

**2007 No. 418**

**SEEDS**

**The Seed Potatoes (Scotland) Amendment Regulations 2007**

*Made* - - - - *5th September 2007*

*Laid before the Scottish Parliament* *7th September 2007*

*Coming into force* - - *30th September 2007*

The Scottish Ministers make these Regulations in exercise of the powers conferred by sections 16(1) to (5) and 36 of the Plant Varieties and Seeds Act 1964(a) and all other powers enabling them to do so.

They have consulted with representatives of such interests as appear to them to be concerned in accordance with section 16(1) of that Act.

**Citation and commencement**

1. These Regulations may be cited as the Seed Potatoes (Scotland) Amendment Regulations 2007 and come into force on 30th September 2007.

**Amendments to the Seed Potatoes (Scotland) Regulations 2000**

2. The Seed Potatoes (Scotland) Regulations 2000(b) are amended in accordance with regulations 3 to 16 of these Regulations.

**Amendment of regulation 2 (interpretation)**

3. In regulation 2(1) (interpretation)–

(a) insert at the appropriate place–

““the 2004 Commission Decision” means Commission Decision 2004/842/EC(c) of 1st December 2004 concerning implementing rules whereby Member States may authorise the placing on the market of seed belonging to varieties for which an application for entry in the national catalogue of varieties of agricultural plant species or vegetable species has been submitted;”;

““the National List” means the National List published in accordance with the Seeds (National Lists of Varieties) Regulations 2001(d);”;

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(a) 1964 (c.14); section 16 was amended by the European Communities Act 1972 (c.68), section 4(1) and paragraph 5(1) and (2) of Schedule 4 and by the Agriculture Act 1986 (c.49), section 2. Section 16 is applied to seed potatoes by section 29(1); section 29 was amended by the European Communities Act 1972, section 4(1) and paragraph 5(4) of Schedule 4. See section 38 for the definition of “the Ministers”. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) S.S.I. 2000/201, as amended by S.S.I. 2005/280.

(c) O.J. No. L 362, 9.12.2004, p.21.

(d) S.I. 2001/3510.

““Regulation (EC) 1829/2003” means Regulation (EC) 1829/2003(a) of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed;” and

““test and trial seed potatoes” means–

- (a) in relation to seed potatoes produced in Scotland, seed potatoes in relation to which a crop inspection report as test and trial seed potatoes has been issued in accordance with Schedule 1 and not withdrawn or being a lot or part of a lot in a package or container to or in which an official label has been attached;
- (b) in relation to seed potatoes produced outside Scotland, seed potatoes which have been brought into Scotland in a package or container which–
  - (i) bears an official label in accordance with Article 9 of the 2004 Commission Decision; and
  - (ii) to or in which a label or document, approved by the relevant authority, has been attached or placed stating that on examination of the potatoes they satisfy the minimum conditions for basic seed potatoes of a Community grade;” and
- (b) in the definition of “official label”, in paragraphs (a) and (b), both times where it appears, omit “or 2” and insert “, 2 or 2A”.

#### **Amendment of regulation 4 (classification of seed potatoes)**

4. In regulation 4(1) (classification of seed potatoes)–

- (a) at the end of sub-paragraph (a), omit “or”; and
- (b) after sub-paragraph (b) insert–
  - “; or
- (c) test and trial seed potatoes.”.

#### **Amendment of regulation 8 (marketing of seed potatoes)**

5. In regulation 8(1) (marketing of seed potatoes)–

- (a) at the end of sub-paragraph (a), omit “or”; and
- (b) after sub-paragraph (b) insert–
  - “; or
- (c) test and trial seed potatoes.”.

#### **Amendment inserting regulations 8A to 8E (marketing of test and trial seed potatoes)**

6. After regulation 8 insert–

##### **“Restrictions on marketing of test and trial seed potatoes**

**8A.** Regulations 8B to 8E of these Regulations apply to the marketing of test and trial seed potatoes.

##### **Conditions of marketing seed potatoes for test and trial purposes**

**8B.** Any marketing of test and trial seed potatoes must be carried out–

- (a) at an agricultural enterprise for the purposes of gathering information on the cultivation or use of the variety; and
- (b) in accordance with an authorisation granted by–

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(a) O.J. No. L. 268, 18.10.2003, p.1.

- (i) the Scottish Ministers under regulation 8D(1) of these Regulations; or
- (ii) a relevant Authority (other than the Scottish Ministers) pursuant to Article 6(1)(b) (exemption for test and trial purposes) of Council Directive 2002/56, in accordance with Article 2(1) (authorisation) of the 2004 Commission Decision.

#### **Application to the Scottish Ministers for authorisation**

- 8C.**—(1) A producer established in Scotland may apply to the Scottish Ministers for—
- (a) an authorisation to market test and trial seed potatoes; or
  - (b) a renewal of such an authorisation granted by the Scottish Ministers under regulation 8D(1) of these Regulations.
- (2) An application under paragraph (1) must be made in writing.
- (3) An application under paragraph (1)(a) must contain the following information—
- (a) the envisaged tests and trials;
  - (b) the names of the Member States in which those tests and trials are to be carried out;
  - (c) a description of the variety; and
  - (d) the maintenance of the variety.
- (3) An application under paragraph (1)(b) must contain the following information—
- (a) a reference to the original authorisation;
  - (b) any available information which supplements the information already provided on the description;
  - (c) the maintenance and the cultivation or use of the variety subject to the original authorisation; and
  - (d) evidence that evaluation for the entry into the catalogue of the variety is still ongoing, if that information is not otherwise available to the Scottish Ministers.
- (4) The Scottish Ministers may require a producer to provide any additional information which they think is relevant in support of an application under paragraph (1).

#### **Authorisation by the Scottish Ministers**

- 8D.**—(1) The Scottish Ministers may grant or renew an authorisation to a producer (who makes an application under 8C(1) of this regulation) to market test and trial seed potatoes.
- (2) The following paragraphs apply where the Scottish Ministers grant or renew an authorisation under paragraph (1).
- (3) Before granting or renewing an authorisation, the Scottish Ministers must be satisfied that—
- (a) in the case of seed potatoes which contain any genetically modified material, that material is authorised under Part C of Directive 2001/18 or under Regulation (EC) 1829/2003; and
  - (b) marketing of the seed potatoes would not contravene a prohibition on the use of the variety that complies with Article 14 of the 2004 Commission Decision and has been published by the Scottish Ministers in the gazette published under section 34(1) of the Act.
- (4) The authorisation must not exceed one year, or be renewed for periods exceeding one year each.
- (5) The Scottish Ministers may—

- (a) grant or renew their authorisation subject to any additional conditions which they think are appropriate, having regard to the nature of the tests or trials and the nature of the seed potatoes to which the authorisation relates; and
- (b) require, as a condition of authorisation or renewal, that the producer provide on request the following information—
  - (i) the results of the tests and trials which the authorisation relates to; and
  - (ii) the quantities of seed potatoes marketed during the authorised period and the names of the Member States to which the seed potatoes were destined.

#### **Withdrawal and expiry of authorisation**

**8E.**—(1) The Scottish Ministers may withdraw an authorisation granted under regulation 8D(1) where they are satisfied there has been a breach of any condition imposed under regulation 8D.

(2) An authorisation granted under regulation 8D(1) shall cease to have effect where—

- (a) the application referred to in regulation 8C(1) is withdrawn or rejected; or
- (b) the variety of seed potato to which the application relates is entered in the National List or the Common Catalogue of varieties of seed potatoes published in the Official Journal of the European Communities and which has not been notified in writing by the Scottish Ministers as being considered unacceptable for classification.”.

#### **Amendment of regulation 9 (labelling of seed potatoes)**

7. In regulation 9(1) (labelling of seed potatoes)—

- (a) at the end of sub-paragraph (b), omit “and” and insert—
  - “(ba) in the case of test and trial seed potatoes, the official label meeting the requirements set out in Schedule 6, paragraph 2A; and”;
- (b) in sub-paragraph (c) omit “either” and insert “each”.

#### **Amendment of regulation 10 (sealing of packages)**

8. In regulation 10(1) (sealing of packages), omit “pre-basic or basic”, and insert “pre-basic, basic or test and trial”.

#### **Amendment of regulation 15 (retail sales of seed potatoes)**

9. In regulation 15 (retail sales of seed potatoes), in paragraph (1), immediately before “seed potatoes”, where it first appears, insert “pre-basic or basic”.

#### **Amendment of regulation 17 (information regarding seed potatoes)**

10. In regulation 17 (information regarding seed potatoes), each time where it appears, omit “pre-basic seed potatoes or basic seed potatoes” and insert “pre-basic, basic or test and trial seed potatoes”.

#### **Amendment of Schedule 1 (classification: certification conditions)**

11. In Schedule 1 (classification: certification conditions)—

- (a) in paragraph 3, for sub-paragraph (b) substitute—
  - “(b) the seed potatoes are of a variety—
    - (i) for the time being listed in the National List, or in the Common Catalogue of varieties of seed potatoes published in the Official Journal of the European

- Communities and which has not been notified in writing by the Scottish Ministers as being considered unacceptable for classification; or
- (ii) for which an application has been submitted, but not withdrawn or finally determined, for acceptance on to the National List;”;
- (b) in paragraph 4, in sub-paragraph (c), after “basic” insert “or test and trial”.

**Amendment of Schedule 2 (classification: source material, other requirements and tolerances)**

12. In Schedule 2 (classification: source material, other requirements and tolerances) for paragraph 1 substitute—

“1. Following completion of examination of the crop in accordance with paragraph (1)(c) of Schedule 1, an authorised officer may issue a crop inspection report for the potatoes—

- (a) as being pre-basic or basic seed potatoes of a class and, where appropriate, class generation specified in column 1 of Table I (pre-basic seed potatoes) or Table II (basic seed potatoes) to this Schedule where that officer is satisfied that—
  - (i) the seed potatoes are derived from source material of the kind specified in the entry in column 2 corresponding to that class and, where appropriate, class generation;
  - (ii) that the other requirements specified in the entry in column 3 corresponding to that class and, where appropriate, class generation have been met;
  - (iii) on a sample that any of the tolerances specified in the entry in column 4 corresponding to that class and, where appropriate, class generation have not been exceeded; and
  - (iv) the conditions in paragraph 3(b)(i) of Schedule 1 apply (variety listed in the National List or Common Catalogue);
- (b) as being test and trial seed potatoes where that officer is satisfied that—
  - (i) the seed potatoes meet the requirements for basic seed potatoes set out in paragraph 1(a)(i) to (iii); and
  - (ii) the conditions in paragraph 3(b)(ii) of Schedule 1 apply (application submitted but not withdrawn or finally determined for acceptance of variety onto the National List).”.

**Amendment of Schedule 3 (particulars to be specified in a crop inspection report)**

13. In Schedule 3 (particulars to be specified in a crop inspection report), in paragraph 5 omit “or “Basic seed potatoes”” and insert “, “Basic seed potatoes” or “Test and trial seed potatoes””.

**Amendment of Schedule 4 (requirements as to varietal purity and size)**

14. In Schedule 4 (requirements as to varietal purity and size), in paragraph 4—

- (a) in the heading (“basic seed potatoes”), after “basic” insert “and test and trial”;
- (b) in sub-paragraph (1)(a), after “basic”, insert “or test and trial”; and
- (c) in sub-paragraph (4)(a) for “2%” substitute “3%”.

**Amendment to Schedule 6 (official labels)**

15. In Schedule 6 (official labels)—

- (a) in paragraph 1(2)(b), omit the words “and have printed on it the words “EC Rules and Standards””;
- (b) in paragraph 2(2)(b), after “and” where it first appears, insert “, unless the package or container is intended for export to countries outside the European Community,”;

(c) after paragraph 2, insert—

**“Test and trial seed potatoes**

**2A.**—(1) The requirements set out in this paragraph apply to an official label attached to a package or container of test and trial seed potatoes.

(2) An official label to which this paragraph applies shall—

- (a) be coloured orange;
- (b) measure not less than 110 millimetres by 67 millimetres and, unless the package or container is intended for export to countries outside the European Community, have printed on it the words “EC Rules and Standards”;
- (c) contain the words “variety not yet officially listed” and “for tests and trials only”; and
- (d) state the following particulars—

Certification authority and Member State or their initials

Country of Production

Species indicated at least in Roman characters, under its botanical name which may be given in abridged form and without the authors names or under its common name or both

Crop identification number including producer’s identification number (or equivalent)

Variety and official application number, indicated at least in Roman characters

Genetically modified variety (if appropriate)

Size

Month and year when officially sealed

Declared net weight”;

(d) in paragraph 3, omit “and 2(2)(c)”, and insert “, 2(2)(c) and 2A(2)(b)”;

(e) in paragraph 4(1)—

- (i) omit “(1)”;
- (ii) omit “or 2” and insert “, 2 or 2A”.

**Amendment of Schedule 7 (tolerances for diseases, pests, damage and defects)**

**16.** In Schedule 7 (tolerances for diseases, pests, damage and defects)—

(a) in both paragraphs 1(1)(c) and (d) (tolerances)—

(i) for “basic seed potatoes”, where it first appears, substitute “seed potatoes”; and

(ii) after paragraph (ii), insert—

“; or

(iii) classified under these Regulations as test and trial seed potatoes.”;

(b) in Table II (pre-basic class generations 1 to 4 and equivalent), in Group III, for the entries in relation to common scab, substitute—

(i) “5%” in columns 2, 3 and 4; and

(ii) “33%” in column 5;

(c) in Table III (basic seed potatoes and equivalent produced in the UK)—

(i) for the heading above the table, substitute “Basic, equivalent and test and trial seed potatoes produced in the UK”;

(ii) in Group III for the entries in relation to common scab—

- (aa) in columns 2, 3 and 4 after “4.0%”, insert “(5.0%\*)”; and
- (bb) in column 5, after “25.0%”, insert “(33.0%\*)”; and
- (d) in Table IV (basic seed potatoes and equivalent not produced in the UK)–
  - (i) for the heading above the table, substitute “Basic, equivalent and test and trial seed potatoes not produced in the UK”; and
  - (ii) in Group V for the entry in column 2 in relation to dirt or other extraneous matter substitute “1.0%”.

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A member of the Scottish Executive

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Edinburgh  
5th September 2007

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations, which extend to Scotland only, amend the Seed Potatoes (Scotland) Regulations 2000 (S.S.I. 2000/201) (“the principal Regulations”).

Subject to the proviso in the next paragraph, these Regulations give effect to Commission Decision 2004/842/EC of 1st December 2004 (“the 2004 Commission Decision”), whereby Member States may authorise the marketing of seed potatoes for test and trial purposes. These Regulations also make a number of minor amendments relating to crop tolerances and labelling requirements.

Article 5(4) of the 2004 Commission Decision provides that test and trial seed potatoes must comply with the technical conditions laid down in Annexes I and II to Directive 2002/56/EC for certified seed potatoes. However, under Commission Decision 2004/3/EC of 19th December 2003 (O.J. No. L 2, 6.1.2004 p.47) (“the 2003 Commission Decision”), the United Kingdom is authorised to restrict the marketing of seed potatoes in Scotland to basic seed potatoes (of the Community Grades specified in Article 1 of the 2003 Commission Decision). Test and trial seed potatoes marketed in Scotland must therefore satisfy the minimum source, tolerance, purity and size requirements for basic seed potatoes.

Regulation 3 amends the interpretation provisions in regulation 2 of the principal Regulations to include a definition of test and trial seed potatoes. Regulations 4 and 5 and 8 to 14 of these Regulations make a number of amendments to the principal Regulations consequential upon the insertion of that definition. These include provisions relating to: classification (regulation 4), marketing (regulation 5), sealing of packages (regulation 8), retail sales (regulation 9), information regarding seed potatoes (regulation 10), classification of seed potatoes (regulations 11 and 12), particulars to be included in a crop inspection report (regulation 13) and varietal purity and size (regulation 14).

Regulation 6 inserts regulations 8A to 8E into the principal Regulations. They set out the criteria for authorising marketing of test and trial seed potatoes, and also set out the restrictions on marketing them once an authorisation has been obtained.

Regulations 7 and 15 of these Regulations amend, respectively, regulation 9 and Schedule 6 to the principal Regulations to provide for labelling requirements for test and trial seed potatoes. Regulation 15 also amends the labelling requirements for packages and containers intended for export to countries outside the European Community.

Regulation 16 of these Regulations amends certain tolerance levels in Schedule 7 to the principal regulations.

No Regulatory Impact Assessment has been prepared in respect of these Regulations.

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