
SCOTTISH STATUTORY INSTRUMENTS

2004 No. 317

The Oil and Fibre Plant Seed (Scotland) Regulations 2004

PART I
GENERAL

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Oil and Fibre Plant Seed (Scotland) Regulations 2004, and shall come into force on 26th September 2004.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Plant Varieties and Seeds Act 1964;

“Annex V(C) document” means a document of the type specified in the second indented sub paragraph of the first paragraph of Article 19(2) (packing and labelling of not yet finally certified seed harvested in another EEA State or third country) of the Oil and Fibre Plant Seed Directive containing the particulars specified in Part C (document to be provided in the case of not yet finally certified seed harvested in another EEA State or third country) of Annex V of that Directive issued by the relevant competent seed certification authority;

“black mustard” means plants of the species specified in column 2 of Schedule 1 in relation to black mustard;

“blended seed lot” means a seed lot obtained by mixing seed where—

(a) the seed that goes into the seed lot—

(i) is of the same variety;

(ii) has come from different sources; and

(iii) either—

(aa) is fully certified seed;

(bb) is not fully certified seed, but is seed which has been harvested from seed crops for which official field inspection reports have been issued showing that the relevant crops met the conditions for the relevant category of seed specified in Part I of Schedule 4 or Annex I (crop conditions) of the Oil and Fibre Plant Seed Directive; or

(cc) is made up of seed which falls within sub paragraph (aa) and seed which falls within sub paragraph (bb); and

(b) a National Authority has been notified that the seed which goes into the seed lot is intended to be included in a blended seed lot;

“breeder”—

(a) in relation to a variety which has not been accepted on to a UK National List or the Common Catalogue, includes any person lawfully multiplying (on their own account) seed bred by another; and

(b) in relation to a variety which has been so accepted, means the person who is indicated in the relevant UK National List or in the Common Catalogue as responsible for maintaining the plant variety in accordance with the characteristics to which regard was had when the plant variety was accepted on to the relevant UK National List or Common Catalogue;

“breeder’s confirmation” means a document issued by the Scottish Ministers in accordance with Part II of Schedule 2 containing in respect of the seed to which it relates the particulars specified in paragraph 2 of Schedule 3;

“brown mustard” means plants of the species specified in column 2 of Schedule 1 in relation to brown mustard;

“bulked seed lot” means a seed lot obtained by mixing seed where–

(a) the seed that goes into the seed lot is–

(i) of the same variety;

(ii) has come from different sources; and

(iii) has been harvested from seed crops for which official field inspection reports have been issued showing that the relevant crops met the conditions for the relevant category of seed specified in Part I of Schedule 4 or Annex I (crop conditions) of the Oil and Fibre Plant Seed Directive; and

(b) a National Authority has been notified that the seed which goes into the seed lot is intended to be included in a bulked seed lot;

“Common Catalogue” means the Common Catalogue of varieties of species of agricultural plants published in the Official Journal of the European Communities;

“the Common Catalogue Directive” means Council Directive [2002/53/EC](#)(1) on the common catalogue of varieties of agricultural plant species, as amended by the Food and Feed Regulation;

“component” means–

(a) in the case of Pre basic Seed, a component used in the production of a hybrid variety; and

(b) in the case of Basic Seed, a component of a hybrid variety;

“control plot” means a plot sown by a European Authority with seed from a submitted sample taken–

(a) by a European Authority; or

(b) by a licensed seed sampler;

“the 1990 Deliberate Release Directive” means Council Directive [90/220/EEC](#)(2) on the deliberate release into the environment of genetically modified organisms, as amended by Commission Directive [94/15/EC](#)(3) and Commission Directive [97/35/EC](#)(4);

“the 2001 Deliberate Release Directive” means Directive [2001/18/EC](#) of the European Parliament and of the Council(5) on the deliberate release into the environment of genetically modified organisms and repealing Council Directive [90/220/EEC](#), as amended by Commission

(1) O.J. No. L 193, 20.7.02, p.1.

(2) O.J. No. L 117, 8.5.90, p.15.

(3) O.J. No. L 103, 22.4.94, p.20.

(4) O.J. No. L 169, 27.6.97, p.72.

(5) O.J. No. L 106, 17.4.01, p.1.

Decision 2002/623(6), the Food and Feed Regulation and Regulation (EC) No 1830/2003 of the European Parliament and of the Council(7);

“Department of Agriculture and Rural Development” means the Department of Agriculture and Rural Development in Northern Ireland;

“dioecious hemp” means hemp of dioecious hemp varieties;

“early movement seed” means seed marketed under regulation 12;

“EEA State” means a Member State, Norway, Iceland or Lichtenstein;

“Equivalence Decision” means Council Decision 2003/17/EC(8) 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, as amended by Council Decision 2003/403/EC(9) and Council Regulation (EC) No 885/2004(10);

“European Authority” means a National Authority or a competent seed certification authority of an EEA State other than the United Kingdom and “by a European Authority” means–

- (a) by or on behalf of the Department of Agriculture and Rural Development;
- (b) by or on behalf of the National Assembly for Wales;
- (c) by the Scottish Ministers;
- (d) by or on behalf of the Secretary of State; or
- (e) by a competent seed certification authority of an EEA State other than the United Kingdom;

“first buyer by way of trade” has the same meaning as for the purposes of the Oil and Fibre Plant Seed Directive;

“flax” means plants of the species specified in column 2 of Schedule 1 in relation to flax, commonly known as flax;

“the Food and Feed Regulation” means Regulation (EC) No 1829/2003 of the European Parliament and of the Council(11) on genetically modified food and feed;

“fully certified” means–

- (a) officially certified; or
- (b) certified by a European Authority other than the Scottish Ministers,

as satisfying the conditions specified for the relevant category of seed in regulation 3 and in Annexes I (crop conditions) and II (seed conditions) of the Oil and Fibre Plant Seed Directive;

“genetically modified” has the same meaning as for the purposes of the 2001 Deliberate Release Directive;

“hemp” means plants of the species specified in column 2 of Schedule 1 in relation to hemp;

“homogeneous seed lot” means a seed lot in which the seed has been so mixed or blended that it is as uniform as practicable and, as far as is practicable, the seed lot shows no evidence of heterogeneity;

“inbred line” means a sufficiently uniform and stable line obtained either by artificial self-fertilisation with selection over several successive generations or by equivalent operations;

(6) O.J. No. L 200, 30.7.02, p.22.

(7) O.J. No. L 268, 18.10.03, p.24.

(8) O.J. No. L 8, 14.1.03, p.10.

(9) O.J. No. L 141, 7.6.03, p.23.

(10) O.J. No. L 168, 1.5.04, p.1.

(11) O.J. No. L 268, 18.10.03, p.1.

“licensed crop inspector” means a person who holds a current licence to be a crop inspector granted by–

- (a) the Scottish Ministers under regulation 10(1) (licensing of seed samplers and crop inspectors) of the Seeds (Registration, Licensing and Enforcement) Regulations 1985⁽¹²⁾; or
- (b) a National Authority other than the Scottish Ministers under provisions equivalent to that regulation;

“licensed EC crop inspector” means a person authorised by a competent seed certification authority in an EEA State other than the United Kingdom, pursuant to Article 2(5)(a)(iii) (licensed crop inspectors) of the Oil and Fibre Plant Seed Directive, to carry out field inspections of crops in that EEA State;

“licensed seed sampler” means a person who holds a current licence to be a seed sampler granted by–

- (a) the Scottish Ministers under regulation 10(1) (licensing of seed samplers and crop inspectors and licensed seed samplers) of the Seeds (Registration, Licensing and Enforcement) Regulations 1985; or
- (b) a National Authority other than the Scottish Ministers under provisions equivalent to that regulation;

“licensed seed testing station” means an establishment which holds a current licence for testing of seed granted by–

- (a) the Scottish Ministers under regulation 9(1) (licensing of seed testing stations) of the Seeds (Registration, Licensing and Enforcement) Regulations 1985; or
- (b) a National Authority other than the Scottish Ministers under provisions equivalent to that regulation;

“linseed” means plants of the species specified in column 2 of Schedule 1 in relation to linseed, commonly known as linseed;

“lower germination seed” means seed marketed under regulation 11;

“monoecious hemp” means hemp of monoecious hemp varieties;

“National Authority” means the Department of Agriculture and Rural Development, the National Assembly for Wales, the Scottish Ministers or the Secretary of State;

“official certificate” means a certificate issued by the Scottish Ministers in accordance with Part I of Schedule 2 containing in respect of the seed to which it relates the particulars specified in paragraph 1 of Schedule 3 and “officially certified” shall be construed accordingly;

“official examination” means–

- (a) in relation to Seed of a Certified Generation or Commercial Seed–
 - (i) an examination or a test carried out by the Scottish Ministers;
 - (ii) if the seed has undergone official post control the results of which have been satisfactory, a field examination carried out by a licensed crop inspector; or
 - (iii) a test carried out by a licensed seed testing station; and
- (b) in relation to Pre basic Seed and Basic Seed–
 - (i) an examination or a test carried out by the Scottish Ministers; or
 - (ii) a test carried out by a licensed seed testing station;

“official field inspection” means a field examination of a crop carried out–

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

- (i) by a European Authority; or
- (ii) in the case of seed which, if it were fully certified would be Seed of a Certified Generation, or Commercial Seed, and which has been harvested from a crop which has been produced from seed that has undergone official post-control the results of which have been satisfactory, by a field examination of the crop carried out by a licensed crop inspector or a licensed EC crop inspector;

“official label” means a label issued by a European Authority;

“official post control” means a control plot has been sown with seed from the relevant seed lot and has produced plants which have been examined by the relevant European Authority; and
“official post control the results of which have been satisfactory” means official post control has been carried out for the relevant seed lot and the relevant European Authority has found, having regard to–

- (a) the conditions specified in–
 - (i) in the case of the Scottish Ministers–
 - (aa) paragraphs 4, 8 and 9 of Part I of Schedule 4;
 - (bb) paragraphs 10, 11 and 15(1) of Part II of Schedule 4; and
 - (ii) in the case of a European Authority other than the Scottish Ministers–
 - (aa) Annex I (crop conditions) of the Oil and Fibre Plant Seed Directive; and
 - (bb) Annex II (seed conditions) of the Oil and Fibre Plant Seed Directive; and
- (b) the category of the seed to be produced,

that the plants produced in the control plot indicate that the corresponding plants in the field are satisfactory plants from which to harvest the relevant category of seed;

“Oil and Fibre Plant Seed Directive” means Council Directive [2002/57/EC](#) on the marketing of seed of oil and fibre plants⁽¹³⁾ as amended by Council Directive [2002/68/EC](#)⁽¹⁴⁾, Commission Directive [2003/45/EC](#)⁽¹⁵⁾ and Council Directive [2003/61/EC](#)⁽¹⁶⁾;

“Secretary of State” means the Secretary of State for Environment, Food and Rural Affairs;

“seed lot” means an identifiable consignment of seed of a weight not exceeding that specified in column 2 of the table in paragraph 24 of Part II of Schedule 5 for the species specified in column 1 of that table by more than 5%, including a blended seed lot and a bulked seed lot, which bears a unique seed lot reference number;

“small package” means a package containing a net weight of not more than 15 kilograms of fully certified Pre basic Seed, fully certified Basic Seed, Seed of a Certified Generation or Commercial Seed;

“soya bean” means plants of the species specified in column 2 of Schedule 1 in relation to soya bean;

“submitted sample” means a sample of at least the minimum weight of a sample specified in paragraph 24 of Part II of Schedule 5, or in the case of a sample to be submitted to a licensed seed testing station, double the minimum weight of a sample specified in paragraph 24 of Part II of Schedule 5, taken from a seed lot in accordance with the provisions of Part I of Schedule 5;

“sunflower” means plants of the species specified in column 2 of Schedule 1 in relation to sunflower;

⁽¹³⁾ O.J. No. L 193, 20.7.02, p.74.

⁽¹⁴⁾ O.J. No. L 195, 24.7.02, p.32.

⁽¹⁵⁾ O.J. No. L 138, 5.6.03, p.40.

⁽¹⁶⁾ O.J. No. L 165, 3.7.03, p.23.

“swede rape” means plants of the species specified in column 2 of Schedule 1 in relation to swede rape, including plants commonly known as swede fodder rape and swede oilseed rape;

“third country” means a country listed in Annex I (countries, authorities and species) to the Equivalence Decision or Switzerland;

“turnip rape” means plants of the species specified in column 2 of Schedule 1 in relation to turnip rape, including plants commonly known as turnip fodder rape and turnip oilseed rape;

“UK National List ” means a list of varieties of species of oil and fibre plants for the time being published in accordance with the Seeds (National Lists of Varieties) Regulations 2001(17);

“white mustard” means plants of the species specified in column 2 of Schedule 1 in relation to white mustard.

(2) In these Regulations–

- (a) any reference to a numbered regulation, to a numbered Part or to a numbered Schedule is a reference to the regulation, Part or Schedule in these Regulations so numbered; and
- (b) any reference to a numbered paragraph is a reference to the paragraph so numbered in the regulation or Schedule in which that reference occurs.

Definitions of seed categories

3. In these Regulations–

“Breeder’s Seed” means seed of a generation prior to Basic Seed which has been produced by or under the responsibility of the breeder and is intended for the production of Pre-basic Seed or Basic Seed;

“Pre-basic Seed” means seed of a generation prior to Basic Seed which–

- (a) other than in relation to a component used in the production of a hybrid variety–
 - (i) has been produced by or under the responsibility of the breeder according to accepted practices for the maintenance of the variety; and
 - (ii) is intended to be used for the production of more Pre-basic Seed, Basic Seed, or with the written authority of the breeder–
 - (aa) in the case of black mustard, brown mustard, dioecious hemp, sunflower, swede rape, turnip rape or white mustard, Certified Seed;
 - (bb) in the case of flax, linseed, monoecious hemp or soya bean, Certified Seed of the First Generation;
 - (cc) in the case of flax, linseed, monecious hemp or soya bean, Certified Seed of the Second Generation; or
 - (dd) in the case of flax or linseed, Certified Seed of the Third Generation; or
- (b) in relation to a component of a hybrid variety seed is intended to be used for the production of–
 - (i) more Pre-basic Seed of the component;
 - (ii) Basic Seed; or
 - (iii) with the written authority of the breeder, Certified Seed of a hybrid variety; and
- (c) has been–
 - (i) officially certified, or certified by the Scottish Ministers by means of a breeder’s confirmation, as satisfying the conditions specified in paragraph (a) or (b) and the requirements for Basic Seed specified in Schedule 4; or

- (ii) certified by a European Authority other than the Scottish Ministers as satisfying the conditions specified in paragraph (a) or (b) and the requirements for Basic Seed specified in Annexes I (crop conditions) and II (seed conditions) of the Oil and Fibre Plant Seed Directive;

“Basic Seed” means seed which–

- (a) in relation to black mustard, brown mustard, flax, hemp, linseed, soya bean, sunflower, swede rape, turnip rape and white mustard, other than a hybrid variety–
 - (i) has been produced by or under the responsibility of the breeder according to accepted practices for the maintenance of the variety; and
 - (ii) is intended to be used for the production of–
 - (aa) in the case of black mustard, brown mustard, dioecious hemp, sunflower, swede rape, turnip rape or white mustard, Certified Seed;
 - (bb) in the case of flax, linseed, monoecious hemp or soya bean, Certified Seed of the First Generation;
 - (cc) in the case of flax, linseed, monoecious hemp or soya bean, Certified Seed of the Second Generation; or
 - (dd) in the case of flax or linseed, Certified Seed of the Third Generation; or
- (b) in relation to a component of a hybrid variety, or an inbred line which is a component of a hybrid variety, seed which is intended to be used for the production of Certified Seed of a hybrid variety; or
- (c) in relation to a simple hybrid which is a component of a hybrid variety, seed which is intended to be used for the production of Certified Seed of a double cross hybrid variety or three way cross hybrid variety, where–
 - (i) “single cross hybrid” means the first generation of a cross between two inbred lines, defined by the breeder;
 - (ii) “double cross hybrid” means the first generation of a cross between two single cross hybrids, defined by the breeder; and
 - (iii) “three way cross hybrid” means the first generation of a cross between an inbred line and a single cross hybrid, defined by the breeder; and
- (d) has been–
 - (i) officially certified, or certified by the Scottish Ministers by means of a breeder’s confirmation, as satisfying the conditions specified in paragraphs (a), (b) or (c) and the requirements for Basic Seed specified in Schedule 4; or
 - (ii) certified by a European Authority other than the Scottish Ministers as satisfying the conditions specified in paragraph (a), (b) or (c) and the requirements for Basic Seed specified in Annexes I (crop conditions) and II (seed conditions) of the Oil and Fibre Plant Seed Directive;

“Certified Seed” means seed which, in relation to black mustard, brown mustard, dioecious hemp, sunflower, swede rape, turnip rape and white mustard including hybrids–

- (a) has been produced directly from Basic Seed or, with the breeder’s written authority, from Pre basic Seed;
- (b) is intended for purposes other than the production of oil and fibre plant seed; and
- (c) has been–
 - (i) officially certified as satisfying the conditions specified in paragraphs (a) and (b) and the requirements for Certified Seed specified in Schedule 4; or

- (ii) certified by a European Authority other than the Scottish Ministers as satisfying the conditions specified in sub paragraphs (a) and (b) and the requirements for Certified Seed specified in Annexes I (crop conditions) and II (seed conditions) of the Oil and Fibre Plant Seed Directive;

“Certified Seed of the First Generation” means seed of flax, linseed, monoecious hemp or soya bean which—

- (a) has been produced directly from Basic Seed or, with the written authority of the breeder, from Pre basic Seed;
- (b) is intended—
 - (i) for the production of Certified Seed of the Second Generation;
 - (ii) in the case of flax or linseed for the production of Certified Seed of the Third Generation; or
 - (iii) for purposes other than the production of oil and fibre plant seed; and
- (c) has been
 - (i) officially certified as meeting the conditions specified in paragraphs (a) and (b) and the requirements for Certified Seed of the First Generation specified in Schedule 4; or
 - (ii) certified by a European Authority other than the Scottish Ministers as satisfying the conditions specified in paragraphs (a) and (b) and the requirements for Certified Seed of the First Generation specified in Annexes I (crop conditions) and II (seed conditions) of the Oil and Fibre Plant Seed Directive;

“Certified Seed of the Second Generation” means seed of flax, linseed, monoecious hemp or soya bean which—

- (a) in the case of flax, linseed or soya bean—
 - (i) has been produced directly from the Basic Seed, Certified Seed of the First Generation or, with the written authority of the breeder, from Pre basic Seed;
 - (ii) is intended—
 - (aa) in the case of flax or linseed, for the production of Certified Seed of the Third Generation; or
 - (bb) in the case of flax, linseed or soya bean for purposes other than the production of oil and fibre plant seed; and
 - (iii) has been—
 - (aa) officially certified as satisfying the conditions specified in sub paragraphs (i) and (ii) and the requirements for Certified Seed of the Second Generation specified in Schedule 4; or
 - (bb) certified by a European Authority other than the Scottish Ministers as satisfying the conditions specified in sub paragraphs (i) and (ii) and the requirements for Certified Seed of the Second Generation specified in Annexes I (crop conditions) and II (seed conditions) of the Oil and Fibre Plant Seed Directive;
- (b) in the case of monoecious hemp—
 - (i) has been produced directly from Certified Seed of the First Generation which has been established and officially controlled with a special view to the production of Certified Seed of the Second Generation;
 - (ii) is intended for the production of hemp to be harvested in flower; and

- (iii) has been—
 - (aa) officially certified as satisfying the conditions specified in sub paragraphs (i) and (ii) and the requirements of Certified Seed of the Second Generation specified in Schedule 4; or
 - (bb) certified by a European Authority other than the Scottish Ministers as satisfying the conditions specified in sub paragraphs (i) and (ii) and the requirements for Certified Seed of the Second Generation specified in Annexes I (crop conditions) and II (seed conditions) of the Oil and Fibre Plant Seed Directive;

“Certified Seed of the Third Generation” means seed of flax or linseed which—

- (a) has been produced directly from Basic Seed, Certified Seed of the First Generation or Certified Seed of the Second Generation or, with the written authority of the breeder, from Pre basic Seed;
- (b) is intended for purposes other than the production of oil and fibre plant seed; and
- (c) has been—
 - (i) officially certified as satisfying the conditions specified in paragraphs (a) and (b) and the requirements for Certified Seed of the Third Generation specified in Schedule 4; or
 - (ii) certified by a European Authority other than the Scottish Ministers as satisfying the conditions specified in paragraphs (a) and (b) and the requirements for Certified Seed of the Third Generation specified in Annexes I (crop conditions) and II (seed conditions) of the Oil and Fibre Plant Seed Directive;

“Commercial Seed” means seed of black mustard which—

- (a) is identifiable as to its species; and
- (b) has been—
 - (i) officially certified as satisfying the conditions specified in paragraph (a) and the requirements for Certified Seed specified in Part II of Schedule 4; or
 - (ii) certified by a European Authority other than the Scottish Ministers as satisfying the conditions specified in paragraph (a) and the requirements for Certified Seed specified in Annex II (seed conditions) of the Oil and Fibre Plant Seed Directive;

“Seed of a Certified Generation” means Certified Seed, Certified Seed of the First Generation, Certified Seed of the Second Generation and Certified Seed of the Third Generation.

Definition of marketing

4.—(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.

Seed to which the Regulations apply

5.—(1) Subject to paragraph (2), these Regulations apply to oil and fibre plant seed of the species specified in Schedule 1, being seed intended to be used only for the production of agricultural crops other than for ornamental purposes.

(2) These Regulations shall not apply to seed which is shown to be intended for export to a country which is not an EEA State.

PART II MARKETING

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) Commercial Seed; or
 - (ii) seed of a plant variety of a species specified in Part I of Schedule 1 (varieties of plant species on national lists) to the Seeds (National Lists of Varieties) Regulations 2001⁽¹⁸⁾ accepted on to a UK National List or the Common Catalogue and which is fully certified Pre-basic Seed, fully certified Basic Seed or Seed of a Certified Generation; or
 - (iii) Breeder's Seed.

(2) Paragraph (1) shall not apply to the marketing of seed which has not yet been fully certified if—

- (a) the seed is marketed for processing;
- (b) the identity of the seed is ensured; and
- (c) the seed 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 (crop conditions) of the Oil and Fibre Plant Seed Directive for the relevant category of seed.

(3) Where seed is sampled in an untreated state for either the official examination referred to in paragraph 2(c) of Part I of Schedule 2, or for an examination or test carried out by a European Authority other than the Scottish Ministers, and the seed is subsequently subjected to chemical treatment the seller shall, upon or before delivering the seed to the purchaser, provide the purchaser with a statement in writing that the seed has been subsequently subjected to chemical treatment and specifying the chemical nature of such treatment.

(4) 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.

(5) Any person marketing seed which has been imported from a country which is not an EEA State 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, with the particulars relating to the seed specified in paragraph 10 of Part V of Schedule 6.

Mixtures

7. Regulation 6(1) shall not prevent the marketing of a mixture of seed permitted by the Fodder Plant Seeds Regulations 1993(19) which includes seed of a species to which these Regulations apply which—

- (a) fell within regulation 6(1)(b)(i) or (ii); and
- (b) complied with the provisions of these Regulations,

before mixing with the fodder plant seed.

Exception for scientific selection work and for tests and trials

8.—(1) Regulation 6(1)(b) shall not apply to the marketing by a producer of—

- (a) small quantities of seed for scientific purposes or selection work; or
- (b) seed for test and trial purposes,

for which—

- (i) an authorisation has been granted to the producer by the Scottish Ministers in accordance with this regulation; or
- (ii) 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)(a) (exemption for small quantities of seed for scientific purposes or selection work) of the Oil and Fibre Plant Seed Directive or in respect of seed for test and trial purposes, pursuant to Article 6(1)(b) (exemption for test and trial purposes) of the Oil and Fibre Plant Seed Directive.

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

(3) An application under this regulation shall be made in such form and manner and at such time as the Scottish Ministers shall require and shall be accompanied by such information as the Scottish Ministers may require for the purpose of determining whether to grant an authorisation.

(4) The Scottish Ministers shall not grant an authorisation under this regulation for scientific purposes and selection work in respect of seed of a genetically modified variety unless an authorisation is in force in respect of the variety concerned under the Food and Feed Regulation, or under Part B (deliberate release of GMOs for any other purpose than for placing on the market) or Part C (placing on the market of GMOs as or in products) of the 2001 Deliberate Release Directive, or under Part B (deliberate release of GMOs for any other purpose than for placing on the market) or Part C (placing on the market of GMOs as or in products) of the 1990 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.

(5) The Scottish Ministers shall not grant an authorisation under this regulation in respect of seed for test and trial purposes unless—

- (a) they consider that the amount of seed that may be marketed under it is of an appropriate quantity for the test or trial; and
- (b) (i) either—
 - (aa) an application has been submitted to the relevant authority under regulation 4(1)(a) (applications in relation to national lists) of the Seeds

(19) S.I. 1993/2009, as relevantly amended by S.I. 1993/2529, 1996/1453, 1997/616, 1999/1864, S.S.I. 2000/247, S.I. 2001/3510 and S.S.I. 2002/564..

(National Lists of Varieties) Regulations 2001⁽²⁰⁾ for acceptance of the variety concerned on to a UK National List and the application has not been withdrawn or finally determined; and

(bb) in the case of seed of a genetically modified variety, an authorisation is in force in respect of the variety concerned under the Food and Feed Regulation or under Part C (placing on the market of GMOs as or in products) of the 2001 Deliberate Release Directive or under Part C (placing on the market of GMOs as or in products) of the 1990 Deliberate Release Directive; or

(ii) in the case of seed of a genetically modified variety, an authorisation is in force in respect of the variety concerned under Part B (deliberate release of GMOs for any other purpose than for placing on the market) of the 2001 Deliberate Release Directive or under Part B (deliberate release of GMOs for any other purpose than for placing on the market) of the 1990 Deliberate Release Directive.

(6) An authorisation under this regulation may—

(a) and in the case of an authorisation in respect of seed for test and trial purposes shall, specify the amount of seed which may be marketed under it; and

(b) impose such conditions as the Scottish Ministers may think necessary or desirable having regard to the nature of the scientific purpose or selection work involved in the case of an authorisation granted for scientific purposes and selection work and, in all cases, to the nature of the seed to which the authorisation relates, including a condition relating to the keeping of records in respect of the marketing of the seed.

Varietal associations

9.—(1) Regulation 6(1)(b) shall not apply to the marketing of a varietal association of seed—

(a) to which these Regulations apply; and

(b) the female and male components of which—

(i) have been dressed using a different coloured dressing; and

(ii) have been mechanically combined in proportions notified to a European Authority by the person responsible for the maintenance of the pollinator-dependent hybrid and pollinator within the varietal association.

(2) Subject to paragraph (3), the person responsible for the maintenance of the pollinator-dependent hybrid and pollinator within a varietal association may notify the Scottish Ministers of the proportions of the pollinator-dependent hybrid and pollinator within the varietal association.

(3) In a case where different persons are responsible for the maintenance of the pollinator-dependent hybrid and pollinator within a varietal association, those persons may notify the Scottish Ministers of the proportions of the pollinator-dependent hybrid and pollinator agreed by them within the varietal association.

(4) A notification given under paragraph (2) or (3) shall be made in such form and manner as the Scottish Ministers may require and be accompanied by such information and other documents as the Scottish Ministers may require.

(5) The Scottish Ministers shall acknowledge the receipt of each notification that they receive under paragraph (2) or (3).

(6) In this regulation—

“pollinator-dependent hybrid” means a male-sterile component within a varietal association (female component);

“pollinator” means a component shedding pollen within a varietal association (male component); and

“varietal association” means an association of Certified Seed of a specified pollinator dependent hybrid accepted on to a UK National List or the Common Catalogue with Certified Seed of one or more specified pollinators similarly accepted.

General exemptions

10.—(1) Subject to paragraphs (2) and (3), the Scottish Ministers may, by a general licence, exempt any person or class of persons, or persons generally, from compliance with any provision of these Regulations.

(2) The Scottish Ministers shall not exercise the power to issue a general licence under paragraph (1) except—

- (a) to the extent that the provisions of the general licence are permitted in accordance with a temporary experiment organised under Article 16 (temporary experiments) of the Oil and Fibre Plant Seed Directive;
- (b) to the extent that the provisions of the general licence are permitted in accordance with Article 19(2) (waiving packing and labelling requirements for not yet fully certified seed imported from other EEA States) of the Oil and Fibre Plant Seed Directive;
- (c) to give effect to the provisions of a Council Decision made under Article 20 (checks on third country field inspections and quality control) of the Oil and Fibre Plant Seed Directive, including for the avoidance of doubt the Equivalence Decision, and amendments made to such a Decision; or
- (d) to the extent that the provisions of the general licence are permitted in accordance with measures taken pursuant to Article 21 (permission to market lower quality seed) of the Oil and Fibre Plant Seed Directive.

(3) A general licence issued under paragraph (1)—

- (a) shall have effect during the period specified in it unless the Scottish Ministers revoke it earlier; 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, including a condition relating to the keeping of records in respect of the marketing of the seed.

Marketing of officially certified lower germination seed

11.—(1) Notwithstanding regulation 6(1)(b) and the requirement in regulation 3 that Pre-basic Seed and Basic Seed shall attain the minimum standards of germination specified for Basic Seed in Part II of Schedule 4 or Annex II (seed conditions) of the Oil and Fibre Plant Seed Directive, any person may, subject to paragraphs (2) and (3) and regulation 17(6) 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 paragraph 13 of Part II of Schedule 4 in relation to Basic Seed by virtue of exception (ii) of paragraph 2 of Part I of Schedule 2;
- (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 II (seed conditions) of the Oil and Fibre Plant Seed Directive in relation to Basic Seed, by virtue of Article 5(a) (marketing of lower germination seed) of the Oil and Fibre Plant 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 paragraph 13 of 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 II (seed conditions) of the Oil and Fibre Plant 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 into the United Kingdom from a country which is not 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 seed of a plant variety of a species specified in Part I (varieties of plant species on national lists) of Schedule 1 to the Seeds (National Lists of Varieties) Regulations 2001 accepted on to a UK National List or the Common Catalogue has not been completed, but a provisional germination report has shown that the seed attains the appropriate minimum standard of germination specified in paragraph 13 of Part II of Schedule 4 and the seed in all other respects satisfies the appropriate requirements of Schedule 4; 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 Oil and Fibre Plant Seed Directive, the seed lot or any part of the seed lot may, notwithstanding regulation 6(1)(b) but subject to paragraphs (2) to (5), regulation 17(7) 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 seven 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 paragraph 13 of 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 seven days after being informed of it.

(3) The provisions of 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 II (seed conditions) of the Oil and Fibre Plant Seed Directive.

(4) A person who sells any seed in accordance with paragraph (1) shall make and, until the end of the period of two 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 the date of such delivery, of the reference number of the seed lot or part of a seed lot delivered, of the name and address of the first buyer by way of trade, of 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, 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.

(5) Paragraph (1) shall not apply to seed which has been imported into the United Kingdom from a country which is not an EEA State.

Requirement for homogeneity

13. No person shall market seed in accordance with regulation 6(1)(b)(i) or (ii), 11 or 12 unless it is marketed in a homogeneous seed lot or in part of a homogeneous seed lot.

PART III

PROCEDURES FOR ISSUING OFFICIAL CERTIFICATES

Applications for official certificates

14.—(1) An application in respect of a seed lot for the issue of an official certificate certifying the seed to be Pre basic Seed, Basic Seed, Seed of a Certified Generation or Commercial Seed—

- (a) shall be made in writing to the Scottish Ministers in such form and manner, and shall include such information, records, illustrations, material and seed as the Scottish Ministers may require; and
- (b) shall be made not later than 31st December in the year following the year of harvest of the crop from which the seed lot is obtained or within such other time as the Scottish Ministers may allow.

(2) Where an application for the issue of an official certificate is made to the Scottish Ministers in accordance with paragraph (1) the Scottish Ministers shall, subject to paragraph (3), deal with the application in accordance with the provisions of Part I of Schedule 2.

(3) Where a breeder applies to the Scottish Ministers for the issue of an official certificate in accordance with paragraph (1), in respect of a seed lot which already has a breeder's confirmation after the variety of the seed in that seed lot has been accepted on to a UK National List (or an equivalent list in another EEA State) or, if the seed in the seed lot is a component of a hybrid variety of oilseed rape, after the hybrid variety has been accepted on to a UK National List (or an equivalent list in another EEA State), the Scottish Ministers shall issue an official certificate in respect of that seed lot provided they are satisfied that—

- (a) the seed is the seed in respect of which the breeder's confirmation was issued;
- (b) the breeder's confirmation has not been withdrawn pursuant to regulation 19(3);
- (c) the provisions of regulation 20 have been complied with; and
- (d) there is no reason why the breeder's confirmation should be withdrawn pursuant to regulation 19(3).

(4) An official certificate which has been issued by the Scottish Ministers may be withdrawn by them in respect of either the whole of a seed lot or any part of a seed lot if—

- (a) the results of an official examination of the sample taken from the seed lot in respect of which the official certificate has been issued are deemed to be null and void in accordance with regulation 15(2);
- (b) on the basis of information received by them, the Scottish Ministers are satisfied that the crop from which the seed in the seed lot was harvested did not meet the conditions laid down in Part I of Schedule 4;
- (c) on the basis of information received by them, the Scottish Ministers are satisfied that the seed in the seed lot, or part of the seed lot—
 - (i) did not meet the conditions laid down in Part II of Schedule 4 at the time the seed was tested for seed certification purposes, which includes the purpose of issuing a breeder's confirmation; or
 - (ii) although it met the conditions in Part II of Schedule 4 at the time of such testing no longer meets them; or
- (d) the licensed seed sampler who sampled the seed lot or the licensed crop inspector or licensed EC crop inspector who inspected the crop, did so in breach of any of the terms of the licensed seed sampler's, or licensed crop inspector's, or licensed EC crop inspector's, licence,

and any seed from which an official certificate has been so withdrawn shall be deemed not to have been officially certified.

(5) The Scottish Ministers may withdraw the official certificate in respect of a seed lot, or any part of a seed lot, by giving notice to—

- (a) the person who made an application in respect of the seed lot under paragraph (1); or
- (b) any person marketing, or who has marketed, any of the seed.

(6) Where, in accordance with paragraph (5), the official certificate in respect of a seed lot, or part of a seed lot, is withdrawn under paragraph (4), the Scottish Ministers may notify—

- (a) the person who made an application under paragraph (1) in respect of the seed lot;
- (b) any person marketing, or who has marketed, any of the seed; and
- (c) any person who has purchased, or been supplied with, any of the seed,

that the official certificate in respect of the seed lot, or part of a seed lot, as the case may be, has been withdrawn.

(7) Where the official certificate in respect of a seed lot, or part of a seed lot, is withdrawn under paragraph (4), any seller of the seed shall, as soon as practicable and in any case not later than 7 days after being informed of it, notify the purchaser, in writing, that the official certificate has been withdrawn and that the seed is deemed not to have been officially certified.

Sampling

15.—(1) A sample of seed taken for the purposes of an official examination shall be taken—

- (a) (i) by a European Authority; or
 - (ii) by a licensed seed sampler in accordance with the terms of the licensed seed sampler's licence;
- (b) in accordance with the methods specified in Part I of Schedule 5; and
- (c) from a homogeneous seed lot.

(2) If a sample from a seed lot submitted or taken for the purpose of an official examination—

- (a) is found not to have been taken in accordance with paragraph (1);
 - (b) is taken from a seed lot which, subject to paragraph 23 of Part II of Schedule 5, does not comply with paragraph 22 of Part II of Schedule 5;
 - (c) is not a submitted sample; or
 - (d) is otherwise found not to have been taken in accordance with the seeds regulations,
- no, or no further, official examination of that sample shall be made under these Regulations, and any findings or results obtained in the course of any official examination of that sample, or from inspecting plants grown in a plot which has been sown with seed from that sample, shall be deemed to be null and void and shall be disregarded.
- (3) For the avoidance of doubt, the provisions of this regulation apply for the purposes of issuing a breeder's confirmation, as they do for the purposes of issuing an official certificate.

PART IV

PACKAGING AND LABELLING REQUIREMENTS FOR FULLY CERTIFIED SEED

Sealing of packages of fully certified seed

16.—(1) Subject to regulation 18, no person shall market in accordance with regulations 6(1), 9, 11 or 12 a package (other than a small package sealed in accordance with paragraph (4)) of Commercial Seed, Pre-basic Seed, Basic Seed, Seed of a Certified Generation, a varietal association to which regulation 9 applies, lower germination seed or early movement seed unless, subject to paragraph (2), it has been—

- (a) (i) not later than at the time of sampling; or
 - (ii) in the case of seed which is wholly or partly re packaged, the original package has been not later than at the time of sampling,sealed in Scotland by the Scottish Ministers or a licensed seed sampler with a sealing device in such a manner that when the package is opened the sealing device will be broken and cannot be re used; or
- (b) sealed—
 - (i) in the United Kingdom but not in Scotland; or
 - (ii) in an EEA State other than the United Kingdom,in accordance with the provisions of Article 11(1) (sealing of packages) of the Oil and Fibre Plant Seed Directive.

(2) In the case of a package of seed in respect of which the Scottish Ministers have issued an official certificate under regulation 14(3)—

- (a) paragraph (1)(a) shall apply as if the words “not later than at the time of sampling” were omitted; and
- (b) subject to sub paragraph (a), the package of seed shall be sealed in accordance with paragraph (1)(a) within 7 days of the issue of the official certificate.

(3) If a package of seed which has been sealed in accordance with paragraph (1) is opened it may not be marketed in accordance with regulations 6(1), 9, 11 or 12 unless it is re sealed or further re sealed—

- (a) in Scotland by the Scottish Ministers or a licensed seed sampler with a sealing device in such a manner that when the package is opened the sealing device is broken and cannot be re-used; or
- (b) (i) in the United Kingdom but not in Scotland; or
 - (ii) in an EEA State other than the United Kingdom,
 in accordance with the provisions of Article 11(2) (re sealing of packages) of the Oil and Fibre Plant Seed Directive.

(4) No person shall market in accordance with regulations 6(1), 9, 11 or 12 a small package of Commercial Seed, Pre basic Seed, Basic Seed, Seed of a Certified Generation, a varietal association to which regulation 9 applies, lower germination seed or early movement seed, unless it has been, or in the case of seed which is wholly or partly re packaged, the original package has been, sealed by the Scottish Ministers, a licensed seed sampler or a person registered by a National Authority in any part of the United Kingdom as a seed merchant, seed packer or seed processor under regulation 4(1) (registration of seed merchants, seed packers and seed processors) of the Seeds (Registration, Licensing and Enforcement) Regulations 1985⁽²¹⁾ or provisions equivalent to that regulation, not later than at the time of sampling in the United Kingdom with a sealing device in such a manner that when the package is opened the sealing device is broken and cannot be re used.

(5) If a small package of seed which has been sealed in accordance with paragraph (4) is opened, it may not be marketed in accordance with regulations 6(1), 9, 11 or 12 unless it is re-sealed or further re-sealed by the Scottish Ministers, a licensed seed sampler or a person registered by a National Authority in any part of the United Kingdom as a seed merchant, seed packer or seed processor under regulation 4(1) (registration of seed merchants, seed packers and seed processors) of the Seeds (Registration, Licensing and Enforcement) Regulations 1985 or provisions equivalent to that regulation, with a sealing device, in such a manner that when the package is opened the sealing device is broken and cannot be re-used.

(6) No person shall market in accordance with regulation 6(1) a package of Breeder's Seed unless it is marketed in a package which has been sealed with a sealing device in such a manner that when the package is opened the sealing device is broken and cannot be re-used.

(7) If a package of Breeder's Seed which has been sealed in accordance with paragraph (6) is opened it may not be marketed in accordance with regulation 6(1) unless it is re-sealed or further re-sealed with a sealing device in such a manner that when the package is opened the sealing device is broken and cannot be re-used.

Labelling of packages of fully certified seed

17.—(1) Subject to regulation 18, no person shall market in accordance with regulations 6(1), 9, 11 or 12 any Commercial Seed, Pre basic Seed, Basic Seed, Seed of a Certified Generation, a varietal association to which regulation 9 applies, lower germination seed or early movement seed, except in a package which, not later than at the time of sealing, is labelled, inscribed or otherwise dealt with in accordance with this regulation.

(2) In the case of a package of seed in respect of which the Scottish Ministers have issued an official certificate under regulation 14(3)–

- (a) paragraph (1) shall apply as if the words “not later than at the time of sealing” were omitted; and
- (b) subject to sub-paragraph (a), the package of seed shall be re labelled in accordance with this regulation within 7 days of the issue of the official certificate.

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

(3) In the case of seed of a variety which has been genetically modified, any label, document, printing or stamp, whether official or otherwise, affixed to or accompanying a seed lot or any part of a seed lot in accordance with the provisions of this regulation, and any particulars given under regulation 18, shall clearly indicate that the variety has been genetically modified.

(4) A package of Breeder's Seed shall have affixed on the outside a label containing, as appropriate to the seed, particulars of the matters specified, and being of the colour also specified, in paragraph 3 of Part II of Schedule 6, which shall be either an adhesive label or tear-proof label and shall be affixed, in either case, not later than at the time of sealing.

(5) Subject to paragraph (10), a package (other than a small package sealed in the United Kingdom in accordance with regulation 16(4)) of Commercial Seed, Pre basic Seed, Basic Seed, Seed of a Certified Generation, a varietal association of seed to which regulation 9 applies, lower germination seed or early movement seed—

- (a) which is sealed in Scotland shall have affixed on the outside an official label—
 - (i) containing, as appropriate to the category of seed and the seed itself, particulars of the matters specified, and being of at least the size and of the colour also specified, in the relevant paragraph of Part II of Schedule 6; and
 - (ii) which shall be either an adhesive label or a label secured to the package by a sealing device approved by the Scottish Ministers and shall be affixed, in either case, by the Scottish Ministers or a licensed seed sampler; and
- (b) which is sealed—
 - (i) in the United Kingdom but not in Scotland; or
 - (ii) in an EEA State other than the United Kingdom,

in accordance with the provisions of Articles 11(2) (re sealing), 12(1)(a) (labelling of packages) and 18(c) (labelling of packages of Pre-basic Seed) of the Oil and Fibre Plant Seed Directive appropriate to the relevant category of seed and the seed itself.

- (6) If in accordance with regulation 11 a person shall market any lower germination seed—
 - (a) the official label shall contain a statement that the minimum percentage of germination of the seed is less than the minimum percentage of germination for Basic Seed; and
 - (b) a label affixed to the outside of the package shall contain a statement of the specific minimum percentage of germination of the seed guaranteed by the person marketing the seed in accordance with regulation 11(2) together with the name and address of the seller and the reference number of the seed lot.

(7) If in accordance with regulation 12 a person shall market any early movement seed, a label affixed to the outside of the package shall contain—

- (a) a statement that the seed is being sold before the official examination of the germination of that seed lot has been concluded; and
- (b) a statement of the specific minimum percentage of germination guaranteed by the person marketing the seed in accordance with regulation 12(2)(c), together with the name and address of the seller and the reference number of the seed lot.

(8) Subject to paragraph (9), a package (other than a small package sealed in the United Kingdom in accordance with regulation 16(4)) of Commercial Seed, Pre-basic Seed, Basic Seed, Seed of a Certified Generation, a varietal association of seed to which regulation 9 applies, lower germination seed or early movement seed—

- (a) which is sealed in Scotland shall contain an official inner label which shall be of the same colour as, and in addition to, the official label affixed to the outside of the package in accordance with paragraph (5) and shall contain particulars of the matters specified in the items numbered—

- (i) in the case of Pre basic Seed and lower germination seed to which paragraph 4 of Part II of Schedule 6 is relevant, paragraph 4(a)(iii) to (v) of Part II of Schedule 6;
 - (ii) in the case of Basic Seed, Seed of a Certified Generation, or lower germination seed to which paragraph 5 of Part II of Schedule 6 is relevant, paragraph 5(a)(iv) to (vi) of Part II of Schedule 6;
 - (iii) in the case of Commercial Seed, paragraph 6(a)(iv) to (vi) of Part II of Schedule 6; and
 - (iv) in the case of a varietal association to which regulation 9 applies, paragraph 7(a)(iv) to (vi) of Part II of Schedule 6; and
- (b) which is sealed in–
- (i) the United Kingdom but not in Scotland; or
 - (ii) an EEA State other than the United Kingdom,
- shall contain an official document in accordance with Article 12(1)(b) (official documents) of the Oil and Fibre Plant Seed Directive.

(9) The official inner label or document referred to in paragraph (8) shall not be required if the particulars specified in paragraphs (3), (8) and (13) are printed indelibly on the outside of the package or if the official label is an adhesive or a tear resistant label.

(10) Notwithstanding paragraph (5), but subject to paragraphs (6) and (7), a package (other than a small package sealed in the United Kingdom in accordance with regulation 16(4)) of Commercial Seed, Basic Seed, Seed of a Certified Generation, a varietal association of seed to which regulation 9 applies, lower germination seed or early movement seed may be marketed if–

- (a) the appropriate particulars of the matters specified in Part II of Schedule 6 and paragraphs (3), (12) and (13) for packages sealed in Scotland, and in Articles 5 (lower germination and early movement seed), 11(2) (re-sealing) 12(1)(a) (labelling) and 14 (identification of genetically modified varieties) and Annex IV (labels) of the Oil and Fibre Plant Seed Directive for packages sealed in either–
 - (i) the United Kingdom but not Scotland; or
 - (ii) an EEA State other than the United Kingdom,
 are printed or stamped indelibly on the package in a panel of at least the size and of the colour so specified; and
- (b) the requirements of paragraphs 11 to 16 of Part VI of Schedule 6 are satisfied, in the case of a package sealed in Scotland; and
- (c) the requirements of paragraph 17 of Part VI of Schedule 6 are satisfied in the case of a package sealed in either–
 - (i) the United Kingdom but not in Scotland; or
 - (ii) an EEA State other than the United Kingdom.

(11) A small package sealed in the United Kingdom shall have affixed on the outside a label containing, as appropriate to the category of the seed and the seed itself, particulars of the matters specified in paragraphs (3), (12) and (13) and the relevant paragraph of Part II of Schedule 6, and being of the colour specified in the relevant paragraph of Part II of Schedule 6, except that subject to paragraphs (6) and (7)–

- (a) if such particulars are printed indelibly on the outside of the package in a panel of the colour so specified, the label shall not be required; and
- (b) if the packaging material is transparent the label may be placed inside the package provided it can be read through the packaging.

(12) Subject to paragraph (10) or (11), if a package of seed has been re sealed in accordance with regulation 16(3) or 20(4) this fact shall be stated on the official label required under paragraph (5) or the label required under paragraph (11), as the case may be, together with the month and year of re sealing and the name of the authority responsible for the re sealing.

(13) If any seed has been subjected to any chemical treatment this fact and the nature of the treatment or the proprietary name of the chemical used in the treatment shall be stated either—

- (a) in a case where regulation 18 applies, with the particulars given in accordance with that regulation;
- (b) in a case where regulation 18 does not apply—
 - (i) on a separate label on the package; or
 - (ii) on the label referred to in paragraph (4), (5) or (11), the official inner label or document referred to in paragraph (8), or the printing or stamp referred to in paragraph (9), (10) or (11),

and also, except where the information prescribed by this paragraph is given on an adhesive or tear resistant label, either on the outside of the package or on a document enclosed inside the package.

(14) The particulars and information given in accordance with this regulation shall be given in one of the official languages of the European Community.

(15) Subject to the provisions of the Act and of these Regulations, no person shall, in the course of the marketing or the preparation for marketing of any seed by that person or by any other person, wilfully reproduce, remove, alter, deface, conceal or misuse in any way any label affixed to, contained in or marked on any package of seed or which is to be so affixed, contained or marked.

Marketing of unpacked seed

18. Subject to regulation 17(3) and (13) a person may sell any seed otherwise than in a package which is sealed, labelled, inscribed or otherwise dealt with in accordance with regulations 16 and 17 where—

- (a) the seed is sold in a quantity not exceeding 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 paragraph 9 of Part IV of Schedule 6.

PART V

PROCEDURES FOR ISSUING BREEDER'S CONFIRMATIONS

Breeder's confirmations

19.—(1) An application for the issue of a breeder's confirmation for Pre-basic Seed or Basic Seed in respect of a seed lot—

- (a) shall be made in writing by the breeder to the Scottish Ministers in such form and manner, and shall include such information, records, illustrations, material and seed, as the Scottish Ministers may require; and
- (b) shall be made not later than 31st December in the year following the year of harvest of the crop from which the seed lot is obtained or within such other time as the Scottish Ministers may allow; and
- (c) shall be made only—

- (i) for seed of a variety for which an application has been made to have that variety accepted on to a UK National List (or an equivalent list in another EEA State); or
- (ii) for seed of a component of a hybrid variety of oilseed rape for which hybrid variety an application has been made to have that hybrid variety accepted on to a UK National List (or to an equivalent list in another EEA State).

(2) Where an application for the issue of a breeder's confirmation is made to the Scottish Ministers in accordance with paragraph (1) the Scottish Ministers shall deal with the application in accordance with the provisions of Part II of Schedule 2.

(3) A breeder's confirmation which has been issued by the Scottish Ministers may be withdrawn by them in respect of either the whole of a seed lot or any part of a seed lot if—

- (a) the results of an official examination of the sample taken from the seed lot in respect of which the breeder's confirmation has been issued are declared null and void in accordance with regulation 15(2);
- (b) on the basis of information received by them, the Scottish Ministers are satisfied that the crop from which the seed in the seed lot was harvested did not meet the conditions specified in Part I of Schedule 4; or
- (c) on the basis of information received by them, the Scottish Ministers are satisfied that the seed in the seed lot, or part of the seed lot—
 - (i) did not meet the conditions laid down in Part II of Schedule 4 at the time the seed was tested for breeder's confirmation purposes; or
 - (ii) although it met the conditions in Part II of Schedule 4 at the time of such testing no longer meets them,

and any seed from which a breeder's confirmation has been so withdrawn shall be deemed not to have had a breeder's confirmation.

(4) The Scottish Ministers may withdraw the breeder's confirmation in respect of a seed lot, or any part of a seed lot, by giving notice to the person who made an application in respect of the seed lot under paragraph (1).

PART VI

PACKAGING AND LABELLING REQUIREMENTS RELATING TO BREEDER'S CONFIRMATION

Sealing of packages of seed in relation to breeder's confirmation

20.—(1) No person shall have in their possession any package of seed in respect of which a breeder's confirmation for Pre basic Seed or Basic Seed has been applied for or issued unless it has been sealed in accordance with this regulation by the Scottish Ministers or a licensed seed sampler with a sealing device in such manner that when the package is opened the sealing device will be broken and cannot be re used.

(2) Sealing under paragraph (1) shall take place not later than at the time of sampling or, in the case of seed which is wholly or partly re packaged, the sealing of the original package shall take place no later than that time.

(3) Subject to paragraph (4), no person shall open a package of seed which has been sealed in accordance with paragraph (1) or re sealed in accordance with paragraph (4) except—

- (a) for the purpose of sowing all the seed;
- (b) where—

- (i) some of the seed is sown immediately after the package is opened;
 - (ii) the rest of the seed remains in the package after the seed is sown in accordance with sub-paragraph (i); and
 - (iii) the package is re sealed immediately after the seed is sown in accordance with sub-paragraph (i); or
- (c) for the purpose of re packaging and re sealing all of the seed.
- (4) If a package of seed which has been sealed in accordance with paragraph (1), or re-sealed in accordance with this paragraph, is in accordance with paragraph (3) or otherwise, opened neither it nor any other package containing any of that seed may be sealed, re sealed or further re sealed, as the case may be, except by the Scottish Ministers or a licensed seed sampler.
- (5) If the details on any label required by regulation 21 cease to be correct as a consequence of any action of the kind described in paragraph (3) the label shall be replaced by the Scottish Ministers or a licensed seed sampler at the time the package is re sealed under paragraph (4).

Labelling of packages of seed in relation to breeder's confirmation

21.—(1) No person shall have in their possession any package of seed in respect of which a breeder's confirmation has been applied for unless it has been, not later than the time of sealing under regulation 20, labelled, inscribed or otherwise dealt with in accordance with this regulation.

(2) In the case of seed of a variety which has been genetically modified, any label, document, printing or stamp, whether official or otherwise, affixed to or accompanying a seed lot or any part of a seed lot in accordance with the provisions of this regulation, shall clearly indicate that the variety has been genetically modified.

(3) Packages of seed in respect of which a breeder's confirmation has been applied for shall have affixed on the outside an official label—

- (a) containing, as appropriate to the category of seed and the seed itself, particulars of the matters specified, and being of at least the size and of the colour also specified, in the relevant paragraph of Part II of Schedule 6; and
- (b) which shall be—
 - (i) either an adhesive label or a label secured to the package by a sealing device approved by the Scottish Ministers;
 - (ii) affixed, in either case, by the Scottish Ministers or a licensed seed sampler; and
 - (iii) over stamped “not certified”.

(4) If in accordance with paragraphs 5 and 6(c) of Part II of Schedule 2 a breeder's confirmation has been issued in respect of seed of a lower percentage of germination than that specified for Basic Seed in Part II of Schedule 4—

- (a) the official label, or the particulars printed or stamped on the package in accordance with paragraph (5), shall contain a statement that the minimum percentage of germination of the seed is less than the minimum percentage of germination for Basic Seed; and
- (b) where possession of the package is transferred to another person, the transferor shall—
 - (i) guarantee a specific minimum percentage of germination of the seed; and
 - (ii) affix a label to the outside of the package containing a statement of the specific minimum percentage of germination of the seed guaranteed by the person transferring possession of the seed together with the name and address of the transferor and the reference number of the seed lot.

(5) Notwithstanding paragraphs (2) to (4) and (9), a package of seed need not be labelled if—

- (a) the appropriate particulars of the matters specified in the relevant paragraph of Part II of Schedule 6 and paragraphs (2), (4), (8) and (9) are printed or stamped indelibly on the package in a panel of at least the size and of the colour so specified and over stamped “not certified”; and
- (b) the requirements of paragraphs 11 to 14 and 16 of Part VI of Schedule 6 are satisfied.
- (6) Subject to paragraph (7), a package of seed for which a breeder’s confirmation has been issued shall contain an official inner label which shall be of the same colour as, and in addition to, the official label affixed to the outside of the package in accordance with paragraph (3) and shall contain particulars of the matters specified in the items numbered–
- (i) in the case of Pre-basic Seed and lower germination seed to which paragraph 4 of Part II of Schedule 6 is relevant, paragraph 4(a)(iii) to (v) of Part II of Schedule 6; and
- (ii) in the case of Basic Seed and lower germination seed to which paragraph 5 of Part II of Schedule 6 is relevant, paragraph 5(a)(iv) to (vi) of Part II of Schedule 6.
- (7) The official inner label referred to in paragraph (6) shall not be required if the particulars specified in paragraphs (2), (6) and (8) are printed indelibly on the outside of the package or if the official label is an adhesive or tear resistant label.
- (8) If a package of seed has been re sealed in accordance with regulation 20(4) this fact shall be stated on the official label required in terms of paragraph (3), and if an official certificate is issued in respect of the seed, on the official label required in terms of regulation 17(12), together with the month and year of re sealing and the name of the authority responsible for the re sealing.
- (9) If any seed has been subjected to any chemical treatment this fact and the nature of the treatment or the proprietary name of the chemical used in the treatment shall be stated either–
- (a) on a separate label on the package; or
- (b) on the label referred to in paragraph (3) or (4) or the printing or stamp referred to in paragraph (5),
- and also, except where the information prescribed by this paragraph is given on an adhesive or tear resistant label, either on the outside of the package or as a document enclosed inside the package.
- (10) The particulars and information given in accordance with this regulation shall be given in one of the official languages of the European Community.
- (11) For the purposes of this regulation, references in Schedule 6 to the “certifying authority” shall, in the case of a breeder’s confirmation, be taken to be references to that authority as issuer of the breeder’s confirmation.
- (12) Subject to the provisions of the Act and of these Regulations, no person shall wilfully reproduce, remove, alter, deface, conceal or misuse in any way any label affixed to, contained in or marked on any package of seed or which is to be so affixed, contained or marked, except as may occur in the course of opening the package for the purposes of regulation 17(2)(b) or 20(3).

PART VII

MISCELLANEOUS

Comparative tests and trials

22. For the purposes of comparative tests and trials under Article 23 (comparative tests and trials) of the Oil and Fibre Plant Seed Directive, the Scottish Ministers shall be entitled, on request, to an additional submitted sample taken from any seed lot of seed to which these Regulations apply whenever that seed lot is sampled for the purposes of–

- (a) an official examination under these Regulations; or
- (b) for the purposes of an examination or test carried out by a National Authority or a licensed seed testing station under the Oil and Fibre Plant Seeds Regulations 1993(22).

Civil liabilities of sellers of seed

23.—(1) The particulars given to a purchaser by the seller of seed to which these Regulations apply, whether given in pursuance of these Regulations 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 the seed, the percentage germination of the seed, the percentage analytical purity of the seed, the content of seed of other plant species, the varietal identity and the varietal purity of the seed or, in the case of a mixture of seed permitted by regulation 7, 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 7.

(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 10 days after delivery to that purchaser of the seed, give to the seller written notice of the purchaser's intention and thereupon the seller may indicate a day (not being more than 21 days after 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 fails to appoint such a day and time, on a day not more than 28 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 from the relevant seed lot or part of a seed lot sold to the purchaser, which sample shall be at least twice the minimum weight prescribed in paragraph 24 of Part II of Schedule 5.

(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 methods specified in Part I of Schedule 5, each part being of at least the minimum weight prescribed in paragraph 24 of Part II of Schedule 5, of which one part shall be sent to the Chief Officer of the Official Seed Testing Station for Scotland 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.

Service of notices

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

- (a) by delivering it to that 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 sub-paragraph (a) to the secretary of the body;

(22) S.I. 1993/2007 as relevantly amended by S.I. 1994/1423, 1996/1451, 1997/616, 1999/1862, S.S.I. 2000/249, S.I. 2001/3510 and S.S.I. 2003/304.

- (c) if the person is a limited liability partnership, by giving it in accordance with sub-paragraph (a) to a member of the partnership; or
- (d) if the person is a partnership, by giving it in accordance with sub-paragraph (a) to a partner or a person having control of the management of the partnership business.

(2) For the purposes of this regulation and section 7 (service of documents by post) of the Interpretation Act 1978⁽²³⁾ 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 seed merchant, seed packer or seed processor registered under regulation 4(1) (registration of seed merchants, seed packers and seed processors) of the Seeds (Registration, Licensing and Enforcement) Regulations 1985⁽²⁴⁾ or a licensed crop inspector who has a current licence granted by the Scottish Ministers or a licensed seed sampler who has a current licence granted by the Scottish Ministers, it shall be the address which could be made available by the Scottish Ministers under regulation 13(a) (inspection and publication of lists of registered and licensed persons) of the Seeds (Registration, Licensing and Enforcement) Regulations 1985; and
- (b) in other cases it shall be—
 - (i) in the case of a body corporate (other than a limited liability partnership) or its secretary, the address of the registered or principal office of the body;
 - (ii) in the case of a limited liability partnership or a member of the partnership, the address of the registered or principal office of the partnership; and
 - (iii) in the case of a partnership or a partner or a person having the control or management of a partnership business, 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 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 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 (service of documents by post) of the Interpretation Act 1978 in its application to this regulation, instead of that determined under paragraph (2).

Written and electronic communication

25.—(1) All applications, approvals, authorisations, notices, notifications and statements to which these Regulations apply shall be made in writing.

(2) “Writing” in paragraph (1) includes an electronic communication as defined in the Electronic Communications Act 2000⁽²⁵⁾, 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 sent 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 purpose of these Regulations or has otherwise represented that that form of electronic communication is a means by which the Scottish Ministers can communicate with them.

(23) 1978 c. 30.

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

(25) 2000 c. 7.

Amendment to the Seeds (Fees) (Scotland) Regulations 2002

26. In Schedule 3 (matters arising under the Oil and Fibre Plant Seeds Regulations 1993) of the Seeds (Fees) (Scotland) Regulations 2002⁽²⁶⁾ for “Oil and Fibre Plant Seeds Regulations 1993” substitute “Oil and Fibre Plant Seed (Scotland) Regulations 2004⁽²⁷⁾”.

Revocations and transitional provisions

27.—(1) Subject to paragraph (2), the Regulations set out in column 1 of Schedule 8 are revoked to the extent specified in the corresponding entry in relation to those Regulations in column 3 of Schedule 8.

(2) Subject to regulation 5 and paragraph (3), the provisions of these Regulations shall—

- (a) apply to hemp seed, varietal associations of seed and seed of hybrid varieties, from the coming into force date of these Regulations; and
- (b) not apply to seed other than seed to which paragraph (2)(a) applies, harvested on or before the coming into force date of these Regulations until 1st July 2005.

(3) Subject to regulation 5, regulation 22 shall apply to all seed from the coming into force date of these Regulations.

(4) Section 17 (repeal and re enactment) of the Interpretation Act 1978 shall not apply in relation to general licences granted under the Oil and Fibre Plant Seeds Regulations 1993.

St Andrew’s House, Edinburgh
1st July 2004

ROSS FINNIE
A member of the Scottish Executive

⁽²⁶⁾ S.S.I. 2002/526.

⁽²⁷⁾ S.S.I.2004/[].