
WELSH STATUTORY INSTRUMENTS

2005 No. 3036

The Cereal Seed (Wales) Regulations 2005

PART IV

MISCELLANEOUS AND SUPPLEMENTAL PROVISIONS

Civil liability of sellers of seeds

27.—(1) Particulars given to a purchaser by the seller of seed in pursuance of these Regulations, whether given expressly or by implication arising from the description under which the seed is sold, shall constitute a statutory warranty for the purpose of section 17 of the Act in so far as they relate to the category of seed, the level of seed, the percentage germination of the seed, the percentage analytical purity of the seed, the content of seed of other plant species and the varietal identity and varietal purity of the seed or, in the case of a mixture of seed permitted by regulation 22(2), of each of its constituents to which these Regulations apply.

(2) Section 17(2) of the Act shall apply to any particulars given to a purchaser by the seller of seed, being particulars given or implied as in paragraph (1), in so far as they relate to the percentage germination, the percentage analytical purity or the content of seed of other plant species and there are hereby prescribed in respect of such matters the limits of variation set out in Schedule 9.

(3) Section 17(3) of the Act shall apply to any particulars given to a purchaser by the seller of the seed, being particulars given or implied as in paragraph (1), in so far as they relate to the percentage germination, the percentage analytical purity or the content of seed of other plant species.

(4) A purchaser who intends to obtain a test of seed for the purposes of section 17(3) of the Act shall, not more than ten days after delivery to the purchaser of the seed, give to the seller notice of the purchaser's intention and thereupon the seller may indicate a day (not being more than twenty-one days after the delivery of the seed to the purchaser) and a reasonable time on that day at which a sample of the seed may be taken in the presence of the seller or the seller's representative and the purchaser shall afford to the seller reasonable facilities for that purpose.

(5) On the day and at the time appointed by the seller in accordance with paragraph (4) or, if the seller shall have failed to appoint such a day and time, on a day not more than twenty-eight days after delivery of the seed to the purchaser, the purchaser or the purchaser's representative may, and if the seller or the seller's representative is present shall, take a sample of seed.

(6) A sample taken in accordance with the requirements of paragraph (5) shall be taken and divided by the purchaser or the purchaser's representative into two parts in accordance with the requirements contained in Schedule 5 of the Seed (Registration, Licensing and Enforcement) (Wales) Regulations 2005, of which one part shall be sent to the chief officer of an official testing station for the purpose of being tested and the other part delivered or tendered to the seller or the seller's representative or, if the seller or the seller's representative was not present when the sample was taken, sent to the seller by post.

(7) Where a sample is taken in accordance with the requirements of paragraph (5) and divided into two parts in accordance with paragraph (6) each part of the divided sample shall be of at least the appropriate minimum weight specified in Schedule 7 (lots and sample weights) of these Regulations.

Arrangements for official measures

28.—(1) Subject to the following provisions of this regulation, the National Assembly may make arrangements, in such form as it is of the opinion may be necessary or desirable, for the purpose of enabling any person to act under its responsibility in carrying out official measures.

(2) The National Assembly shall not make an arrangement under this regulation unless it is satisfied that it will make provision for the purpose of preventing the person with whom the arrangement is made, and any other person, from—

- (a) deriving any private gain from any official measures carried out under the arrangement; and
- (b) carrying out any official measures under the arrangement except under the supervision of the National Assembly.

(3) An arrangement under this regulation may include such conditions as the National Assembly is of the opinion are necessary or desirable for the purposes referred to in paragraphs (1) and (2) above, including conditions—

- (a) specifying—
 - (i) the official measures that the person with whom the arrangement is made shall carry out under it;
 - (ii) the species and generation of seed in respect of which that person may carry out the official measures;
 - (iii) the methods to be used in connection with the official measures that person carries out under the arrangement;
 - (iv) the fees that may be charged by the person with whom the arrangement is made in relation to the official measures he carries out under it; and
 - (v) the records that must be kept by the person with whom the arrangement is made in connection with the official measures that person carries out;
- (b) prohibiting the person with whom the arrangement is made from—
 - (i) carrying out the official measures except under official supervision, and
 - (ii) charging fees in relation to the official measures that person carries out under the arrangement except to the extent that these do not exceed the costs that person incurs in carrying them out; and
- (c) prohibiting the person with whom the arrangement is made from making any further arrangement for any purpose in connection with the carrying out of any of the official measures that person has arranged with the National Assembly to carry out, unless—
 - (i) the National Assembly has first approved all the conditions of the further arrangement and the person with whom the arrangement was made has received the prior approval of the National Assembly to make the further arrangement;
 - (ii) the further arrangement includes a condition prohibiting the making of any subsequent arrangements for any purpose in connection with the carrying out of any of the official measures in respect of which the National Assembly made the arrangement;
 - (iii) the further arrangement includes an acknowledgement by the person with whom it is made that the National Assembly may vary, suspend or revoke the further arrangement, whether or not it also varies, suspends or revokes the arrangement it made with the person seeking its approval for the further arrangement; and
 - (iv) the further arrangement includes the conditions specified in sub-paragraphs (a) and (b).

(4) The National Assembly shall not approve the making of a further arrangement by any person with whom it makes an arrangement under this regulation unless it is satisfied that the person with whom the further arrangement is to be made—

- (a) will not derive any private gain from any official measures the person is to be authorised to carry out under the further arrangement, and
- (b) will not carry out any official measures under the further arrangement except under official supervision.

(5) The National Assembly may vary, suspend or revoke an arrangement or the conditions of an arrangement made under this regulation, or a further arrangement or any of the conditions of a further arrangement under this regulation, by giving notice to the person with whom the arrangement or further arrangement is made, and a further arrangement may be varied, suspended or revoked under this paragraph notwithstanding that the arrangement in respect of which it was made is not also varied, suspended or revoked.

(6) A notice of a variation, suspension or revocation of an arrangement or further arrangement, or of a condition of an arrangement or further arrangement, shall specify—

- (a) in respect of a variation or a revocation, a date on and after which the variation or revocation shall have effect, and
- (b) in respect of a suspension, a period during which suspension shall have effect,

and the variation, suspension or revocation shall have effect in accordance with the notice.

(7) When a variation, suspension or revocation has effect the National Assembly may, for any purposes in relation to these Regulations or a determination under these Regulations, continue to have regard to such of the official measures carried out under an arrangement which was varied, suspended or revoked as appear to it to be official measures carried out in accordance with the provisions of these Regulations.

Fees

29.—(1) The National Assembly may charge any person reasonable fees in respect of costs reasonably incurred by the National Assembly in carrying out official measures for the purposes of these Regulations.

(2) The National Assembly may charge any person concerned in any matter connected with these Regulations reasonable fees in respect of costs reasonably incurred by the National Assembly in connection with that matter for the purposes of these Regulations, including the costs reasonably incurred by an officer authorised for the purposes of these Regulations by the National Assembly in connection with—

- (a) the taking of samples in accordance with regulation 23;
- (b) the packaging and sealing of packages in accordance with regulations 24 and 25; and
- (c) the labelling of packages in accordance with regulation 26.

(3) A person carrying out official measures in accordance with an arrangement or further arrangement under regulation 28 may charge any person, including any other person with whom an arrangement or further arrangement has been made under regulation 28, reasonable fees in respect of costs reasonably incurred in carrying out official measures under the responsibility of the National Assembly in accordance with these Regulations.

(4) All fees payable under these Regulations in connection with any application shall be payable—

- (a) at the time the application is made, or
- (b) with the agreement of the National Assembly or a person carrying out official measures in accordance with an arrangement or further arrangement under regulation 28 (as the case

may be), within twenty-eight days following notice from the National Assembly or that person (as the case may be) demanding the fee payable in respect of such application.

(5) All other fees payable under these Regulations shall be payable within twenty-eight days following the issue of a notice under these Regulations demanding the payment of the fee.

(6) A fee charged in accordance with this regulation shall be recoverable as a debt from the person by whom the fee is payable.

Service of notices

30.—(1) Any notice required by virtue of these Regulations to be given to any person by the National Assembly may be given by it—

- (a) by delivering it to the person or by leaving it at that person's proper address or by sending it by post to that person at that address;
- (b) if the person is a body corporate other than a limited liability partnership, by giving it in accordance with paragraph (a) to the secretary of the body;
- (c) if the person is a limited liability partnership, by giving it in accordance with paragraph (a) to a member of the partnership; or
- (d) if the person is a partnership, by giving it in accordance with paragraph (a) to a partner or a person having control of the management of the partnership business.

(2) For the purposes of this section and section 7 of the Interpretation Act 1978⁽¹⁾ (service of documents by post) in its application to this section, the proper address of any person to whom a notice is to be given shall be that person's last known address, except that—

- (a) in the case of a body corporate (other than a limited liability partnership) or its secretary, it shall be the address of the registered or principal office of the body;
- (b) in the case of a limited liability partnership or a member of the partnership, it shall be the address of the registered or principal office of the partnership; and
- (c) in the case of a partnership or a partner or a person having the control or management of a partnership business, it shall be the address of the principal office of the partnership.

(3) Paragraph (4) applies if a person to be given a notice under these Regulations by the National Assembly has specified to it an address within the United Kingdom other than that person's proper address (as determined under paragraph (2)) as the one at which that person or someone on that person's behalf will accept notices of that description.

(4) In relation to that notice, that address shall be treated as that person's proper address for the purposes of this regulation and section 7 of the Interpretation Act 1978 in its application to this regulation, instead of that determined under paragraph (2).

Index of defined words and expressions

31. Schedule 10 contains an index of defined words and expressions used in these Regulations.

Revocations and transitional provisions

32.—(1) Subject to paragraph (2)—

- (a) the Cereal Seeds Regulations 1993⁽²⁾, the Cereal Seeds (Amendment) Regulations 1995⁽³⁾, the Seeds (Miscellaneous Amendments) Regulations 1997⁽⁴⁾ and the Cereal Seeds (Amendment) Regulations 1999⁽⁵⁾ are revoked in so far as they apply to Wales;

⁽¹⁾ 1978 c. 30.

⁽²⁾ S.I.1993/2005, relevant amending instruments are S.I. 1995/1482, 1997/616, 1999/1860, 1999/2196.

⁽³⁾ S.I. 1995/1482.

- (b) the Cereal Seeds (Amendment) (Wales) Regulations 2001(6) are revoked;
 - (c) the Seeds (Fees) Regulations 1985(7) are revoked in so far as they apply to Wales in relation to matters arising under the Cereal Seeds Regulations 1993; and
 - (d) the Seeds (Fees) (Amendment) (Wales) Regulations 2002(8) and the Seeds (Fees) (Amendment) (Wales) (No2) Regulations 2002((9) are revoked in relation to matters arising under the Cereal Seeds Regulations 1993.
- (2) Section 17 of the Interpretation Act 1978 shall not apply in relation to general licences made under the Cereal Seeds Regulations 1993.

(4) S.I. 1997/616.
(5) S.I. 1999/1860.
(6) S.I. 2001/3664.
(7) S.I. 1985/981, amended by S.I. 2002/1563.
(8) S.I. 2002/1554.
(9) S.I. 2002/1870.