers may require, as a condition of a tests and trials authorisation, that the producer to whom authorisation was granted provide them, on request, with information about—
- (a) the results of the tests and trials to which the authorisation relates; and
  - (b) the quantities of seed marketed during the authorised period and the names of the EEA States for which the seed was destined.

### **Exception for Conservation Varieties**

- 10.**—(1) No person may market seed of a Conservation Variety—
- (a) other than in its region of origin; and
  - (b) unless the requirements of paragraphs (2), (3) and (5) are met.
- (2) The seed must descend from seed produced according to well defined practices for maintenance of the variety.
- (3) The seed must be harvested from a crop that—
- (a) has been produced in the region of origin for the variety or additional region; and
  - (b) satisfies the conditions laid down in paragraph 2 of Part I of Schedule 4.
- (4) The Scottish Ministers may ascertain, so far as practicable, whether the requirements for the crop set out in paragraph 2 of Schedule 4 are met by the use of methods which may include examination of a post control plot sown with a sample from the seed and the consideration of any other relevant information, without requiring an official field inspection of the crop.
- (5) The seed must satisfy the conditions laid down in paragraph 8 of Part II of Schedule 4.
- (6) A person proposing to produce seed of a Conservation Variety must supply the Scottish Ministers, in such manner and form as the Scottish Ministers may require, with the following details in writing—
- (a) the size (in hectares); and

(b) the location,  
of the area to be used to produce that seed.

(7) For the purposes of Article 14 of Commission Directive 2008/62, the Scottish Ministers may specify the maximum amount of seed of a Conservation Variety which may be marketed in any given growing season. Different maxima for different persons or classes of person may be specified.

(8) No person shall market more than the maximum amount of seed of a Conservation Variety applicable to that person as specified under paragraph (7).

(9) Any person marketing seed of a Conservation Variety must supply the Scottish Ministers, on request, with details in writing of the amount and variety of the seed placed on the market during each growing season.

### **Marketing of officially certified lower germination seed**

**11.**—(1) Notwithstanding regulation 6(1) and the requirement in Schedule 1 that Pre-Basic Seed and Basic Seed shall attain the minimum standards of germination specified for Basic Seed in Schedule 4 or Annex I of the Beet Seed Directive, any person may, subject to paragraphs (2) and (3) and regulation 19 and the other provisions of these Regulations, market seed—

- (a) in respect of which an official certificate certifying that the seed is of the relevant category of seed has been issued in accordance with Part I of Schedule 2, although it attains a lower percentage of germination than that specified in Part II of Schedule 4 in relation to Basic Seed by virtue of the exception in paragraph 2(1)(c) of Schedule 2; or
- (b) which has been certified as satisfying the conditions for the relevant category of seed by a European Authority other than the Scottish Ministers although the seed attains a lower germination than that specified in Annex I(B) of the Beet Seed Directive in relation to Basic Seed, by virtue of Article 5(a) (marketing of lower germination seed) of the Beet Seed Directive; or
- (c) which the person marketing the seed knows does not satisfy the minimum standards of germination specified for Basic Seed—
  - (i) in the case of seed which has been officially certified as being Pre-Basic Seed or Basic Seed, in Part II of Schedule 4, irrespective of the findings of the Scottish Ministers; and
  - (ii) in the case of seed which has been fully certified as being Pre-Basic Seed or Basic Seed by a European Authority other than the Scottish Ministers, in Annex I(B) of the Beet Seed Directive, irrespective of the findings of the relevant European Authority.

(2) Paragraph (1) shall not apply unless the person marketing the seed guarantees a specific minimum percentage of germination of the seed.

(3) Paragraph (1) shall not apply to seed which has been imported from a country other than an EEA State unless it has been produced directly from Pre-Basic Seed or Basic Seed produced in an EEA State.

### **Marketing of early movement seed**

**12.**—(1) In a case where—

- (a) the official examination in respect of the germination of any seed lot of Pre-Basic Seed, Basic Seed or Certified Seed of a plant variety of a species accepted on to a UK National List or the Common Catalogue is being undertaken and has not been completed, but a provisional germination report has shown that the seed attains the appropriate minimum standard of germination specified in Part II of Schedule 4, the seed in all other respects satisfies the appropriate requirements of Schedule 4 and the provisional analytical report

and the provisional germination report on the seed have been presented by the producer to the Scottish Ministers; or

- (b) any seed lot has been certified by a European Authority other than the Scottish Ministers by virtue of Article 5(b) (early movement of seed) of the Beet Seed Directive, and the provisional germination report on the seed has been presented by the producer to the Scottish Ministers,

the seed lot or any part of the seed lot may, notwithstanding regulation 6 but subject to paragraphs (2) to (5), regulation 19 and the other provisions of these Regulations, be marketed to the first buyer by way of trade.

(2) In the event of any marketing under paragraph (1), the seller of the seed shall—

- (a) upon or before delivery, provide the first buyer by way of trade with a written statement that the seed is marketed before the completion of the official germination test together with the result in the provisional germination report;
- (b) notify the Scottish Ministers in writing of the name and address of the first buyer by way of trade as soon as practicable after delivery and in any event not later than 7 days after delivery;
- (c) guarantee a specific minimum percentage of germination, which shall be the percentage of the germination of the seed as ascertained in the provisional germination report; and
- (d) in the event of the official germination test showing the failure of the seed to comply with the minimum germination standard specified in Part II of Schedule 4 for seed of the relevant category, the seller shall provide the first buyer by way of trade with the result of the completed official germination test, in writing, as soon as practicable and in any event not later than 7 days after being informed of it.

(3) Paragraph (1) shall not apply to the marketing of any seed lot or part of any seed lot in respect of which a previous official examination or an examination by a European Authority other than the Scottish Ministers has shown that the seed fails to meet the standards specified for the relevant category of seed in Part II of Schedule 4 or Annex I(B) of the Beet Seed Directive.

(4) Paragraph (1) shall not apply to seed which has been imported from a country other than an EEA State unless it has been produced directly from Pre-Basic Seed or Basic Seed produced in an EEA State.

(5) A person who sells any seed in accordance with paragraph (1) shall make and, until the end of the period of six years after the date of delivery of the seed to the first buyer by way of trade, keep available for inspection by the Scottish Ministers a record of—

- (a) the date of such delivery;
- (b) the reference number of the seed lot or part of a seed lot delivered;
- (c) the name and address of the first buyer by way of trade;
- (d) the date on which the preliminary test of germination was carried out and of the result of that test in the provisional germination report; and
- (e) if appropriate, of the date on which the first buyer by way of trade was informed of the result of the completed official germination test.

### **Requirement for homogeneity**

**13.** No person shall market seed in accordance with these Regulations unless it is marketed in a homogenous seed lot or as part of a homogenous seed lot.

### **Marketing of unpacked seed**

**14.** A person may sell any seed otherwise than in a package which is labelled, inscribed or otherwise dealt with in accordance with regulations 18 and 19 where—

- (a) the seed is sold in a quantity not exceeding 2.5 kilograms to the final consumer; and
- (b) the seed is taken, in the presence of the final consumer, from a container on which there is clearly and visibly marked, or near which there is clearly and visibly displayed, a statement containing particulars of the matters specified in Part IV of Schedule 6.