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SCOTTISH STATUTORY INSTRUMENTS

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**2005 No. 328**

**The Cereal Seed (Scotland) Regulations 2005**

**PART I  
GENERAL**

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Cereal Seed (Scotland) Regulations 2005, and shall come into force on 1st July 2005.

(2) These Regulations extend to Scotland only.

**Interpretation**

2.—(1) In these Regulations—

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

“AFP number” means the official application for protection number issued by the Plant Variety Rights Office;

“Annex V(C) document” means a document of the type specified in the second indented sub paragraph of the first paragraph of Article 15(2) (packing and labelling of not yet finally certified seed harvested in another EEA State or third country) of the Cereal 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;

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

“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 Cereal 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;

“breeder’s designation” means the title, name or other designation proposed by a breeder for a new plant variety which is the subject of an application for acceptance on to a UK National List;

“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 Cereal 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;

“the Cereal Seed Directive” has the same meaning as it has in Schedule 9;

“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;

“constituent” means seed of a single species and, where appropriate, variety, which forms part of a mixture of seeds;

“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);

(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.

“the 2001 Deliberate Release Directive” means Directive [2001/18/EC](#) of the European Parliament and of the Council<sup>(5)</sup> on the deliberate release into the environment of genetically modified organisms and repealing Council Directive [90/220/EEC](#), as amended by Commission Decision 2002/623<sup>(6)</sup>, the Food and Feed Regulation and Regulation (EC) No. [1830/2003](#) of the European Parliament and of the Council<sup>(7)</sup>;

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

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

“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](#)<sup>(8)</sup> 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](#)<sup>(9)</sup> and Council Regulation (EC) No. [885/2004](#)<sup>(10)</sup>;

“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;

“Excepted Seed Marketed in Bulk” means Certified Seed (other than seed of maize), Certified Seed of the First Generation or Certified Seed of the Second Generation–

- (a) which is marketed in bulk direct to the final consumer in a container that is closed after filling; and
- (b) in respect of which a random sample has been taken in accordance with paragraph 12 of Schedule 5, by a person authorised in that behalf;

“first buyer by way of trade” has the same meaning as for the purposes of the Cereal Seed Directive;

“the Food and Feed Regulation” means Regulation (EC) No. [1829/2003](#) of the European Parliament and of the Council<sup>(11)</sup> 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 either in Schedule 4 or in Annexes I (crop conditions) and II (seed conditions) of the Cereal Seed Directive;

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

(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.

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

“Higher Voluntary Standards” means the standards specified in Schedule 4 as being HVS Standards and the abbreviation “HVS” shall be construed accordingly;

“HVS level Basic Seed” means Basic Seed which is currently certified by the Scottish Ministers as–

- (a) having been harvested from a crop that met the Higher Voluntary Standards for a crop to produce Basic Seed specified in Part I of Schedule 4; and
- (b) having met the Higher Voluntary Standards for Basic Seed laid down in Part II of Schedule 4;

“HVS level Certified Seed of the First Generation” means Certified Seed of the First Generation which is currently certified by the Scottish Ministers as–

- (a) having been harvested from a crop that met the Higher Voluntary Standards for a crop to produce Certified Seed of the First Generation specified in Part I of Schedule 4; and
- (b) having met the Higher Voluntary Standards for Certified Seed of the First Generation laid down in Part II of Schedule 4;

“HVS level Certified Seed of the Second Generation” means Certified Seed of the Second Generation which is currently certified by the Scottish Ministers as–

- (a) having been harvested from a crop that met the Higher Voluntary Standards for Certified Seed of the Second Generation specified in Part I of Schedule 4; and
- (b) having met the Higher Voluntary Standards for Certified Seed of the Second Generation laid down in Part II of Schedule 4;

“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;

“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<sup>(12)</sup>; 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(3)(i)(c) (licensed crop inspectors) of the Cereal 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) 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–

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

- (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;

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

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

“minimum level Basic Seed” means Basic Seed which is not currently certified by the Scottish Ministers as–

- (a) having been harvested from a crop that met the Higher Voluntary Standards for a crop to produce Basic Seed specified in Part I of Schedule 4; and
- (b) having met the Higher Voluntary Standards for Basic Seed laid down in Part II of Schedule 4;

“minimum level Certified Seed of the First Generation” means Certified Seed of the First Generation which is not currently certified by the Scottish Ministers as–

- (a) having been harvested from a crop that met the Higher Voluntary Standards for a crop to produce Certified Seed of the First Generation specified in Part I of Schedule 4; and
- (b) having met the Higher Voluntary Standards for Certified Seed of the First Generation laid down in Part II of Schedule 4;

“minimum level Certified Seed of the Second Generation” means Certified Seed of the Second Generation which is not currently certified by the Scottish Ministers as–

- (a) having been harvested from a crop that met the Higher Voluntary Standards for Certified Seed of the Second Generation specified in Part I of Schedule 4; and
- (b) having met the higher voluntary standards for Certified Seed of the Second Generation laid down in Part II of Schedule 4;

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

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

“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 control” means under the supervision of, and in accordance with any conditions set by, a European Authority;

“official examination” means–

- (a) in relation to Seed of a Certified Generation–
  - (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–

- (a) by a European Authority; or

- (b) in the case of seed which, if it were fully certified would be Seed of a Certified Generation, 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 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, 9, 10, 11 and 12 of Part I of Schedule 4; and

(bb) paragraphs 13, 14, 15 and 17 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 Cereal Seed Directive; and

(bb) Annex II (seed conditions) of the Cereal 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;

“official sticker” means a sticker issued by a European Authority and attached to an official label;

“registered number” means the number issued to a person registered by the Scottish Ministers under regulation 4 of the Seeds (Registration, Licensing and Enforcement) Regulations 1985 or by another National Authority under any equivalent provision extending to any other part of the United Kingdom;

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

“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 3 of the table in paragraph 26 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, a bulked seed lot, and a mixture of seed 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 or Seed of a Certified Generation;

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

“submitted sample” means a sample of at least the minimum weight of a sample specified in paragraph 26 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 26 of Part II of Schedule 5, taken from a seed lot in accordance with the provisions of Part I of Schedule 5;

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

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

“UK National List ” means a list of varieties of species of cereal plants for the time being published in accordance with the Seeds (National Lists of Varieties) Regulations 2001(13);

“volunteers” means plants of a species and variety that have grown from seed that was not deliberately sown as part of the crop;

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

“wild oats” means plants of the species *Avena fatua*, *Avena ludoviciana* and *Avena sterilis*.

(2) In these Regulations, in relation to varieties, hybrids and inbred lines of maize–

“open-pollinated variety” means a sufficiently uniform and stable variety;

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

“simple hybrid” means the first generation of a cross, defined by the breeder, between two inbred lines;

“double hybrid” means the first generation of a cross, defined by the breeder, between two simple hybrids;

“triple-cross hybrid” means the first generation of a cross, defined by the breeder, between an inbred line and a simple hybrid;

“top cross hybrid” means the first generation of a cross, defined by the breeder, between an inbred line or a simple hybrid and an open-pollinated variety; and

“intervarietal hybrid” means the first generation of a cross, defined by the breeder, between plants grown from basic seed of two open pollinated varieties.

(3) 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 barley, durum wheat, maize, oats, rye, spelt wheat, triticale or wheat 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) has been produced by or under the responsibility of the breeder according to accepted practices for the maintenance of the variety; and

(b) is intended to be used for the production of more Pre-basic Seed, Basic Seed, or with the written authority of the breeder–

(i) in the case of maize or rye, Certified Seed;

(ii) except in the case of maize or rye, Certified Seed of the First Generation;

(iii) except in the case of maize or rye, Certified Seed of the Second Generation; and

(c) has been–

- (i) subject to regulation 12, officially certified, or confirmed by the Scottish Ministers by means of a breeder's confirmation, as satisfying the conditions specified in paragraphs (a) and (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 paragraphs (a) and (b) and the requirements for Basic Seed specified in Annexes I (crop conditions) and II (seed conditions) of the Cereal Seed Directive;

“Basic Seed” means seed which–

- (a) in relation to barley, durum wheat, oats, rye, triticale, spelt wheat and wheat, 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 rye, Certified Seed;
    - (bb) except in the case of rye, Certified Seed of the First Generation;
    - (cc) except in the case of rye, Certified Seed of the Second Generation; or
- (b) in relation to a component of a hybrid variety of barley, durum wheat, maize, oats, rye, self pollinating triticale, spelt wheat or wheat, is intended to be used for the production of a hybrid variety of barley, durum wheat, maize, oats, rye, self-pollinating triticale, spelt wheat or wheat and which has been produced by or under the responsibility of the breeder according to accepted practices for the maintenance of the variety; or
- (c) in relation to an open-pollinated variety of maize–
  - (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–
    - (aa) for the production of Certified Seed of the same variety; or
    - (bb) as a component in the production of Certified Seed of a top cross or intervarietal hybrid variety; or
- (d) in relation to inbred lines of maize, has been produced by or under the responsibility of the breeder according to accepted practices for the maintenance of the variety; or
- (e) in relation to simple hybrids of maize, is intended to be used for the production of double hybrids, triple-cross hybrids or top cross hybrids; and
- (f) has been–
  - (i) subject to regulation 12, officially certified, or confirmed by the Scottish Ministers by means of a breeder's confirmation, as satisfying the conditions specified in paragraphs (a), (b), (c), (d) or (e) 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), (c), (d) or (e) and the requirements for Basic Seed specified in Annexes I (crop conditions) and II (seed conditions) of the Cereal Seed Directive;

“Certified Seed” means seed which, in relation to maize and rye (including hybrids of maize and rye) and hybrids of barley, durum wheat, oats, self-pollinating triticale, spelt wheat and wheat–



- (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 cereal seed; and
- (c) has been—
  - (i) subject to regulation 12, 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 paragraphs (a) and (b) and the requirements for Certified Seed specified in Annexes I (crop conditions) and II (seed conditions) of the Cereal Seed Directive;

“Certified Seed of the First Generation” means seed of barley, durum wheat, oats, spelt wheat, triticale, or wheat, other than a hybrid in each case, 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; or
  - (ii) for purposes other than the production of cereal seed; and
- (c) has been
  - (i) subject to regulation 12, 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 Cereal Seed Directive;

“Certified Seed of the Second Generation” means seed of barley, durum wheat, oats, spelt wheat, triticale or wheat, other than hybrids in each case, which—

- (a) has been produced directly from Basic Seed, Certified Seed of the First Generation or, with the written authority of the breeder, from Pre basic Seed;
- (b) is intended for purposes other than the production of cereal seed; and
- (c) has been—
  - (i) subject to regulation 12, officially certified as satisfying the conditions specified in paragraphs (a) and (b) and the requirements for Certified Seed of the Second 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 Second Generation specified in Annexes I (crop conditions) and II (seed conditions) of the Cereal Seed Directive;

“Seed of a Certified Generation” means Certified Seed, Certified Seed of the First Generation and Certified Seed of the Second 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 cereal seed of the species specified in Schedule 1, being seed intended to be used only for the production of agricultural or horticultural 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.