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SCOTTISH STATUTORY INSTRUMENTS

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**2016 No. 68**

The Seed (Licensing and Enforcement  
etc.) (Scotland) Regulations 2016

PART IV

MISCELLANEOUS AND SUPPLEMENTAL

**Right to make representations**

15.—(1) The Scottish Ministers must not decide to—

- (a) refuse to grant a licence under regulation 4(1)(b);
- (b) vary a licence or refuse to vary a licence under regulation 5(1); or
- (c) suspend or revoke a licence under regulation 7;

unless they have complied with the provisions of this regulation.

(2) Subject to paragraph (3), before taking any decision mentioned in paragraph (1) the Scottish Ministers must give the licence holder—

- (a) a notice stating what they are proposing to do and the reasons for it; and
- (b) the opportunity of making representations within such period as the Scottish Ministers consider reasonable.

(3) Paragraph (2) does not apply to a decision of the Scottish Ministers to suspend a licence in whole or in part with immediate effect under regulation 7(4).

(4) Where the Scottish Ministers decide to suspend a licence in whole or in part with immediate effect under regulation 7(4), they must give the licence holder—

- (a) as soon as reasonably practicable notice of their decision and the reasons for it; and
- (b) the opportunity of making representations within such period as the Scottish Ministers consider reasonable.

(5) If the Scottish Ministers have received written representations within the period referred to in paragraph (2)(b) or, as the case may be, paragraph (4)(b), they must as soon as reasonably practicable consider any such representations before taking any decision mentioned in paragraph (1) or, as the case may be, deciding that the suspension of the licence is to remain in force or is to be recalled.

(6) The Scottish Ministers must give the licence holder notice of—

- (a) any decision mentioned in paragraph (1) together with the reasons for it and the date from which the decision is to have effect;
- (b) any decision that the suspension of a licence in whole or in part is to remain in force together with the reasons for it.

(7) In giving a notice under paragraph (6), the Scottish Ministers must, where a right of appeal exists under regulation 16(1), inform the licence holder of—

- (a) the right to appeal to the Tribunal against the decision; and

- (b) the period of time within which such an appeal may be brought.

### **Appeals**

**16.**—(1) Subject to paragraph (2), a person given notice of a decision in accordance with regulation 15(6) and (7) may appeal to the Tribunal.

- (2) A right of appeal to the Tribunal does not apply where the Scottish Ministers have—
  - (a) refused to grant or vary a licence; or
  - (b) varied, suspended or revoked a licence,

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

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

(4) Paragraph (3) does not apply to a decision under regulation 15(5) that a suspension of the licence is to remain in force.

(5) The Scottish Ministers must give effect to any decision of the Tribunal which constitutes the final determination of an appeal under paragraph (1).

### **Exemptions**

**17.** The Scottish Ministers may exempt any person or class of persons, or persons generally, from compliance with any provision of these Regulations, subject to any conditions the Scottish Ministers think appropriate.

### **Extension of time**

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

### **Form of records**

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

### **Service of notices**

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

- (a) delivering it to that person;
- (b) leaving it at that person's proper address;
- (c) sending it by post or fax to that person's proper address; or
- (d) sending it by email to that person's last known email address.

(2) For the purposes of paragraph (1), in the case of a licensed professional seed operator or a licensed seed testing station, "person" includes a responsible person.

- (3) For the purposes of paragraph (1)(a), a notice is delivered to—

- (a) a body corporate where it is given to a relevant individual within that body;
  - (b) a partnership where it is given to a partner or a person having control or management of the partnership;
  - (c) an unincorporated association where it is given to an officer or a member of the governing body of the association or any other person having management responsibilities in respect of the association.
- (4) For the purposes of paragraph (1)(b) and (c) and section 7 of the Interpretation Act 1978(1) (service of documents by post) in its application to this regulation, “proper address” means—
- (a) in the case of a body corporate, the registered office (if it is in the United Kingdom) or the principal office of the body in the United Kingdom;
  - (b) in the case of a partnership, the principal office of the partnership;
  - (c) in the case of an unincorporated association, the principal office of the association;
  - (d) in any other case, a person’s last known address.
- (5) For the purposes of paragraph (1)(d), a notice is sent to an email address of—
- (a) a body corporate, where it is sent to an email address of—
    - (i) the body corporate; or
    - (ii) a relevant individual within that body,where that address is supplied by that body for the conduct of the affairs of that body;
  - (b) a partnership, where it is sent to an email address of—
    - (i) the partnership; or
    - (ii) a partner or person having control or management of that partnership,where that address is supplied by that partnership for the conduct of the affairs of the partnership;
  - (c) an unincorporated association, where it is sent to an email address of—
    - (i) an officer or member of the governing body of the association; or
    - (ii) any other person having management responsibilities in respect of the association,where that address is supplied by that association for the conduct of the affairs of that association;
  - (d) a person other than a person mentioned in sub-paragraph (a), (b) or (c), where it is sent to an email address supplied by that person for the conduct of the affairs of that person.
- (6) In this regulation—
- “partnership” includes a Scottish partnership; and
  - “relevant individual” means—
    - (a) a director, manager, secretary or other similar officer of the body corporate; or
    - (b) where the affairs of the body corporate are managed by its members, a member.

### **Written and electronic communication**

**21.** All applications, representations, notices and requests to which these Regulations apply must be made in writing which includes an electronic communication within the meaning of section 15(1) (general interpretation) of the Electronic Communications Act 2000(2).

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(1) 1978 c.30.

(2) 2000 c.7, as amended by the Communications Act 2003 (c.21), section 406 and Schedule 17, paragraph 158.

**Amendments to the Seed Marketing Regulations**

**22.** The Seed Marketing Regulations mentioned in Schedule 3 and the Seed Potatoes (Scotland) Regulations 2015(3) are amended in accordance with Schedule 3.

**Revocations, transitional and savings provisions**

**23.**—(1) Subject to the following provisions of this regulation, the 2006 Regulations are revoked.

(2) Any application made to the Scottish Ministers in accordance with regulation 4(1) (applications for registration) of the 2006 Regulations but not determined before 1st July 2016 is to be treated as an application to be licensed as a professional seed operator under regulation 3(1)(a) of these Regulations and is to be determined in accordance with these Regulations.

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

- (a) a crop inspector's licence under regulation 10(1) of the 2006 Regulations;
- (b) a seed sampler's licence under regulation 17(1) of the 2006 Regulations; or
- (c) a seed testing station licence under regulation 24(1) of the 2006 Regulations,

but not determined before 1st July 2016, is to be treated as an application for a licence under regulation 3(1)(a) or, as the case may be, regulation 3(1)(b) of these Regulations and is to be determined in accordance with these Regulations.

(4) Subject to paragraph (6), any registration granted under regulation 5(1) of the 2006 Regulations and having effect immediately before 1st July 2016 is to continue to have effect until 31st December 2016 and the 2006 Regulations continue to apply to any such registration.

(5) A registered person (as defined in regulation 2(1) of the 2006 Regulations) may, in accordance with regulation 3(1)(a) of these Regulations, apply to be licensed as a professional seed operator.

(6) Where, following the receipt of an application as mentioned in paragraph (5), the Scottish Ministers grant a licence under regulation 4(1)(a) of these Regulations, any registration granted under regulation 5(1) of the 2006 Regulations ceases to have effect as from the date of the grant of the licence.

(7) Any licence—

- (a) granted—
  - (i) to a licensed crop inspector under regulation 11(1) of the 2006 Regulations;
  - (ii) to a licensed seed sampler under regulation 18(1) of the 2006 Regulations; or
  - (iii) in respect of a licensed seed testing station under regulation 25(1) of the 2006 Regulations; and
- (b) having effect immediately before 1st July 2016,

is to have effect on and after 1st July 2016 as if it were a licence granted under regulation 4(1)(a) of these Regulations.

(8) The Scottish Ministers may, in accordance with regulation 5(1) of these Regulations, vary any licence mentioned in paragraph (7) apart from its expiry date.

(9) The right to make representations in accordance with regulation 15 of these Regulations and the right to appeal to the Tribunal in accordance with regulation 16 of these Regulations is not to apply in respect of any licence which was granted under the 2006 Regulations and which is, in accordance with regulation 5(1) of these Regulations, varied no later than 31st December 2016.

(10) Any fee arising whether wholly or in part under the 2006 Regulations but not paid before 1st July 2016 is to be treated as a fee arising under these Regulations and is recoverable accordingly.

