
SCOTTISH STATUTORY INSTRUMENTS

2006 No. 313

The Seed (Registration, Licensing and Enforcement) (Scotland) Regulations 2006

PART VII

MISCELLANEOUS AND SUPPLEMENTAL

Right to make representations

35.—(1) The Scottish Ministers shall not—

- (a) refuse to register a person as a seed merchant, seed packer or seed processor;
- (b) vary, refuse to vary, or revoke the registration of a person as a seed merchant, seed packer or seed processor, except where a variation is at the request of the registered person;
- (c) refuse to grant or refuse to vary a crop inspector's licence;
- (d) vary a crop inspector's licence under regulation 12(5);
- (e) suspend or revoke a crop inspector's licence;
- (f) refuse to grant or refuse to vary a seed sampler's licence;
- (g) vary a seed sampler's licence under regulation 19(3);
- (h) suspend or revoke a seed sampler's licence;
- (i) refuse to grant or refuse to vary a seed testing station licence;
- (j) vary a seed testing station licence under regulation 26(4); or
- (k) suspend or revoke a seed testing station licence,

unless they have complied with the provisions of this regulation.

(2) Subject to paragraph (3), before taking any decision mentioned in paragraph (1) the Scottish Ministers shall—

- (a) give the person concerned notice stating what they are proposing to do and the reasons for it; and
- (b) inform the person concerned of the right to make representations to them and of the manner in which and the time, being not less than 21 days from the giving of the notice, within which such representations may be made.

(3) Paragraphs (2), (7)(a) and (8) shall not apply to a decision of the Scottish Ministers to suspend a licence with immediate effect under regulation 14(3), 21(3) or 29(3).

(4) Where the Scottish Ministers decide to suspend a licence with immediate effect under regulation 14(3), 21(3) or 29(3), they shall—

- (a) as soon as reasonably practicable and not later than 7 days after making the decision give the person concerned notice of their decision and the reasons for it;

- (b) inform the person concerned of the right to make representations to them and the manner in which and the time, being not less than 7 days from the giving of the notice under sub-paragraph (a), within which such representations may be made;
 - (c) decide within 21 days of the date of the decision whether the suspension is to remain in force or be withdrawn; and
 - (d) give the person concerned notice of their decision under sub-paragraph (c) together with the reasons for it and, where appropriate, notice of the date from which that decision shall have effect.
- (5) A person who makes representations to the Scottish Ministers shall, within the time allowed for the making of such representations, provide the Scottish Ministers with a copy of any document upon which that person seeks to rely.
- (6) For the purposes of paragraphs (2) and (4), any notice to be given in connection with a registration held by a body corporate or a partnership or with a seed testing station licence shall be—
- (a) in the case of a registration, given to the responsible person; and
 - (b) in the case of a seed testing station licence, given to the Person in Charge.
- (7) The Scottish Ministers shall not —
- (a) take any decision mentioned in paragraph (1) until any period allowed under paragraph (2) (b) for making representations has passed; or
 - (b) take a decision under paragraph (4)(c) until any period allowed under paragraph (4)(b) for making representations has passed.
- (8) The Scottish Ministers shall consider any representations made to them in accordance with this regulation before reaching a decision and shall give the person concerned notice of their decision together with the reasons for it and, where appropriate, notice of the date from which the decision shall have effect.
- (9) In giving a notice under paragraphs (4)(d) or (8) the Scottish Ministers shall, where a right of appeal exists under regulation 36(1), inform the person concerned of—
- (a) the right to appeal to the Tribunal against the decision; and
 - (b) the time within which such an appeal may be brought.
- (10) The Scottish Ministers may charge any person making representations under this regulation reasonable fees in that connection and such fees shall be payable at the time that the representations are made.

Appeals

36.—(1) Subject to paragraph (2), a person notified of a decision under regulation 35(4)(d) or (8) may appeal to the Tribunal.

- (2) There shall be no right of appeal to the Tribunal where the Scottish Ministers have—
 - (a) refused to grant or refused to vary a crop inspector's licence or a seed sampler's licence; or
 - (b) varied, suspended or revoked a crop inspector's licence or a seed sampler's licence,

for the sole reason that the applicant or licence holder has failed to undertake and pass an examination that required to be undertaken and passed in relation to an application for the grant or variation of the licence or required to be undertaken and passed as a condition of the licence.

(3) Subject to paragraph (4), a decision which may be appealed to the Tribunal under paragraph (1) shall not have effect during the time allowed for making an appeal and, in the event that an appeal is timeously made, shall not have effect pending final determination of the appeal.

(4) Paragraph (3) shall not apply to a decision under regulation 35(4)(c) that a suspension of licence is to remain in force.

(5) The Scottish Ministers shall take such steps as are necessary on their part to give effect to any decision of the Tribunal which constitutes the final determination of an appeal under paragraph (1).

Exemptions

37. The Scottish Ministers may exempt any person or class of persons, or persons generally, from compliance with any provision of these Regulations and any such exemption may be granted subject to conditions.

Extension of time

38. Where any document is to be delivered or given or any act is to be done in a time prescribed by these Regulations the Scottish Ministers may, if they consider it reasonable, extend the time for such period and upon such conditions as they consider appropriate.

Form of records

39. Any record required to be kept under these Regulations, or as a condition of a registration or licence granted under these Regulations, may be in written or electronic form and shall be kept for at least six years, except where otherwise provided for in seeds regulations.

Form of registers

40. Any register required to be kept by the Scottish Ministers under these Regulations may be kept in written or electronic form.

Service of notices

41.—(1) Any notice required to be given to any person by the Scottish Ministers by virtue of these Regulations may be given by them—

- (a) by delivering it to or 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 or a partnership by giving it in accordance with paragraph (a) to the responsible person at the address of the registered or principal office of that body corporate or partnership; or
- (c) if the notice is in connection with a licensed seed testing station by giving it in accordance with paragraph (a) to the Person in Charge.

(2) For the purposes of this regulation and section 7 of the Interpretation Act 1978(1)(service of documents by post) in its application to this regulation, the proper address of any person to whom a notice is to be given shall be that person's last known address, which in the case of a body corporate or a partnership shall be the last known address of the registered or principal office of the body corporate or partnership;

(3) Paragraph (4) applies if a person to be given a notice under these Regulations by the Scottish Ministers has specified to them an address within the United Kingdom other than that person's proper address (as determined under paragraph (2)) as the one at which notices of that description will be accepted.

(4) An address specified in accordance with paragraph (3) shall be treated as the 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).

Written and electronic communication

42.—(1) All applications, statements of commitment, representations, notices and requests to which these Regulations apply shall be made in writing.

(2) “Writing” in paragraph (1) shall include an electronic communication within the meaning of the Electronic Communications Act 2000⁽²⁾ which has been recorded and is consequently capable of being reproduced provided that—

- (a) any document of the type referred to in paragraph (1) shall only be sent to the Scottish Ministers by an electronic communication if the Scottish Ministers have represented that electronic communication is a means by which persons can send such a document to them; and
- (b) notifications required to be made by the Scottish Ministers to any person shall only be made by an electronic communication if the intended recipient has used the same form of electronic communication in communicating with the Scottish Ministers for the purposes of these Regulations or has otherwise represented that the form of electronic communication to be used by the Scottish Ministers is a means by which the Scottish Ministers can communicate with them.

Amendments to the Oil and Fibre Plant Seed (Scotland) Regulations 2004, the Cereal Seed (Scotland) Regulations 2005 and the Fodder Plant Seed (Scotland) Regulations 2005

43.—(1) The Oil and Fibre Plant Seed (Scotland) Regulations 2004⁽³⁾, the Cereal Seed (Scotland) Regulations 2005⁽⁴⁾ and the Fodder Plant Seed (Scotland) Regulations 2005⁽⁵⁾ are each amended in accordance with this regulation.

(2) In regulation 2 (interpretation) –

- (a) in the definition of “licensed crop inspector”, for “regulation 10(1) (licensing of seed samplers and crop inspectors) of the Seeds (Registration, Licensing and Enforcement) Regulations 1985” substitute “regulation 11(1) (licences) of the Seed (Registration, Licensing and Enforcement) (Scotland) Regulations 2006”;
- (b) in the definition of “licensed seed sampler” –
 - (i) in the Oil and Fibre Plant Seed (Scotland) Regulations 2004, for “regulation 10(1) (licensing of seed samplers and crop inspectors and licensed seed samplers) of the Seeds (Registration, Licensing and Enforcement) Regulations 1985” substitute “regulation 18(1) (licences) of the Seed (Registration, Licensing and Enforcement) (Scotland) Regulations 2006”; and
 - (ii) in the Cereal Seed (Scotland) Regulations 2005 and the Fodder Plant Seed (Scotland) Regulations 2005, for “regulation 10(1) (licensing of seed samplers and crop inspectors) of the Seeds (Registration, Licensing and Enforcement) Regulations 1985” substitute “regulation 18(1) (licences) of the Seed (Registration, Licensing and Enforcement) (Scotland) Regulations 2006”;

(2) 2000 c. 7; the definition of “electronic communication” in section 15(1) was amended by the Communications Act 2003 (c. 21), section 406(1) and Schedule 17, paragraph 158.

(3) S.S.I. 2004/317.

(4) S.S.I. 2005/328.

(5) S.S.I. 2005/329.

- (c) in the definition of “licensed seed testing station”, for “regulation 9(1) (licensing of seed testing stations) of the Seeds (Registration, Licensing and Enforcement) Regulations 1985” substitute “regulation 25(1) (licences) of the Seed (Registration, Licensing and Enforcement) (Scotland) Regulations 2006”; and
 - (d) in the case of the Cereal Seed (Scotland) Regulations 2005 and the Fodder Plant Seed (Scotland) Regulations 2005 only, in the definition of “registered number ”for “regulation 4 of the Seeds (Registration, Licensing and Enforcement) Regulations 1985” substitute “regulation 5(1) (registrations) of the Seed (Registration, Licensing and Enforcement) (Scotland) Regulations 2006”.
- (3) In regulation 16(4) and (5), for “regulation 4(1) (registration of seed merchants, seed packers and seed processors) of the Seeds (Registration, Licensing and Enforcement) Regulations 1985” substitute “regulation 5(1) (registrations) of the Seed (Registration, Licensing and Enforcement) (Scotland) Regulations 2006”.
- (4) In regulation 24(2)(a) of the Oil and Fibre Plant Seed (Scotland) Regulations 2004 and regulation 25(2)(a) of the Cereal Seed (Scotland) Regulations 2005 and the Fodder Plant Seed (Scotland) Regulations 2005 respectively—
- (a) for “regulation 4(1) (registration of seed merchants, seed packers and seed processors) of the Seeds (Registration, Licensing and Enforcement) Regulations 1985” substitute “regulation 5(1) (registrations) of the Seed (Registration, Licensing and Enforcement) (Scotland) Regulations 2006”; and
 - (b) for “regulation 13(a) (inspection and publication of lists of registered and licensed persons) of the Seeds (Registration, Licensing and Enforcement) Regulations 1985” substitute “regulation 9, 15, or 22 of the Seed (Registration, Licensing and Enforcement) (Scotland) Regulations 2006”.

Amendments to the Seeds (Fees) Scotland Regulations 2002

44.—(1) The Seeds (Fees) Scotland Regulations 2002(6) are amended in accordance with this regulation.

- (2) In regulation 2 (interpretation) –
 - (a) in the definition of “licensed crop inspector”, for “regulation 10 of the Seeds (Registration, Licensing and Enforcement) Regulations 1985” substitute “regulation 11(1) (licences) of the Seed (Registration, Licensing and Enforcement) (Scotland) Regulations 2006”;
 - (b) in the definition of “licensed seed sampler”, for “regulation 10 of the Seeds (Registration, Licensing and Enforcement) Regulations 1985 ” substitute “regulation 18(1) (licences) of the Seed (Registration, Licensing and Enforcement) (Scotland) Regulations 2006”; and
 - (c) in the definition of “licensed seed testing station”, for “regulation 9 of the Seeds (Registration, Licensing and Enforcement) Regulations 1985 ” substitute “regulation 25(1) (licences) of the Seed (Registration, Licensing and Enforcement) (Scotland) Regulations 2006”.
- (3) In the Schedule 6 heading, for “THE SEEDS (REGISTRATION, LICENSING AND ENFORCEMENT) REGULATIONS 1985” substitute “THE SEED (REGISTRATION, LICENSING AND ENFORCEMENT) (SCOTLAND) REGULATIONS 2006”.

Revocations , transitional a nd savings provisions

45.—(1) Subject to the following provisions of this regulation, the following regulations are revoked insofar as they apply to Scotland—

(6) S.S.I. 2002/526 as amended by S.S.I 2004/317, 2005/328, 2005/329 and 2006/70.

- (a) the Seeds (Registration, Licensing and Enforcement) Regulations 1985 (“the 1985 Regulations”)(7);
- (b) the Seeds (Registration, Licensing and Enforcement) (Amendment) Regulations 1987(8);
- (c) the Seeds (Registration, Licensing and Enforcement) (Amendment) Regulations 1990(9); and
- (d) the Seeds (Registration, Licensing and Enforcement) (Amendment) Regulations 1993(10).

(2) Any application made to the Scottish Ministers in accordance with regulation 4(2) of the 1985 Regulations but not determined at the coming into force of these Regulations shall be treated as an application referred to in regulation 4(1) of these Regulations and shall be determined in accordance with these Regulations.

(3) Any application made to the Scottish Ministers for–

- (a) a seed testing station licence under regulation 9(1); or
- (b) a crop inspector’s licence or seed sampler’s licence under regulation 10(1).

of the 1985 Regulations but not determined at the coming into force of these Regulations shall be treated as an application referred to in regulation 10(1), 17(1) or 24(1), as the case may be, of these Regulations and shall be determined in accordance with these Regulations.

(4) Any registration made in accordance with regulation 4(3) of the 1985 Regulations and having effect at the coming into force of these Regulations shall have effect as though it were a registration made in accordance with regulation 5 of these Regulations.

(5) Any licence granted–

- (a) in respect of a licensed seed testing station in accordance with regulation 9(1) of the 1985 Regulations and having effect at the coming into force of these Regulations shall have effect as though it were a licence granted in accordance with regulation 25(1) of these Regulations; and
- (b) to a licensed crop inspector or licensed seed sampler in accordance with regulation 10(1) of the 1985 Regulations and having effect at the coming into force of these Regulations shall have effect as though it were a licence granted in accordance with regulation 11(1) of these Regulations in the case of a licensed crop inspector and regulation 18(1) of these Regulations in the case of a licensed seed sampler.

(6) The right to make representations in accordance with regulation 35 of these Regulations and to appeal to the Tribunal in accordance with regulation 36 of these Regulations shall not apply in respect of any licence which was granted under the 1985 Regulations and which is varied within three months of the coming into force of these Regulations.

(7) Any fee arising whether wholly or in part under the 1985 Regulations but not paid at the coming into force of these Regulations shall be treated as a fee arising under these Regulations and shall be recoverable accordingly.

(7) S.I.1985/980 as amended by S.I. 1987/1098, 1990/611 and 1993/2530.

(8) S.I. 1987/1098.

(9) S.I. 1990/611.

(10) S.I. 1993/2530.