
SCOTTISH STATUTORY INSTRUMENTS

2017 No. 177

**PLANT HEALTH
SEEDS**

**The Marketing of Fruit Plant and Propagating
Material (Scotland) Regulations 2017**

| | | |
|--|---------|----------------------|
| <i>Made</i> | - - - - | <i>30th May 2017</i> |
| <i>Laid before the Scottish Parliament</i> | - - - - | <i>1st June 2017</i> |
| <i>Coming into force</i> | - - | <i>1st July 2017</i> |

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 ^{MI} and all other powers enabling them to do so.

Marginal Citations

MI 1972 c.68. Section 2(2) was amended by the [Scotland Act 1998 \(c.46\)](#) (“the 1998 Act”), schedule 8, paragraph 15(3) (which was amended by section 27(4) of the [Legislative and Regulatory Reform Act 2006 \(c.51\)](#) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the [European Union \(Amendment\) Act 2008 \(c.7\)](#), **schedule**, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), so far as they are exercisable within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

PART 1

Introduction

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017 and come into force on 1st July 2017.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

Status: Point in time view as at 01/07/2017.

Changes to legislation: There are currently no known outstanding effects for the The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017. (See end of Document for details)

“accompanying document” has the meaning given in regulation 9(3);

“basic material” means propagating material which—

- (a) is intended for the production of certified material;
- (b) has been produced in a vegetative way from pre-basic material; and
- (c) has been officially certified as basic material;

“body corporate” includes a limited liability partnership;

“breeder's reference” means the reference allocated to a breeder following an application for plant variety rights;

“CAC material” means *Conformitas Agraria Communitatis* material which—

- (a) in relation to propagating material and fruit plants produced in Scotland, is material and plants that meet the requirements for CAC material in schedule 3; and
- (b) in relation to propagating material and fruit plants produced outside Scotland, is material and plants that meet the requirements in Articles 23 to 27 of Commission Implementing Directive 2014/98/EU;

“category”, in relation to plant material, means pre-basic material, basic material, certified material or CAC material;

“certified material” means—

- (a) propagating material which—
 - (i) is intended for the production of fruit plants;
 - (ii) has been produced in a vegetative way from basic material or pre-basic material or, if intended to be used for the production of rootstocks, by certified seeds from basic or certified material of rootstocks; and
 - (iii) has been officially certified; or
- (b) fruit plants which have been—
 - (i) produced directly from pre-basic material, basic material or certified material; and
 - (ii) officially certified;

“Council Directive 2008/90/EC” means Council Directive 2008/90/EC on the marketing of fruit plant propagating material and fruit plants intended for fruit production^{M2};

“Commission Implementing Directive 2014/96/EU” means Commission Implementing Directive 2014/96/EU on the requirements for the labelling, sealing and packaging of fruit plant propagating material and fruit plants intended for fruit production, falling within the scope of Council Directive 2008/90/EC^{M3};

“Commission Implementing Directive 2014/97/EU” means Commission Implementing Directive 2014/97/EU implementing Council Directive 2008/90/EC as regards the registration of suppliers and of varieties and the common list of varieties^{M4};

“Commission Implementing Directive 2014/98/EU” means Commission Implementing Directive 2014/98/EU implementing Council Directive 2008/90/EC as regards specific requirements for the genus and species of fruit plants referred to in Annex I thereto, specific requirements to be met by suppliers and detailed rules concerning official inspections^{M5};

“Directive 2001/18/EC” means Directive 2001/18/EC of the European Parliament and of the Council on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC^{M6};

“fruit plants” means plants of the genera and species listed in schedule 1 and their hybrids which are intended to be planted or replanted, after marketing;

“genetically modified organism” has the meaning given in Article 2 of Directive [2001/18/EC](#);

“inspector” means a person appointed by the Scottish Ministers under regulation 18;

“lot” means a number of units of a single commodity, identifiable by its homogeneity of composition and origin;

“marketing” means the sale, holding with a view to sale, offer for sale or any disposal, supply or transfer aimed at commercial exploitation of propagating material or fruit plants to third parties whether or not for consideration;

“official description” means the description of a variety provided on—

- (a) registration in respect of a registered variety; or
- (b) the grant of plant variety rights;

“official inspection” has the meaning given in paragraph 1 of schedule 2;

“official label”—

- (a) in the case of pre-basic material, basic material or certified material originating in Scotland, means a label issued or approved by the Scottish Ministers which has not previously been used and which meets the requirements of the relevant paragraphs of Part 1 of schedule 5;
- (b) in the case of pre-basic material, basic material or certified material originating elsewhere in the European Union, means a label issued or approved by the responsible official body and which meets the applicable requirements in relation to that material contained in Article 2 of Commission Implementing Directive 2014/96/EU;

“officially certified”—

- (a) in the case of plant material originating in Scotland, means certified by the Scottish Ministers in accordance with the relevant provisions of schedule 2;
- (b) in the case of plant material originating elsewhere in the European Union, means certified for the purposes of Article 3 of Council Directive [2008/90/EC](#) by the responsible official body;

“officially recognised description” means a description of the key morphological features that enable a variety which was marketed in the European Union prior to 30th September 2012 to be identified;

“plant material” means the plants and materials described in regulation 3(1);

“plant variety rights” means rights granted under Part 1 of the Plant Varieties Act 1997 ^{M7} or under Council Regulation (EC) No 2100/94 on Community plant variety rights ^{M8};

“pre-basic material” means propagating material which—

- (a) has been produced, according to generally accepted methods, for the maintenance of the identity of the variety including the relevant pomological characteristics and for the prevention of diseases;
- (b) is intended for the production of basic or certified material; and
- (c) has been officially certified as pre-basic material;

“propagating material” means seeds, parts of plants and all plant material, including rootstocks, intended for the propagation and production of fruit plants;

“registered variety” means a variety which is—

- (a) registered in Scotland accordance with schedule 4; or
- (b) in the case of varieties registered elsewhere in the European Union, a variety which is registered in accordance with Article 7(4) of Council Directive [2008/90/EC](#);

Status: Point in time view as at 01/07/2017.

Changes to legislation: There are currently no known outstanding effects for the The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017. (See end of Document for details)

“Regulation (EC) No 1829/2003” means Regulation (EC) No 1829/2003 of the European Parliament and of the Council on genetically modified food and feed ^{M9};

“responsible official body” means in relation to functions imposed on a responsible official body under, or for the purposes of, Council Directive 2008/90/EC—

- (a) the Scottish Ministers, where those functions require to be performed in Scotland; or
- (b) an authority established or designated by the member State for the territory concerned, in accordance with Article 2(11) of Council Directive 2008/90/EC, where those functions require to be performed outside Scotland;

“third country” means a country which is not a member State of the European Union;

“supplier” means a person who is involved professionally in the reproduction, production, preservation, treatment, importation or marketing of plant material;

“supplier's document” means a document that meets the requirements of Part 2 of schedule 5;

“variety” means a plant grouping within a single botanical taxon of the lowest known rank, which can be—

- (a) defined by the expression of the characteristics resulting from a given genotype or combination of genotypes;
- (b) distinguished from any other plant grouping by the expression of at least one of those characteristics; and
- (c) considered as an entity in view of its ability to be propagated unchanged; and

“working day” means a day which is not a Saturday, Sunday, a bank holiday in Scotland (as specified in section 1 and paragraph 2 of schedule 1 of the Banking and Financial Dealings Act 1971 ^{M10}) or other public holiday.

(2) Except in the context of accompanying documents, official labels and supplier's documents, any reference to writing in these Regulations includes an electronic communication within the meaning of section 15(1) (general interpretation) of the Electronic Communications Act 2000 ^{M11}.

(3) Any other words or expressions used in these Regulations that are also used in Council Directive 2008/90/EC have the meaning they bear in that Directive.

Marginal Citations

- M2** OJ L 267, 8.10.2008, p.8, as last amended by Regulation (EU) No 652/2014 (OJ L 189, 27.6.2014, p.1).
- M3** OJ L 298, 16.10.2014, p.12.
- M4** OJ L 298, 16.10.2014, p.16.
- M5** OJ L 298, 16.10.2014, p.22.
- M6** OJ L 106, 17.4.2001, p.1, as last amended by Directive (EU) 2015/412 (OJ L 68, 13.3.2015, p.1).
- M7** [1997 c.66](#).
- M8** OJ L 227, 1.9.1994, p.1, as last amended by Council Regulation (EC) No 15/2008 (OJ L 8, 11.1.2008, p.2).
- M9** OJ L 268, 18.10.2003, p.1, as last amended by Regulation (EC) No 298/2008 (OJ L 97, 9.4.2008, p.64).
- M10** [1971 c.80](#).
- M11** [2000 c.7](#), as amended by the [Communications Act 2003 \(c.21\)](#), [section 406](#) and schedule 17, paragraph 158.

Application of these Regulations

3.—(1) Subject to paragraph (2) and regulation 4, these Regulations apply in relation to the marketing in Scotland of—

- (a) fruit plants and propagating material of the genera and species listed in schedule 1 and their hybrids; and
- (b) parts of plants, including rootstocks, of other genera or species or their hybrids, if material from fruit plants listed in schedule 1 (or any hybrid of such fruit plants) is, or is to be, grafted on to them.

(2) These Regulations do not apply in relation to plant material intended for export from Scotland to a third country provided that the plant material is identified as such and kept sufficiently isolated.

Marketing of plant materials for trials etc.

4.—(1) These Regulations do not apply to the marketing of plant material in Scotland which is intended for any of the purposes listed in paragraph (2), provided that the marketing is in accordance with an authorisation granted by an inspector.

(2) The purposes referred to in paragraph (1) are—

- (a) trials or scientific purposes;
- (b) selection work; or
- (c) measures aimed at the conservation of genetic diversity.

(3) The authorisation referred to in paragraph (1)—

- (a) must be in writing;
- (b) may be amended, suspended or revoked by an inspector by notice; and
- (c) may be subject to such conditions as the inspector considers necessary.

PART 2

Marketing of plant material

General requirements for marketing of plant material

5.—(1) No person may market plant material in Scotland unless—

- (a) in the case of propagating material, the plant material is—
 - (i) pre-basic material;
 - (ii) basic material;
 - (iii) certified material; or
 - (iv) CAC material;
- (b) in the case of fruit plants, the plant material is—
 - (i) basic material;
 - (ii) certified material; or
 - (iii) CAC material;
- (c) in the case of plant material which consists of a genetically modified organism, the organism has been authorised pursuant to Directive [2001/18/EC](#) or Regulation (EC) No [1829/2003](#);

Status: Point in time view as at 01/07/2017.

Changes to legislation: There are currently no known outstanding effects for the The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017. (See end of Document for details)

- (d) in the case of plant material the products of which are intended to be used as, or in, food within the scope of Article 3 of Regulation (EC) No 1829/2003, or as, or in, feed within the scope of Article 15 of that Regulation, the food or feed concerned has been authorised pursuant to that Regulation;
- (e) it is—
 - (i) of a variety which may be marketed under regulation 7(1) and is marketed with a reference to that variety in accordance with the relevant requirements of regulation 7(2); or
 - (ii) in the case of rootstocks which do not belong to a variety, marketed with a reference to the species or interspecific hybrid concerned;
- (f) it is marketed in a sufficiently homogenous lot;
- (g) subject to regulation 6(1), in the case of pre-basic material, basic material or certified material it is labelled, sealed and packaged in accordance with the relevant provisions of regulation 8 and schedule 5;
- (h) subject to regulation 6(1), in the case of CAC material, it is accompanied by a supplier's document; and
- (i) subject to regulation 6(3), the person is a supplier registered by the Scottish Ministers in accordance with regulation 10, or by another responsible official body, in relation to the plant material concerned.

(2) The Scottish Ministers may, until 31st December 2018, authorise the marketing of plant material from any country outside the European Union if they are satisfied the plant material has been produced under conditions equivalent to the requirements for plant material in these Regulations.

Exemptions in relation to retail supply

6.—(1) Subject to compliance with paragraph (2), in relation to the retail supply to a non-professional final consumer of—

- (a) pre-basic material, basic material, and certified material, the requirements of regulation 5(1)(g) do not apply; and
- (b) CAC material, the requirements of regulation 5(1)(h) do not apply.

(2) The plant material mentioned in paragraph (1) must be accompanied by a document containing appropriate product information.

(3) In relation to suppliers only involved in the marketing of plant material to non-professional final consumers, the requirements of regulation 5(1)(i) and regulation 15(4) do not apply.

Varieties which may be marketed

7.—(1) For the purpose of regulation 5(1)(e)(i), a variety may be marketed if it—

- (a) is subject to the grant of plant variety rights;
- (b) is a registered variety;
- (c) is the subject of an application—
 - (i) for plant variety rights; or
 - (ii) to be a registered variety;
- (d) has been marketed in the European Union prior to 30th September 2012 and has an officially recognised description; or
- (e) in relation to a variety having no intrinsic value for commercial crop production—

- (i) has an officially recognised description; and
 - (ii) the plant material concerned is CAC material and this is identified on the accompanying label or document.
- (2) For the purpose of regulation 5(1)(e)(i)—
- (a) in the case of a variety which is the subject of an application for plant variety rights, the reference must be to the breeder's reference or to the proposed name of the variety;
 - (b) in the case of a registered variety, the reference must be to that registered variety; and
 - (c) in the case of a variety which is the subject of an application to be a registered variety, the reference must be to the breeder's reference or to the proposed name of the variety.
- (3) Schedule 4 on the registration of varieties has effect.

Labelling, sealing and packaging

8.—(1) For the purpose of regulation 5(1)(g), pre-basic material, basic material or, as the case may be, certified material must be labelled, sealed and packaged in accordance with this regulation and schedule 5.

(2) Subject to paragraph (3), in relation to pre-basic material, basic material and certified material an official label must be affixed—

- (a) to the plant or part of a plant being marketed; or
- (b) if it is marketed in a package, bundle or container, to that package, bundle or container.

(3) Where a lot of pre-basic material, basic material or certified material is being marketed in the same package, bundle or container, a single official label may be affixed to that package, bundle or container.

(4) An official label must be affixed in such a way that its removal would render it invalid.

(5) Where pre-basic material, basic material or certified material is accompanied by a plant passport issued in accordance with Council Directive [2000/29/EC](#) on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community ^{M12}, that plant passport may constitute the official label if it contains the information in paragraph 4 of schedule 5.

(6) A supplier may only market pre-basic material, basic material or certified material consisting of two or more lots of plants or parts of plants if those plants, or parts of plants, are in a package or container or form part of a bundle and—

- (a) in the case of a package or container, it is sealed in a way that prevents the package or container from being opened without damage to the closure; or
- (b) in the case of a bundle, it is tied in a way that prevents the plants or parts of plants from being separated without damage to the tie or ties.

Marginal Citations

M12 OJ L 169, 10.7.2000, p.1, repealed subject to savings by Regulation (EU) 2016/2031 (OJ L 317, 23.11.2016, p.4).

Accompanying document

9.—(1) Without prejudice to the requirements of regulation 8, plant material which comprises lots of different varieties or different categories of plant material may be marketed with an accompanying

Status: Point in time view as at 01/07/2017.

Changes to legislation: There are currently no known outstanding effects for the The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017. (See end of Document for details)

document produced either by the Scottish Ministers or by the supplier of the plant material concerned (under the supervision of the Scottish Ministers).

(2) Where the information stated on the official label and the information stated on the accompanying document conflict, the conflicting information on the accompanying document must be disregarded.

(3) In this regulation an “accompanying document” means a document which complies with paragraph 8 of schedule 5.

PART 3

Suppliers

Registration of suppliers

10.—(1) An application for registration of a supplier must be made to the Scottish Ministers in writing and must contain—

- (a) the information listed in regulation 11(1); and
- (b) such other information as the Scottish Ministers may reasonably require.

(2) The Scottish Ministers must register a person involved professionally in the reproduction, production, preservation, treatment, importation or marketing of plant material if they are satisfied that the person will comply with the provisions of these Regulations and otherwise must refuse to register the person.

(3) The Scottish Ministers must notify the person of any decision to register, or to refuse to register, that person within a period of 15 working days beginning with the date on which the application was received by the Scottish Ministers.

(4) The Scottish Ministers must assign a registration number in relation to each person registered in accordance with this regulation.

(5) A person who, immediately before 30th September 2012, was accredited under regulation 6 of the Marketing of Fruit Plant Material Regulations 2010^{M13} is to be treated as registered for the purposes of this regulation.

(6) A person who is registered as a plant trader for the purposes of the Plant Health (Scotland) Order 2005^{M14} is to be treated as registered for the purposes of this regulation.

Marginal Citations

M13 [S.I. 2010/2079](#). Regulation 6 ceased to have effect from 30th September 2012 by virtue of regulation 6(4) of [S.I. 2010/2079](#). [S.I. 2010/2079](#) is revoked and replaced by regulation 24 these Regulations.

M14 [S.S.I. 2005/613](#), as last amended by [S.S.I. 2016/83](#).

The register of suppliers

11.—(1) The Scottish Ministers must maintain a register of suppliers, including the following information—

- (a) the name, address and contact details of the supplier;
- (b) a list of all the activities mentioned in regulation 10(2) which are performed by the supplier in relation to plant material;

- (c) the address of the premises involved in those activities; and
- (d) a list of the main genera or species of plant material concerned.

(2) A supplier registered or applying for registration under regulation 10 must notify the Scottish Ministers of any change to the information referred to in paragraph (1).

Revocation of registration etc.

12.—(1) The Scottish Ministers must, by notice, revoke a registration if they are satisfied that the registered supplier no longer performs any of the activities which gave rise to the requirement for registration.

(2) Without prejudice to paragraph (1), the Scottish Ministers may by notice, amend, revoke or suspend a registration, if they are satisfied that—

- (a) any of the information held on the register is inaccurate; or
- (b) the supplier has failed to comply with any provision of these Regulations.

(3) Unless the Scottish Ministers otherwise direct in writing, an amendment, revocation or suspension under this regulation has immediate effect on service of the notice and continues in effect unless the registration is reinstated following an appeal under regulation 13.

Appeals

13.—(1) A person aggrieved by a decision of the Scottish Ministers either to refuse to register them under regulation 10(2) or to amend, revoke or suspend their registration under regulation 12 may appeal against the decision to a person appointed for the purpose of this regulation by the Scottish Ministers.

(2) The person appointed under paragraph (1) must consider the appeal and any representations made by the appellant or the Scottish Ministers and must recommend a course of action, in writing, to the Scottish Ministers.

(3) Following receipt of a recommendation mentioned in paragraph (2), the Scottish Ministers must make a final decision and notify the appellant in writing of that decision and the reasons for it within the period mentioned in paragraph (4).

(4) A decision under paragraph (3) must be notified within a period of 15 working days beginning with the date on which the recommendation mentioned in paragraph (2) was received by the Scottish Ministers.

Supplier's duties – identification and monitoring during production

14.—(1) During the production of plant material, a supplier must have in place a plan to identify and monitor critical points in the production process.

- (2) The plan must include details about—
- (a) the location and number of plants;
 - (b) the timing of cultivation of the plants;
 - (c) propagating operations; and
 - (d) packaging, storage and transportation operations.

Supplier's duties – removal of non-compliant materials and notification of disease

15.—(1) Subject to paragraph (3), a supplier must, during production, remove any mother plant or propagating material (other than rootstocks not belonging to a variety) from the vicinity of any other mother plant or propagating material of the same category if—

Status: Point in time view as at 01/07/2017.

Changes to legislation: There are currently no known outstanding effects for the The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017. (See end of Document for details)

- (a) in the case of a pre-basic mother plant or pre-basic material, the plant, or as the case may be, the material, does not meet any of the requirements set out in paragraphs 5(1)(b) and 7 to 12 of schedule 2;
 - (b) in the case of a basic mother plant or basic material, the plant, or as the case may be, the material, does not meet any of the requirements mentioned in paragraph 15(1)(c) (as read with paragraph 15(2)), (d), (e) and (f) of schedule 2; or
 - (c) in the case of a certified mother plant or certified material, the plant, or as the case may be, the material, does not meet any of the requirements mentioned in paragraph 21(1)(d) (as read with paragraph 21(2)), (e) and (f) of schedule 2.
- (2) Subject to paragraph (3), a supplier must, during production, remove any mother plant or propagating material which is a rootstock not belonging to a variety from the vicinity of any other mother plant or propagating material of the same category if, in the case of a rootstock—
- (a) within the pre-basic category, the rootstock does not meet the requirements set out in paragraphs 8 to 12 of schedule 2;
 - (b) within the basic category, the rootstock does not meet the requirements mentioned in paragraphs 16(1)(b) (as read with paragraph 16(2)) and 18 to 20 of schedule 2; or
 - (c) within the certified category, the rootstock does not meet the requirements mentioned in paragraph 16(1)(b)(i) to (v) (as read with paragraph 16(2)) of schedule 2.
- (3) A supplier may, instead of removing the plant material mentioned in paragraph (1) or (2)—
- (a) take measures to ensure the requirements of the relevant provisions referred to in paragraph (1) or, as the case may be, (2) are met; or
 - (b) if the plant material complies with the conditions for marketing set out in these Regulations in respect of another category—
 - (i) seek official certification of the plant material within that other category; or
 - (ii) if the plant material complies with the conditions for marketing of CAC material, market it as CAC material.
- (4) A supplier must notify the Scottish Ministers of the appearance on that supplier's premises of any organism listed in Table IA or II in schedule 6 or of the appearance of any organism at a level greater than the tolerance specified for such organism in Table IB in schedule 6.
- (5) In this regulation, the terms “pre-basic mother plant”, “basic mother plant” and “certified mother plant” have the meanings given to them in paragraph 1 of schedule 2.

Supplier's duties – separation of plant materials

- 16.**—(1) During growing, lifting or removal from parent material, a supplier must keep propagating material and fruit plants in separate lots.
- (2) A supplier must not mix propagating material which—
- (a) fulfils the criteria for official certification within a certain category, with plant material of any other category; or
 - (b) is of one generation, with another generation of that propagating material.

Supplier's duties - record keeping

- 17.**—(1) A supplier must as soon as reasonably practicable make a record of—
- (a) all sales and purchases of plant material;
 - (b) all deliveries of plant material to and from the supplier's premises; and

- (c) the composition and origin of any plant material of different origins mixed by the supplier during packaging, storage, transportation or delivery.
- (2) A supplier must as soon as reasonably practicable make a record of—
 - (a) all plant material being produced on the supplier's premises;
 - (b) any occurrence on the supplier's premises of any organisms or diseases referred to in Table IA, IB, II or III of schedule 6 and of any measures taken in relation to such an occurrence;
 - (c) all monitoring undertaken for the purposes of regulation 14; and
 - (d) all field inspections, sampling and testing conducted while the plant material is under the supplier's control.
- (3) Any record under paragraph (1) or (2) must be kept while the plant material is in production and for a period of at least 3 years beginning from the point at which the plant material in question is removed or marketed.

PART 4

Enforcement and administration etc.

Inspectors

- 18.**—(1) The Scottish Ministers must appoint inspectors for the purposes of enforcing these Regulations.
- (2) An inspector has the powers set out in schedule 8.

Notices

- 19.**—(1) Any notice served under these Regulations must be in writing and may—
 - (a) contain conditions; and
 - (b) be amended, suspended or revoked in writing at any time.
- (2) A notice may be served on a person by—
 - (a) delivering it to that person;
 - (b) leaving it at that person's proper address; or
 - (c) sending it by post or by electronic means to the person's proper address.
- (3) In the case of a body corporate, a notice may be served on or given to an officer of that body.
- (4) In the case of a partnership, a notice may be served on or given to a partner or person having control or management of the partnership.
- (5) In the case of an unincorporated association, a notice may be served on or 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.
- (6) For the purposes of this regulation and section 7 of the Interpretation Act 1978 ^{M15} (service of documents by post) in its application to this regulation, “proper address” means—
 - (a) in the case of a body corporate or an officer of that body—
 - (i) the registered or principal office of that body; or
 - (ii) the email address of the officer;
 - (b) in the case of a partnership or a partner or person having control or management of the partnership business—

Status: Point in time view as at 01/07/2017.

Changes to legislation: There are currently no known outstanding effects for the The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017. (See end of Document for details)

- (i) the principal office of the partnership; or
- (ii) the email address of the partner or the person having that control or management;
- (c) in the case of an unincorporated association or an officer of the association—
 - (i) the principal office of the association; or
 - (ii) the email address of the officer;
- (d) in any other case, a person's last known address or email address.

(7) For the purposes of paragraph (6), the principal office of a body corporate registered outside the United Kingdom or of a partnership established outside the United Kingdom is its principal office in the United Kingdom.

(8) If the name or address of any occupier of premises on whom a notice is to be served or given under these Regulations cannot, after reasonable inquiry, be ascertained, the notice may be served by leaving it conspicuously affixed to a building or object on the premises.

(9) A notice may specify that a person in receipt of it must immediately inform an inspector of its safe receipt.

(10) In this regulation—

“director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate;

“officer”, in relation to a body corporate, means any director, manager, secretary or other similar officer of the body corporate; and

“partnership” includes a Scottish partnership, but does not include a limited liability partnership.

Marginal Citations

M15 1978 c.30.

Offences and penalties

20.—(1) A person commits an offence if that person does not comply with—

- (a) an information notice served under paragraph 2 of schedule 8;
- (b) a movement notice served under paragraph 3 of schedule 8;
- (c) an enforcement notice served under paragraph 4(1)(a) of schedule 8; or
- (d) a prohibition notice served under paragraph 4(1)(b) of schedule 8.

(2) A person who commits an offence under these Regulations is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Offences by bodies corporate, Scottish partnerships and unincorporated associations

21.—(1) Where—

- (a) an offence under these Regulations has been committed by a body corporate or a Scottish partnership or other unincorporated association; and
- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
 - (i) a relevant individual; or
 - (ii) an individual purporting to act in the capacity of a relevant individual,

the individual as well as the body corporate, Scottish partnership or unincorporated association, commits an offence and is liable to be proceeded against and punished accordingly.

- (2) In paragraph (1), “relevant individual” means—
- (a) in relation to a body corporate—
 - (i) a director, manager, secretary or other similar officer of the body; or
 - (ii) where the affairs of the body are managed by its members, a member;
 - (b) in relation to a Scottish partnership, a partner; and
 - (c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

Arrangements for official measures

22.—(1) Subject to paragraph (2), the Scottish Ministers may make such arrangements as they consider necessary or desirable with any person (“A”) for the purpose of enabling A to carry out official measures on the Scottish Ministers' behalf.

(2) The Scottish Ministers must not make any arrangement under paragraph (1) unless satisfied that A will not—

- (a) derive any private gain from any official measures that A is to carry out under the arrangement; or
- (b) carry out any official measures under the arrangement except under the supervision of the Scottish Ministers.

(3) The Scottish Ministers may include in any arrangement under paragraph (1) such conditions as they consider necessary or desirable for the purposes referred to in that paragraph and paragraph (2), including conditions—

- (a) specifying—
 - (i) the official measures that A must carry out;
 - (ii) the species of plant material in respect of which A may carry out the official measures;
 - (iii) the methods to be used in connection with the carrying out of the official measures by A;
 - (iv) the fees that A may charge in relation to the carrying out of the official measures by A;
 - (v) the records that A must keep in connection with the carrying out of the official measures by A;
- (b) prohibiting A from—
 - (i) charging fees in relation to the official measures that A carries out under the arrangement except to the extent that these do not exceed the costs that A incurs in carrying them out;
 - (ii) carrying out the official measures except under the supervision of the Scottish Ministers;
- (c) prohibiting A from making any further arrangement with any other person (“B”) for any purpose in connection with the carrying out of the official measures that A has arranged with the Scottish Ministers under paragraph (1) to carry out, unless—
 - (i) the Scottish Ministers have approved the proposed conditions of the further arrangement and A has received the prior written approval of the Scottish Ministers to make the further arrangement;

Status: Point in time view as at 01/07/2017.

Changes to legislation: There are currently no known outstanding effects for the The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017. (See end of Document for details)

- (ii) the further arrangement includes a condition prohibiting B from making any subsequent arrangement for any purpose connected with the carrying out of the official measures in respect of which the Scottish Ministers made the arrangement under paragraph (1) with A;
 - (iii) the further arrangement includes an acknowledgment by A that the Scottish Ministers may vary, revoke or suspend the further arrangement if it appears to the Scottish Ministers that B is not complying, or has failed to comply, with any condition of the further arrangement; and
 - (iv) the further arrangement includes the conditions specified in sub-paragraphs (a) and (b) of this paragraph and for these purposes references in those sub-paragraphs to A are to be construed as references to B and references to “the arrangement” are to be construed as references to the further arrangement.
- (4) The Scottish Ministers must not approve the making of any further arrangement under (3)(c)(i) unless satisfied that B will not—
- (a) derive any private gain from any official measures that B is to be authorised to carry out under the further arrangement; or
 - (b) carry out any official measures under the further arrangement except under the supervision of the Scottish Ministers.
- (5) The Scottish Ministers may, by giving notice to A or B (as the case may be), vary, suspend or revoke an arrangement under paragraph (1) or further arrangement under paragraph (3)(c)(i), or any conditions of an arrangement or further arrangement made under this regulation.
- (6) A notice given under paragraph (5) must specify—
- (a) in the case of a variation or revocation, the date from which the variation or revocation takes effect;
 - (b) in the case of a suspension, the period during which the suspension has effect.
- (7) When a variation, revocation or suspension has effect, the Scottish Ministers may, for any purposes in relation to these Regulations, continue to have regard to such of the official measures carried out under an arrangement (or further arrangement) which was varied, revoked or suspended as appear to the Scottish Ministers to be official measures carried out in accordance with the provisions of these Regulations.
- (8) In this regulation, “official measures” include official inspections.

PART 5

General

Transitional provision

23.—(1) This regulation applies where plant material is produced from a parent plant existing before 1st July 2017.

(2) A supplier may until 31st December 2022 market the plant material mentioned in paragraph (1) provided—

- (a) the parent plant meets any certification or CAC material requirements relevant to it under the Marketing of Fruit Plant Material Regulations 2010^{M16}; and
- (b) the supplier's document accompanying it, or the official label affixed to it, includes a reference to Article 32 of Commission Implementing Directive 2014/98/EU.

Marginal Citations

M16 [S.I. 2010/2079](#).

Revocation

24. The Marketing of Fruit Plant Material Regulations 2010 are revoked.

St Andrew's House,
Edinburgh
30th May 2017

FERGUS EWING
A member of the Scottish Government

Status: Point in time view as at 01/07/2017.**Changes to legislation:** There are currently no known outstanding effects for the The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017. (See end of Document for details)

SCHEDULE 1

Regulations 2(1) and 3(1)

Genera and Species to which these Regulations apply

| <i>Genera and species</i> | <i>Common name (for guidance only)</i> |
|---|---|
| <i>Castanea sativa</i> Mill. | Chestnut |
| <i>Citrus</i> L. | Includes grapefruit, lemon, lime, mandarin and orange |
| <i>Corylus avellana</i> L. | Hazelnut |
| <i>Cydonia oblonga</i> Mill. | Quince |
| <i>Ficus carica</i> L. | Common edible fig |
| <i>Fortunella</i> Swingle | Kumquat |
| <i>Fragaria</i> L. | Strawberry |
| <i>Juglans regia</i> L. | Walnut |
| <i>Malus</i> Mill. | Apple |
| <i>Olea europaea</i> L. | Olive |
| <i>Pistacia vera</i> L. | Pistachio |
| <i>Poncirus</i> Raf. | Trifoliate orange |
| <i>Prunus armeniaca</i> L. | Apricot |
| <i>Prunus avium</i> (L.) L. | Sweet cherry |
| <i>Prunus cerasus</i> L. | Sour cherry |
| <i>Prunus domestica</i> L. | Plum |
| <i>Prunus dulcis</i> (Mill.) D A Webb (also known as <i>Prunus amygdalus</i> Batsch) | Almond |
| <i>Prunus persica</i> (L.) Batsch | Peach and nectarine |
| <i>Prunus salicina</i> Lindley | Japanese plum |
| <i>Pyrus</i> L. | Pears |
| <i>Ribes</i> L. | Blackcurrant, gooseberry, red currant and white currant |
| <i>Rubus</i> L. | Blackberry, raspberry and hybrid berries |
| <i>Vaccinium</i> L. | Blueberry, cranberry and bilberry. |

SCHEDULE 2

Regulation 2(1) and 15(1)

Certification requirements

PART 1

General

Interpretation

1. In this schedule—

“administrative checks” means administrative checks performed by or on behalf of the Scottish Ministers for the purposes of these Regulations, including but not limited to checking records kept by a supplier pursuant to regulation 17;

“appropriate EPPO protocol” means—

- (a) a protocol published by the European and Mediterranean Plant Protection Organisation in relation to the particular activity (such as, but not limited to, sampling and testing or multiplication, renewal and propagation of mother plants) and the particular genus or species concerned^{M17};
- (b) where no such protocol as mentioned in sub-paragraph (a) exists, a protocol in relation to the same type of activity as so mentioned, which has international recognition; or
- (c) where neither protocol as mentioned in sub-paragraph (a) or (b) exists, a protocol established by the Scottish Ministers in relation to the same type of activity mentioned in sub-paragraph (a).

“basic mother plant” means a mother plant intended for the production of basic material;

“candidate pre-basic mother plant” means a mother plant which the supplier intends to have accepted as a pre-basic mother plant;

“certified mother plant” means a mother plant intended for the production of certified material;

“cryopreservation” means the maintenance of plant material by cooling to ultra-low temperatures, in order to retain the viability of the material;

“directly propagated” means propagated by renewal, multiplication or micropropagation;

“fruiting plant” means a plant propagated from a mother plant and grown for the production of fruit in order to permit the verification of the varietal identity of the mother plant;

“micropropagation” means the multiplication of plant material in order to produce a large number of plants, using *in vitro* culture of differentiated vegetative buds or differentiated vegetative meristems taken from a plant;

“mother plant” means a plant identified for propagation;

“multiplication” means vegetative production of mother plants in order to obtain a sufficient number of mother plants in the same category;

“official inspection” means any visual inspection, and, where appropriate, sampling and testing conducted by or on behalf of the Scottish Ministers for the purposes of these Regulations;

“practically free from defects” means that defects likely to impair the quality and usefulness of the propagating material or fruit plants are present at a level equal to, or lower than, the level expected to result from good cultivating and handling practices, and that level is consistent with good cultivating and handling practices;

Status: Point in time view as at 01/07/2017.

Changes to legislation: There are currently no known outstanding effects for the The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017. (See end of Document for details)

“pre-basic mother plant” means a mother plant intended for the production of pre-basic material;

“renewal”, in relation to a mother plant, means replacing a mother plant with a plant vegetatively produced from it; and

“visual inspection” means the examination of plants or parts of plants using the unaided eye, lens, stereoscope or microscope and which, in relation to fruiting plants, is conducted during the most appropriate periods of the year (taking into account climatic and growing conditions of the plants of the genera or species concerned).

Marginal Citations

M17 A list of applicable published protocols is available at <http://archives.eppo.int/index.htm>.

Provisions on official inspections

2.—(1) An official inspection must pay particular attention to—

- (a) the suitability and actual use of methods by the supplier for checking each of the critical points in the production process; and
- (b) the overall competence of the supplier's staff to carry out the activities mentioned in regulations 14, 15 and 16.

(2) The Scottish Ministers must ensure that records of the results and the dates of all field inspections, sampling and testing conducted by, or on behalf of, the Scottish Ministers are produced and kept.

PART 2

Pre-basic material

Pre-basic material (other than mother plants and rootstocks not belonging to a variety)

3. Propagating material, other than mother plants and rootstocks which do not belong to a variety, may be officially certified as pre-basic material if it has been found on official inspection and, where appropriate, through administrative checks, to fulfil the following requirements:—

- (a) it is directly propagated from a pre-basic mother plant in accordance with paragraph 13 or 14;
- (b) the pre-basic mother plant mentioned in sub-paragraph (a)—
 - (i) is accepted in accordance with paragraph 5;
 - (ii) has been obtained by multiplication in accordance with paragraph 13; or
 - (iii) has been obtained by micropropagation in accordance with paragraph 14;
- (c) it is true to the description of its variety and this is verified in accordance with paragraph 7;
- (d) it is maintained in accordance with the requirements of paragraph 8;
- (e) it complies with the requirements concerning health in paragraph 10;
- (f) where it has been grown in the field under non-insect proof conditions, in accordance with a derogation granted by the European Commission under Article 8(4) of Commission Implementing Directive 2014/98/EU, the soil in which it has been grown complies with paragraph 11; and

- (g) it complies with the requirements concerning defects in paragraph 12.

Rootstocks not belonging to a variety

4. A rootstock which does not belong to a variety may be certified as pre-basic material if it has been found on official inspection and, where appropriate, through administrative checks, to fulfil the following requirements:—

- (a) it is directly propagated by vegetative or sexual propagation from a mother plant;
- (b) the mother plant mentioned in (a)—
 - (i) is accepted in accordance with paragraph 6;
 - (ii) has been obtained by multiplication in accordance with paragraph 13; or
 - (iii) has been obtained by micropropagation in accordance with paragraph 14;
- (c) where it is directly propagated from a mother plant by sexual propagation, the pollinating trees are directly produced by vegetative propagation from a mother plant;
- (d) it is true to the description of its species;
- (e) it is maintained in accordance with the requirements of paragraph 8;
- (f) it complies with the requirements concerning health in paragraph 10;
- (g) where it has been grown in the field under non-insect proof conditions, in accordance with a derogation granted by the European Commission under Article 8(4) of Commission Implementing Directive 2014/98/EU, the soil in which it has been grown complies with paragraph 11; and
- (h) it complies with the requirements concerning defects in paragraph 12.

Acceptance of plants as pre-basic mother plants

5.—(1) Subject to sub-paragraph (4) the Scottish Ministers may accept a plant as a pre-basic mother plant if it has been found on official inspection and, where appropriate, through administrative checks, that—

- (a) there has been compliance with paragraphs 8 to 12; and
- (b) its trueness to the description of its variety is—
 - (i) established in accordance with sub-paragraphs (2) and (3); and
 - (ii) verified in accordance with paragraph 7.

(2) The trueness of the pre-basic mother plant to the description of its variety must be established by observation of the expression of the characteristics of the variety and such observation must be based on one of the following descriptions:—

- (a) the official description of the variety;
- (b) the description accompanying the application to be a registered variety;
- (c) the description accompanying the application for the grant of plant variety rights; or
- (d) the officially recognised description, if the variety in question is a registered variety.

(3) Where the establishment of the trueness to the description of the variety is only possible on the basis of the characteristics of a fruiting plant—

- (a) the observation of the expression of the characteristics of the variety must be carried out on the fruits of a fruiting plant propagated from the pre-basic mother plant; and
- (b) the fruiting plant mentioned in head (a) must be kept separate from the pre-basic mother plant and pre-basic material.

Status: Point in time view as at 01/07/2017.

Changes to legislation: There are currently no known outstanding effects for the The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017. (See end of Document for details)

- (4) If the observation mentioned in sub-paragraph (2) is based on a description mentioned in either head (b) or (c) of sub-paragraph (2), the pre-basic mother plant may only be accepted—
- (a) following production of a report from the responsible official body in the European Union or by an equivalent official body in a third country which proves that the variety in question is distinct, uniform and stable; and
 - (b) pending registration of the variety, the pre-basic mother plant and any material produced from it may only be used for the production of basic or certified material and may not be marketed as pre-basic, basic or certified material.

Acceptance of rootstocks not belonging to a variety as a pre-basic mother plant

6. The Scottish Ministers may accept a rootstock which does not belong to a variety as a pre-basic mother plant if it has been found on official inspection, and, where appropriate, through administrative checks, that—
- (a) it is true to the description of its species; and
 - (b) there has been compliance with paragraphs 8 to 12.

Verification of trueness to the description of variety

- 7.—(1) The trueness of pre-basic mother plants and pre-basic material to the description of their variety must be regularly verified by the Scottish Ministers and, where appropriate, by the supplier, in accordance with the requirements of paragraph 5(2) and (3) and in a manner appropriate to the variety concerned and the propagation method used.
- (2) In addition to the regular verification mentioned in sub-paragraph (1), the Scottish Ministers and, where appropriate, the supplier must verify the trueness of pre-basic mother plants resulting from any renewal of the pre-basic mother plants or pre-basic material.

Maintenance of pre-basic mother plants and pre-basic material

- 8.—(1) Subject to sub-paragraph (6), candidate pre-basic mother plants, pre-basic mother plants and pre-basic material must be maintained by the supplier in facilities designated for the genera and species concerned and which are insect proof and ensure freedom from infection through aerial vectors and any other possible sources throughout the production process.
- (2) Subject to sub-paragraph (6), candidate pre-basic mother plants must be kept physically isolated from pre-basic mother plants until it is established that they are free from the pests described in paragraph 9(1) and (2).
- (3) Pre-basic mother plants and pre-basic material must be—
- (a) subject to sub-paragraph (6), grown or produced and isolated from the soil, in pots of soil-free or of sterilised growing media;
 - (b) identified by labels to ensure their traceability; and
 - (c) subject to sub-paragraph (6), maintained in a manner which ensures that they are individually identified throughout the production process.
- (4) Pre-basic mother plants and pre-basic material may be maintained by cryopreservation.
- (5) Pre-basic mother plants may only be used for a period as calculated in accordance with the appropriate EPPO protocol on the basis of—
- (a) the stability of the variety;
 - (b) the environmental conditions under which they are grown; and
 - (c) any other determinants having an impact on the stability of the variety.

(6) Where a derogation has been granted by the European Commission under Article 8(4) of Commission Implementing Directive 2014/98/EU in relation to the particular genus or species concerned, pre-basic mother plants and pre-basic material may be produced in the field under non-insect proof conditions provided that—

- (a) the pre-basic mother plants or pre-basic material concerned are identified by a label ensuring their traceability; and
- (b) appropriate measures are taken to prevent infection of the plants by any possible sources, including by—
 - (i) aerial vectors;
 - (ii) root contact; and
 - (iii) cross infection by machinery and grafting tools.

Health requirements for candidate pre-basic mother plants and for pre-basic mother plants produced by renewal

9.—(1) A candidate pre-basic mother plant must be found free, on the basis of visual inspection of the facilities and fields, from the pests listed in Tables IA and IB of schedule 6, in relation to the particular genus or species concerned and, if there are doubts concerning the presence of such pests, there must be sampling and testing of the candidate pre-basic mother plant concerned.

(2) Subject to sub-paragraph (3), a candidate pre-basic mother plant must be found free, on the basis of visual inspection and by sampling and testing, from the pests listed in Table II in schedule 6, in relation to the particular genus or species concerned.

(3) Where a candidate pre-basic mother plant is a seedling, visual inspection, sampling and testing is only required in relation to viruses, viroids or virus-like diseases transmitted by pollen which are listed in Table II of schedule 6 in relation to the particular genus or species concerned, provided that an official inspection has confirmed that the seedling—

- (a) was grown from a seed produced by a plant free from symptoms caused by those viruses, viroids or virus-like diseases; and
- (b) it has been maintained in accordance with paragraph 8(1) and 8(3)(a) and (b).

(4) A pre-basic mother plant produced by renewal must be found free—

- (a) on the basis of visual inspection of the facilities and fields from the pests listed in Tables IA and IB in schedule 6 in relation to the particular genus or species concerned and, if there are doubts concerning the presence of such pests, there must be sampling and testing of the relevant pre-basic mother plant; and
- (b) on the basis of visual inspection of the facilities, fields and lots and by sampling and testing in relation to the viruses and viroids listed in Table II of schedule 6.

(5) In this paragraph, a reference to “sampling and testing” means sampling and testing carried out by or on behalf of the Scottish Ministers and, where appropriate, by the supplier—

- (a) at the most appropriate time of the year, taking into account the climatic conditions, the growing conditions of the plant and the biology of the pests relevant to that plant;
- (b) at any time of the year in the event of doubts concerning the presence of a relevant pest in accordance with the appropriate EPPO protocol;
- (c) through submission of samples to laboratories approved by the Scottish Ministers for the purposes of such sampling and testing; and
- (d) in the case of candidate pre-basic mother plants which are being tested for viruses, viroids, virus-like diseases and phytoplasmas, using the testing method of biological indexing on indicator plants or such other testing method as the Scottish Ministers may authorise,

Status: Point in time view as at 01/07/2017.

Changes to legislation: There are currently no known outstanding effects for the The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017. (See end of Document for details)

having regard to peer reviewed scientific evidence showing that the other testing method is as reliable as biological indexing on indicator plants.

Health requirements for pre-basic mother plants and for pre-basic material

10.—(1) Subject to sub-paragraph (2), a pre-basic mother plant or pre-basic material must be found free, on the basis of visual inspection of the facilities, fields and lots, of the pests listed in Table IA and Table II of schedule 6 in relation to the particular genus or species concerned and, if there are doubts concerning the presence of those pests, there must be sampling and testing of the relevant pre-basic mother plant or pre-basic material.

(2) The visual inspections mentioned in sub-paragraph (1) may not be conducted during cryopreservation.

(3) The percentage of pre-basic mother plants or pre-basic material which is found, on visual inspection of the facilities, fields and lots, to be infested by the pests listed in column 1 of Table IB of schedule 6, must not exceed the tolerance level set out in respect of those pests in column 2(a) of that Table (pre-basic category) and, if there are doubts concerning the presence of those pests, there must be sampling and testing of the relevant pre-basic mother plant or pre-basic material.

(4) In relation to the genera and species listed in column 1 of the Table of schedule 7, the visual inspection and sampling and testing of pre-basic mother plants and pre-basic material within those genera and species must be carried out in accordance with the requirements set out for the pre-basic category in columns 3 (frequency of visual inspections) and 4 (sampling and testing) of that Table.

(5) Without prejudice to sub-paragraph (3), in this paragraph, a reference to “sampling and testing” means sampling and testing carried out by or on behalf of the Scottish Ministers and, where appropriate, by the supplier—

- (a) in accordance with the appropriate EPPO protocol; and
- (b) through submission of samples to laboratories approved by the Scottish Ministers for the purposes of such sampling and testing.

Soil requirements

11.—(1) Subject to sub-paragraphs (2) and (3), pre-basic mother plants and pre-basic material must only be grown in soil which is found, on the basis of sampling and testing carried out prior to the planting of such plants and material, to be free from any pest listed in Table III of schedule 6 for the genus or species concerned and which may host viruses affecting that genus or species.

(2) Sampling and testing is not required under sub-paragraph (1) if—

- (a) there have been no plants which are hosts for any of the pests listed in Table III of schedule 6 grown in the relevant soil for a period of at least 5 years prior to the planting of the pre-basic mother plants and pre-basic material mentioned in sub-paragraph (1) and where there is no doubt concerning the absence of the relevant pests in the soil; or
- (b) an official inspection is carried out which concludes that the soil is free from any of the pests listed in Table III of schedule 6 for the genus or species concerned and which may host viruses affecting that genus or species.

(3) Sampling and testing of the soil must be carried out during the growing period of the pre-basic mother plant or pre-basic material mentioned in sub-paragraph (1) where there is suspicion concerning the presence of the pests listed in Table III of schedule 6.

(4) In this paragraph, “sampling and testing” means sampling and testing carried out by or on behalf of the Scottish Ministers and, where appropriate, by the supplier—

- (a) in accordance with the appropriate EPPO protocol; and

- (b) taking into account the climatic conditions and the biology of the pests listed in Table III of schedule 6 and their relevance to the pre-basic mother plants or pre-basic material concerned.

Defects

12.—(1) Pre-basic mother plants and pre-basic material must be found, on visual inspection, to be practically free from defects.

(2) Injuries, discoloration, scar tissues or dessication must be considered as defects if they affect the quality and usefulness of a mother plant or plant material as propagating material.

Requirements concerning multiplication, renewal and propagation of pre-basic mother plants

13.—(1) Subject to sub-paragraph (4), a supplier may multiply a pre-basic mother plant which has been accepted under paragraph 5.

(2) Subject to sub-paragraph (4), the supplier may renew a pre-basic mother plant which—

- (a) has been accepted under paragraph 5; and
- (b) during the period described in paragraph 8(5).

(3) Subject to sub-paragraph (4), the supplier may propagate a pre-basic mother plant which has been accepted under paragraph 5 to produce pre-basic material.

(4) The multiplication, renewal and propagation described in sub-paragraphs (1) to (3) must be carried out in accordance with the appropriate EPPO protocol, provided that such protocol has been tested on the relevant genus or species for a period of time considered sufficient to allow phenotype validation of the plants as regards the trueness to the description of the variety based on the observation of the fruit production or of the vegetative development of rootstocks.

Requirements concerning multiplication, renewal and propagation by micropropagation of pre-basic mother plants

14. A supplier may multiply, renew or propagate a pre-basic mother plant which has been accepted under paragraph 5 by micropropagation for the purpose of producing other pre-basic mother plants or pre-basic material, provided that—

- (a) the multiplication, renewal or propagation by micropropagation is carried out in accordance with the appropriate EPPO protocol; and
- (b) the appropriate EPPO protocol has been tested on the relevant genus or species for a period of time considered sufficient to allow phenotype validation of the plants as regards the trueness to the description of the variety based on the observation of the fruit production or of the vegetative development of rootstocks.

PART 3

Basic material

Requirements for the certification of basic material

15.—(1) Propagating material other than basic mother plants or rootstocks which do not belong to a variety may be officially certified as basic material if it has been found on official inspection and, where appropriate, through administrative checks, to fulfil the following requirements:—

Status: Point in time view as at 01/07/2017.

Changes to legislation: There are currently no known outstanding effects for the The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017. (See end of Document for details)

- (a) it has been propagated from a basic mother plant;
 - (b) the basic mother plant mentioned in head (a)—
 - (i) has been grown from pre-basic material; or
 - (ii) has been produced by multiplication from a basic mother plant, in accordance with paragraph 20;
 - (c) it complies with the requirements in paragraphs 7, 8(5) and 12;
 - (d) it complies with the requirements in paragraph 8(3)(c);
 - (e) it complies with the requirements in paragraph 17;
 - (f) it complies with the requirements in paragraph 18;
 - (g) it is maintained in accordance with paragraph 19; and
 - (h) there has been compliance with the requirements concerning multiplication and multiplication by micropropagation in paragraph 20.
- (2) For the purposes of sub-paragraph (1)(c) references in paragraphs 7, 8(5) and 12 to—
- (a) pre-basic mother plants may be construed as references to basic mother plants; and
 - (b) pre-basic material may be construed as references to basic material.

Rootstocks not belonging to a variety

16.—(1) A rootstock which does not belong to a variety may be officially certified as basic material if it has been found on official inspection and, where appropriate, through administrative checks, to fulfil the following requirements:—

- (a) it is true to the description of its species;
 - (b) it complies with the requirements in—
 - (i) paragraph 8(3)(c);
 - (ii) paragraph 8(5);
 - (iii) paragraph 12;
 - (iv) paragraph 17;
 - (v) paragraph 18;
 - (vi) paragraph 19; and
 - (vii) paragraph 20.
- (2) For the purposes of sub-paragraph (1)(b)(i), (ii) and (iii), references in paragraphs 8(3)(c) and (5) and 12 to—
- (a) pre-basic mother plants, may be construed as references to basic mother plants; and
 - (b) pre-basic material, may be construed as references to basic material.

Health requirements for basic mother plants and basic material

17.—(1) Subject to sub-paragraph (2), a basic mother plant or basic material must be found free, on the basis of visual inspections of the facilities, fields and lots, of the pests listed in Table IA and Table II in schedule 6 in relation to the particular genus or species concerned and, if there are doubts concerning the presence of those pests, there must be sampling and testing of the basic mother plant or basic material.

(2) The visual inspections mentioned in sub-paragraph (1) may not be conducted during cryopreservation.

(3) The percentage of basic mother plants or basic material which is found, on visual inspection of the facilities, fields and lots, to be infested by the pests listed in column 1 of Table IB in schedule 6, must not exceed the tolerance level set out in respect of those pests in column 2(b) of that Table (basic category) and, if there are doubts concerning the presence of those pests, there must be sampling and testing of the relevant basic mother plant or basic material.

(4) In relation to the genera and species listed in column 1 of the Table in schedule 7 the visual inspection and sampling and testing of basic mother plants and basic material within those genera and species must be carried out in accordance with the requirements set out for the basic category in columns 3 (visual inspections) and 4 (sampling and testing) of that Table.

(5) Without prejudice to sub-paragraph (3), in this paragraph a reference to “sampling and testing” means sampling and testing carried out by or on behalf of the Scottish Ministers and, where appropriate, by the supplier—

- (a) in accordance with the appropriate EPPO protocol; and
- (b) through submission of samples to laboratories officially accepted by the Scottish Ministers for the purposes of such sampling and testing.

Soil requirements

18.—(1) Subject to sub-paragraphs (2) and (3), basic mother plants and basic material must only be grown in soil which is found, on the basis of sampling and testing carried out prior to the planting of such plants and material, to be free from any pest listed in Table III in schedule 6 for the genus or species concerned and which may host viruses affecting that genus or species.

(2) Sampling and testing is not required under sub-paragraph (1) if—

- (a) there have been no plants which are hosts for the pests listed in Table III in schedule 6 grown in the relevant soil for a period of at least 5 years prior to the planting of the basic mother plants and basic material mentioned in sub-paragraph (1) and where there is no doubt concerning the absence of the relevant pests in the soil; or
- (b) an official inspection is carried out which concludes that the soil is free from any of the pests listed in Table III in schedule 6 for the genus or species concerned and which is host to viruses affecting that genus or species.

(3) Sampling and testing of the soil must be carried out during the growing period of the basic mother plant or basic material mentioned in sub-paragraph (1) where there is suspicion concerning the presence of the pests mentioned in that sub-paragraph.

(4) In this paragraph, “sampling and testing” means sampling and testing carried out by or on behalf of the Scottish Ministers and, where appropriate, by the supplier—

- (a) in accordance with the appropriate EPPO protocol; and
- (b) taking into account the climatic conditions and the biology of the pests listed in Table III in schedule 6 and their relevance to the basic mother plants or basic material concerned.

Requirements concerning the maintenance of basic mother plants and basic material

19.—(1) Basic mother plants and basic material must be maintained in fields isolated from potential sources of infection by aerial vectors, root contact, cross infection by machinery or grafting tools and from any other possible sources.

(2) An inspector may determine the distance at which the fields mentioned in sub-paragraph (1) must be isolated from potential sources of infection as mentioned in sub-paragraph (1), having regard to regional circumstances, the type of propagating material, the presence of pests in the area concerned and the relevant risks which are involved.

Status: Point in time view as at 01/07/2017.

Changes to legislation: There are currently no known outstanding effects for the The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017. (See end of Document for details)

(3) Basic mother plants and basic material must be maintained in a manner that ensures that they are individually identified throughout the production process.

Conditions for multiplication and multiplication by micropropagation of basic mother plants

20.—(1) Subject to sub-paragraphs (2) to (5), a basic mother plant mentioned in paragraph 15(1)(b)(i) may be multiplied or multiplied by micropropagation in order to produce the necessary number of basic mother plants.

(2) The multiplication or multiplication by micropropagation mentioned in sub-paragraph (1) must be carried out in accordance with the appropriate EPPO protocol, provided that such protocol has been tested on the relevant genus or species for a period of time considered sufficient to allow phenotype validation of the plants as regards the trueness to the description of the variety based on the observation of the fruit production or of the vegetative development of rootstocks.

(3) In relation to the multiplication, or multiplication by micropropagation, of a basic mother plant of a particular genus or species listed in column 1 of the Table in sub-paragraph (5), the basic mother plant—

- (a) may be multiplied for the maximum number of generations prescribed for that genus or species in the corresponding entry in column 2 of that Table; and
- (b) may not be maintained as a basic mother plant beyond any period which may be prescribed in the corresponding entry in column 3 of that Table.

(4) Where rootstocks are part of the basic mother plant, the rootstock must be basic material of the first generation.

(5) Where, in respect of a particular genus or species listed in column 1 of the Table in this sub-paragraph, multiple generations of basic mother plants are prescribed in column 2 of that Table, each generation of basic mother plant, other than the first one, may derive from any previous generation.

Table of maximum permitted number of generations in the field under non-insect proof conditions and maximum permitted life span of basic mother plants per genera or species.

| <i>Column 1</i> <i>Genera or species</i> | <i>Column 2</i> <i>Maximum number of generations</i> | <i>Column 3</i> <i>of Maximum permitted life span</i> |
|--|--|--|
| <i>Castanea sativa</i> Mill. | 2 generations; or if the basic mother plant is a rootstock, 3 generations | |
| <i>Citrus</i> L., <i>Fortunella</i> Swingle and <i>Poncirus</i> Raf. | 1 generation; or if the basic mother plant is a rootstock, 3 generations | |
| <i>Corylus avellana</i> L. | 2 generations | |
| <i>Cydonia oblonga</i> Mill., <i>Malus</i> Mill. and <i>Pyrus</i> L. | 2 generations; or if the basic mother plant is a rootstock, 3 generations | |
| <i>Ficus carica</i> L. | 2 generations | |
| <i>Fragaria</i> L. | 5 generations | |
| <i>Juglans regia</i> L. | 2 generations | |
| <i>Olea europaea</i> L. | 1 generation | |

| | | |
|--|---|---------|
| <i>Prunus amygdalus</i> , <i>P. armeniaca</i> , <i>P. domestica</i> , <i>P. persica</i> and <i>P. salicina</i> | 2 generations; or if the basic mother plant is a rootstock, 3 generations | |
| <i>Prunus avium</i> and <i>P. cerasus</i> | 2 generations; or if the basic mother plant is a rootstock, 3 generations | |
| <i>Ribes</i> L. | 3 generations | 6 years |
| <i>Rubus</i> L. | 2 generations | 4 years |
| <i>Vaccinium</i> L. | 2 generations | |

PART 4

Certified material

Requirements for certification as certified material

21.—(1) Propagating material other than mother plants or a fruit plant may be officially certified as certified material if it has been found on official inspection and, where appropriate, through administrative checks, to fulfil the following requirements:—

- (a) it has been propagated from a certified mother plant;
 - (b) the certified mother plant mentioned in head (a) has been grown from pre-basic material or basic material;
 - (c) the certified mother plant mentioned in head (a) complies with the requirements in paragraph 24;
 - (d) it complies with the requirements in—
 - (i) paragraph 7;
 - (ii) paragraph 8(5); and
 - (iii) paragraph 12;
 - (e) it complies with the requirements in paragraph 23; and
 - (f) it complies with the requirements in paragraph 24.
- (2) For the purposes of sub-paragraph (1)(d), references in paragraphs 7, 8(5) and 12 to—
- (a) pre-basic mother plants, may be construed as references to certified mother plants; and
 - (b) pre-basic material, may be construed as references to certified material.

Rootstocks not belonging to a variety

22.—(1) A rootstock which does not belong to a variety may be officially certified as certified material if it has been found on official inspection and, where appropriate, through administrative checks, to fulfil the following requirements:—

- (a) it is true to the description of its species;
- (b) it complies with the requirements in—
 - (i) paragraph 8(5); and

Status: Point in time view as at 01/07/2017.

Changes to legislation: There are currently no known outstanding effects for the The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017. (See end of Document for details)

- (ii) paragraph 12; and
 - (c) it complies with the requirements in paragraphs 23 and 24.
- (2) For the purposes of sub-paragraph (1)(b), references in paragraphs 8(5) and 12 to—
- (a) pre-basic mother plants, may be construed as references to certified mother plants; and
 - (b) pre-basic material may, be construed as references to certified material.

Health requirements for certified mother plants and certified material

23.—(1) Subject to sub-paragraph (2), a certified mother plant or certified material must be found free, on the basis of visual inspections of the facilities, fields and lots, of the pests listed in Table IA and Table II in schedule 6 in relation to the particular genus or species concerned and, if there are doubts concerning the presence of those pests, there must be sampling and testing of the certified mother plant or certified material.

(2) The visual inspections mentioned in sub-paragraph (1) may not be conducted during cryopreservation.

(3) The percentage of certified mother plants or certified material which is found, on visual inspection of the facilities, fields and lots, to be infested by the pests listed in column 1 of Table IB in schedule 6, must not exceed the tolerance level set out in respect of those pests in column 2(c) of that Table (certified category) and, if there are doubts concerning the presence of those pests, there must be sampling and testing of the relevant certified mother plant or certified material.

(4) In relation to the genera and species listed in column 1 of the Table in schedule 7, the visual inspection and sampling and testing of certified mother plants and certified material within those genera and species must be carried out in accordance with the requirements set out for the certified category in columns 3 (visual inspections) and 4 (sampling and testing) of that Table.

(5) Without prejudice to sub-paragraph (3), in this paragraph a reference to “sampling and testing” means sampling and testing carried out by or on behalf of the Scottish Ministers and, where appropriate, by the supplier—

- (a) in accordance with the appropriate EPPO protocol; and
- (b) through submission of samples to laboratories officially accepted by the Scottish Ministers for the purposes of such sampling and testing.

Soil requirements

24.—(1) Subject to sub-paragraphs (2) and (3), certified mother plants must only be grown in soil which is found, on the basis of sampling and testing carried out prior to the planting of such mother plants, to be free from any pest listed in Table III in schedule 6 for the genus or species concerned and which may host viruses affecting that genus or species.

(2) Sampling and testing is not required under sub-paragraph (1) if—

- (a) there have been no plants which are hosts for any of the pests listed in Table III in schedule 6 grown in the relevant soil for a period of at least 5 years prior to the planting of the certified mother plants mentioned in sub-paragraph (1) and where there is no doubt concerning the absence of the relevant pests in the soil; or
- (b) an official inspection is carried out which concludes that the soil is free from any of the pests listed in Table III in schedule 6 for the genus or species concerned and which is host to viruses affecting that genus or species.

(3) Sampling and testing of the soil must be carried out during the growing period of the certified mother plant mentioned in sub-paragraph (1) where there is suspicion concerning the presence of the pests mentioned in that sub-paragraph.

(4) In this paragraph, “sampling and testing” means sampling and testing carried out by or on behalf of the Scottish Ministers and, where appropriate, by the supplier—

- (a) in accordance with the appropriate EPPO protocol; and
- (b) taking into account the climatic conditions and the biology of the pests listed in Table III in schedule 6 and their relevance to the certified mother plants concerned.

SCHEDULE 3

Regulation 2(1)

CAC material

Conditions for CAC material other than rootstocks not belonging to a variety

1.—(1) CAC material other than rootstocks not belonging to a variety may only be marketed if it fulfils the following conditions—

- (a) it is propagated from an identified source of material recorded by the supplier;
- (b) its trueness to the description of its variety is established and verified in accordance with paragraph 3;
- (c) it is found by the supplier on visual inspection, or where there is doubt, by sampling and testing, to be substantially free from the pests listed in Tables IA, IB and II in schedule 6;
- (d) in the case of CAC material belonging to the species *Citrus* L., *Fortunella* Swingle, or *Poncirus* Raf—
 - (i) it is produced from an identified source of material that has been found to be free, on sampling and testing, from the pests listed in Table II in schedule 6 for those species;
 - (ii) since the beginning of the last cycle of vegetation, it is found on visual inspection, sampling and testing, to be substantially free from the pests listed in Table II in schedule 6, as regards the species concerned; and
- (e) on visual inspection, it is found to be practically free from defects including injuries, discolouration, scar tissue or dessication that affect the quality and usefulness of the plant as propagating material.

(2) The visual inspections mentioned in sub-paragraph (1)(c) may not be conducted during cryopreservation.

CAC material: rootstocks not belonging to a variety

2.—(1) CAC material consisting of rootstocks not belonging to a variety may only be marketed if it fulfils the following conditions—

- (a) it is true to the description of its species;
- (b) it is found by the supplier on visual inspection, or where there is doubt, by sampling and testing, to be substantially free from the pests listed in Tables IA, IB and II in schedule 6; and
- (c) on visual inspection, it is found to be substantially free from defects including injuries, discolouration, scar tissue or dessication that affect the quality and usefulness of the plant as propagating material.

(2) The visual inspections mentioned in sub-paragraph (1)(b) may not be conducted during cryopreservation.

Status: Point in time view as at 01/07/2017.

Changes to legislation: There are currently no known outstanding effects for the The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017. (See end of Document for details)

CAC material: trueness to the description of the variety

3.—(1) A supplier must establish and regularly verify the trueness of CAC material to the description of its variety in accordance with this paragraph.

(2) The trueness of certified material to the description of its variety must be established and verified by observation of the expression of the characteristics of the variety based on one of the following descriptions—

- (a) its official description;
- (b) the description accompanying the application to be a registered variety;
- (c) the description accompanying the application for a grant of plant variety rights; or
- (d) where the variety is registered with an officially recognised description, or subject to an application for registration with an officially recognised description, that description.

SCHEDULE 4

Regulations 2(1) and 7(3)

Registration of varieties

Interpretation

1. In this schedule—

“CPVO” means the Community Plant Variety Office, being an agency of the European Union^{M18};

“CPVO protocols” means protocols produced by the CPVO for distinctness, uniformity and stability tests in relation to the relevant species that are available at the beginning of the growing trial^{M19};

“distinctness” (and “distinct”) in relation to a variety, is to be construed in accordance with paragraph 9;

“the register” means the register of varieties maintained by the Scottish Ministers under paragraph 2;

“stability” (and “stable”) in relation to a variety, is to be construed in accordance with paragraph 11;

“technical questionnaire” means the technical questionnaire set out in—

- (a) any CPVO protocols published in relation to the relevant species; or
- (b) where no such CPVO protocols have been published as mentioned in sub-paragraph (a), any UPOV guidelines published in relation to the relevant species; or
- (c) where no such protocols as mentioned in sub-paragraph (a) or guidelines as mentioned in sub-paragraph (b) have been published, a protocol or guidelines established by or on behalf of the Scottish Ministers in relation to the same matters;

“uniformity” (and “uniform”) in relation to a variety, is to be construed in accordance with paragraph 10;

“UPOV” means the International Union for the Protection of New Varieties of Plants, being an intergovernmental organisation established by the International Convention for the Protection of New Varieties of Plants^{M20}; and

“UPOV guidelines” mean test guidelines for the conduct of tests for distinctness, uniformity and stability that have been produced for the relevant species by the UPOV and which are applicable at the beginning of the growing trial ^{M21}.

Marginal Citations

M18 The CPVO is located at 3 boulevard Maréchal Foch, FR – 49000 ANGERS, France.

M19 A list of applicable protocols is available on <http://cpvo.europa.eu/en//applications-and-examinations/technical-examinations/technical-protocols>.

M20 UPOV is located at 34, chemin des Colombettes, CH-1211 Genève 20, Switzerland.

M21 A list of applicable test guidelines is available at http://www.upov.int/resource/en/dus_guidance.html.

Register of varieties

2.—(1) The Scottish Ministers must maintain a register of varieties.

(2) The register must include—

- (a) the denomination of the variety and any synonyms;
- (b) the species to which the variety belongs;
- (c) the date of registration of the variety or, where applicable, the date of renewal of the registration; and
- (d) the date of the expiry of the validity of the registration.

(3) The register must state whether a variety has an official description or an officially recognised description.

(4) In relation to each variety registered, the Scottish Ministers must also keep a file containing a description of the variety and a summary of the facts relevant to its registration.

Registration

3.—(1) The Scottish Ministers must register a variety with an official description if they are satisfied that—

- (a) the variety is distinct, uniform and stable;
- (b) a sample of the variety is available; and
- (c) in relation to genetically modified varieties, the genetically modified organism of which the variety consists is authorised for cultivation pursuant to Directive 2001/18/EC or Regulation (EC) No 1829/2003.

(2) Before being satisfied in accordance with sub-paragraph (1)(a) that a variety is distinct, uniform and stable, the Scottish Ministers must take into account the results of growing trials in accordance with paragraph 5, carried out in respect of the variety by or on behalf of—

- (a) the Scottish Ministers; or
- (b) a responsible authority in any other member State.

(3) The Scottish Ministers may register a variety that has been marketed within the European Union prior to 30th September 2012 with an officially recognised description.

Application for registration with an official description

4.—(1) An application for registration of a variety with an official description must be made in writing to the Scottish Ministers in such form as the Scottish Ministers may require.

Status: Point in time view as at 01/07/2017.

Changes to legislation: There are currently no known outstanding effects for the The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017. (See end of Document for details)

- (2) An application must be accompanied by—
- (a) the information required in a technical questionnaire at the time of the application or, where no technical questionnaire is available in relation to the relevant species, such information as the Scottish Ministers may require;
 - (b) information on whether the variety is officially registered in another member State, or is the subject of an application for such a registration;
 - (c) a proposed denomination;
 - (d) in the case of a genetically modified variety, evidence that the genetically modified organism contained in that variety has been authorised for cultivation pursuant to Directive [2001/18/EC](#) or Regulation [\(EC\) No 1829/2003](#); and
 - (e) such other information as the Scottish Ministers may require.
- (3) Where applicable, an application may be accompanied by details of an official description established by a responsible authority in another member State.
- (4) Where applicable, an application may also be accompanied by a statement of any other relevant information.
- (5) Where a growing trial is required, a sample of the material of the variety must be submitted on request.

Growing trials

- 5.—**(1) Growing trials must—
- (a) establish whether a variety is distinct, uniform and stable;
 - (b) in relation to trial design, growing conditions and characteristics of the variety to be covered, be conducted in accordance with—
 - (i) CPVO protocols;
 - (ii) if no CVPO protocols have been published for the relevant species, any UPOV guidelines; or
 - (iii) if no CPVO protocols or UPOV guidelines have been published, any applicable protocols produced by, or on behalf of, the Scottish Ministers.
- (2) Growing trials are not required if the Scottish Ministers are satisfied that an official description submitted in accordance with paragraph 4(3), or information submitted along with the official description, demonstrates that the variety is distinct, uniform and stable.

Duration and renewal of acceptance

- 6.—**(1) The registration of a variety with an official description or, as the case may be, the renewal of such a registration, is valid—
- (a) for the period up to the end of the 30th calendar year from the date of registration or renewal; or
 - (b) in the case of genetically modified varieties, for the shorter of either—
 - (i) the period up to the end of the 30th calendar year from the date of registration or renewal; or
 - (ii) the period during which the genetically modified organism of which the variety consists is authorised for cultivation pursuant to Directive [2001/18/EC](#) or Regulation [\(EC\) No 1829/2003](#).
- (2) The Scottish Ministers may—

- (a) renew registration in accordance with sub-paragraph (3) or (4); or
- (b) revoke registration in accordance with paragraph 7.

(3) The Scottish Ministers may, following an application made in writing to them, renew the registration of a variety with an official description for a period described in sub-paragraph (1), provided that—

- (a) the requirements of distinctness, uniformity and stability are still satisfied in respect of the variety; and
- (b) there is still material of that variety available on the market.

(4) The Scottish Ministers may renew the registration in the absence of a written application where they are satisfied that renewal serves to preserve genetic diversity and sustainable production and the conditions mentioned in sub-paragraph (3) are met.

Removal from register

7.—(1) Subject to sub-paragraph (2), the Scottish Ministers must revoke the registration of a variety if—

- (a) it is no longer distinct, uniform and stable;
- (b) there is no longer available any material of that variety that is sufficiently uniform or which corresponds to the description of the variety at the time of registration;
- (c) false or misleading information material to registration was provided to the Scottish Ministers in connection with the application for registration;
- (d) in the case of any genetically modified variety, the genetically modified organism contained in that variety ceases to be authorised pursuant to Directive 2001/18/EC or Regulation (EC) No 1829/2003.

(2) But heads (a) to (c) of sub-paragraph (1) do not apply if the Scottish Ministers are satisfied that the variety should remain on the register in the interests of preserving the genetic diversity of varieties.

Additional requirements for products to be used as genetically modified food or feed

8.—(1) This paragraph applies to any variety from which products are derived for use as, or in—

- (a) food within the scope of Article 3 of Regulation (EC) No 1829/2003; or
- (b) feed within the scope of Article 15 of that Regulation.

(2) Before registering any such variety, the Scottish Ministers must be satisfied that the food or feed has been authorised pursuant to Regulation (EC) No 1829/2003.

Distinctness

9. A variety is distinct if it is clearly distinguishable by one or more characteristics that result from a particular genotype or combination of genotypes, from any other variety whose existence is a matter of common knowledge at the time of the application for registration.

Uniformity

10. A variety is uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in the expression of those characteristics which are included in the examination for distinctness, as well as any other characteristics used for the variety description.

Status: Point in time view as at 01/07/2017.

Changes to legislation: There are currently no known outstanding effects for the The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017. (See end of Document for details)

Stability

11. A variety is stable if the expression of those characteristics which are included in the examination for distinctness, as well as any others used for the variety description, remain unchanged after repeated propagation or, in the case of micropropagation, at the end of each such cycle.

SCHEDULE 5

Regulations 2(1), 5(1)(g), 8 and 9

Official labels, supplier's documents and accompanying documents

PART 1

Official labels

1. An official label used in relation to pre-basic material must, if a coloured label is used, be white with a diagonal violet stripe.
2. An official label used in relation to basic material must be white.
3. An official label used in relation to certified material must, if a coloured label is used, be blue.
4. An official label must—
 - (a) contain the statement “EU rules and standards”; and
 - (b) state the following particulars:—
 - (i) the name of the responsible official body and member State or their distinguishing abbreviations;
 - (ii) the name of the supplier or their registration number;
 - (iii) the reference number of the package, container or bundle, the individual serial number, the week number or the batch number;
 - (iv) the botanical name of the plant material;
 - (v) the category of the plant material and, for basic material, the generation number;
 - (vi) the denomination of the variety and, where appropriate, the clone.
 - (vii) in the case of rootstocks not belonging to a variety, the name of the species or the interspecific hybrid concerned;
 - (viii) in the case of grafted fruit plants, the information in heads (vi) (in relation to the top-graft) and (vii) (in relation to the rootstock);
 - (ix) for varieties in respect of which an application to be a registered variety or for the grant of a plant variety right is pending, any information given in relation to heads (vi) to (viii) must be pre-fixed with the words “proposed denomination” and “application pending”;
 - (x) where appropriate, the words “variety with an officially recognised description”;
 - (xi) the quantity of plant material;
 - (xii) where different from the member State of labelling, the country of production and its respective code or abbreviation;
 - (xiii) the year of issue, or in the case of a replacement label, the year of issue of the original label;
 - (xiv) in the case of a genetically modified variety—

Status: Point in time view as at 01/07/2017.

Changes to legislation: There are currently no known outstanding effects for the The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017. (See end of Document for details)

- (aa) a statement that the variety has been genetically modified; and
- (bb) a list of the genetically modified organisms.

5. The information and particulars required on an official label must be indelibly printed in one of the official languages of the European Union and must be easily visible and legible.

PART 2

Supplier's documents for CAC material

6. A supplier's document for CAC material must—
- (a) contain the statement “EU rules and Standards”; and
 - (b) state the following particulars:—
 - (i) the name of the responsible official body and member State where the supplier's document was prepared or their distinguishing abbreviations;
 - (ii) the registration number of the supplier;
 - (iii) the individual serial, week number or batch number;
 - (iv) the botanical name of the plant material;
 - (v) CAC material;
 - (vi) the denomination of the variety or, in the case of rootstock, the denomination of the variety of its designation;
 - (vii) the quantity;
 - (viii) the country of production and its distinguishing abbreviations where different from the member State in which the supplier's document was prepared; and
 - (ix) the date of issue.

7. The information and particulars required in a supplier's document must be indelibly printed in one of the official languages of the European Union and must be easily visible and legible.

PART 3

Accompanying documents

8. An accompanying document must—
- (a) contain the information listed in paragraph 4;
 - (b) be written in one of the official languages of the European Union;
 - (c) be delivered at least in duplicate (supplier and recipient);
 - (d) accompany the material from the place of the supplier to the place of the recipient;
 - (e) include the name and address of the recipient;
 - (f) include the date of issue of the document; and
 - (g) include, where appropriate, additional information relevant to the lots concerned.

Status: Point in time view as at 01/07/2017.**Changes to legislation:** There are currently no known outstanding effects for the The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017. (See end of Document for details)

SCHEDULE 6

Regulation 15(4);
regulation 17(2); schedule 2, paragraphs 9,
10(1) and (3), 11, 17 (1) and (3), 18, 23(1)
and (3), 24; and schedule 3, paragraphs
1(1) and 2(1)

Pests

TABLE IA

PESTS FROM WHICH FREEDOM (OR PRACTICAL FREEDOM) IS REQUIRED.

| <i>Column 1 Genus or Species</i> | <i>Column 2 Pests</i> |
|--|--|
| <i>Castanea sativa</i> Mill. | <p>Fungi</p> <p><i>Mycosphaerella maculiformis</i> <i>Phytophthora cambivora</i> <i>Phytophthora cinnamomi</i></p> <p>Virus like disease</p> <p>Chestnut mosaic virus (ChMV)</p> |
| <i>Citrus</i> L., <i>Fortunella</i> Swingle, <i>Poncirus</i> Raf. | <p>Insects</p> <p><i>Aleurotrixus floccosus</i> <i>Parabemisia myricae</i></p> <p>Nematodes</p> <p><i>Pratylenchus vulnus</i> <i>Tylenchus semi-penetrans</i></p> <p>Fungi</p> <p><i>Phytophthora citrophthora</i> <i>Phytophthora parasitica</i></p> |
| <i>Corylus avellana</i> L. | <p>Mites</p> <p><i>Phytoptus avellanae</i></p> <p>Fungi</p> <p><i>Armillariella mellea</i> <i>Verticillium dahliae</i> <i>Verticillium albo-atrum</i></p> <p>Bacteria</p> <p><i>Xanthomonas arboricola</i> pv. <i>corylina</i> <i>Pseudomonas avellanae</i></p> |
| <i>Cydonia oblonga</i> Mill., <i>Malus</i> Mill. and <i>Pyrus</i> L. | <p>Insects</p> <p><i>Eriosoma lanigerum</i> <i>Psylla</i> spp.</p> <p>Nematodes</p> <p><i>Meloidogyne hapla</i> <i>Meloidogyne javanica</i> <i>Pratylenchus penetrans</i> <i>Pratylenchus vulnus</i></p> <p>Fungi</p> |

Status: Point in time view as at 01/07/2017.

Changes to legislation: There are currently no known outstanding effects for the The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017. (See end of Document for details)

| | |
|-------------------------|---|
| | <i>Armillariella mellea</i> <i>Chondrostereum purpureum</i> <i>Glomerella cingulata</i> <i>Pezicula alba</i> <i>Pezicula malicorticis</i> <i>Nectria galligena</i> <i>Phytophthora cactorum</i> <i>Roessleria pallida</i> <i>Verticillium dahliae</i> <i>Verticillium albo-atrum</i> |
| | Bacteria <i>Agrobacterium tumefaciens</i> <i>Pseudomonas syringae</i> pv. <i>syringae</i> |
| | Viruses Other than those listed in Table II |
| <i>Ficus carica</i> L. | Insects <i>Ceroplastes rusci</i> |
| | Nematodes <i>Heterodera fici</i> <i>Meloidogyne arenaria</i> <i>Meloidogyne incognita</i> <i>Meloidogyne javanica</i> <i>Pratylenchus penetrans</i> <i>Pratylenchus vulnus</i> |
| | Fungi <i>Armillaria mellea</i> |
| | Bacteria <i>Phytomonas fici</i> |
| | Virus-like diseases Fig mosaic disease |
| <i>Juglans regia</i> L. | Insects <i>Epidiaspis leperii</i> <i>Pseudaulacaspis pentagona</i> <i>Quadraspidiotus perniciosus</i> |
| | Fungi <i>Armillariella mellea</i> <i>Nectria galligena</i> <i>Chondrostereum purpureum</i> <i>Phytophthora cactorum</i> |
| | Bacteria <i>Agrobacterium tumefaciens</i> <i>Xanthomonas arboricola</i> pv. <i>Juglandi</i> |
| <i>Olea europaea</i> L. | Nematodes <i>Meloidogyne arenaria</i> <i>Meloidogyne incognita</i> <i>Meloidogyne javanica</i> <i>Pratylenchus vulnus</i> |

Status: Point in time view as at 01/07/2017.

Changes to legislation: There are currently no known outstanding effects for the The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017. (See end of Document for details)

| | |
|---|--|
| <i>Pistacia vera</i> L. | <p>Bacteria <i>Pseudomonas savastanoi</i> pv. <i>savastanoi</i></p> <p>Virus-like diseases Leaf yellowing complex disease 3</p> <p>Nematodes <i>Pratylenchus penetrans</i> <i>Pratylenchus vulnus</i></p> |
| <i>Prunus amygdalus</i> , <i>P. armeniaca</i> , <i>P. domestica</i> , <i>P. persica</i> and <i>P. salicina</i> | <p>Fungi <i>Phytophthora cryptogea</i> <i>Phytophthora cambivora</i> <i>Rosellinia necatrix</i> <i>Verticillium dahliae</i></p> <p>Insects <i>Pseudaulacaspis pentagona</i> <i>Quadraspidiotus perniciosus</i></p> <p>Nematodes <i>Meloidogyne arenaria</i> <i>Meloidogyne javanica</i> <i>Meloidogyne incognita</i> <i>Pratylenchus penetrans</i> <i>Pratylenchus vulnus</i></p> |
| <i>Prunus avium</i> , <i>P. cerasus</i> | <p>Fungi <i>Phytophthora cactorum</i> <i>Verticillium dahliae</i></p> <p>Bacteria <i>Agrobacterium tumefaciens</i> <i>Pseudomonas syringae</i> pv. <i>morsprunorum</i> <i>Pseudomonas syringae</i> pv. <i>syringae</i> (on <i>P. armeniaca</i>) <i>Pseudomonas viridiflava</i> (on <i>P. armeniaca</i>)</p> <p>Insects <i>Quadraspidiotus perniciosus</i></p> <p>Nematodes <i>Meloidogyne arenaria</i> <i>Meloidogyne javanica</i> <i>Meloidogyne incognita</i> <i>Pratylenchus penetrans</i> <i>Pratylenchus vulnus</i></p> |
| <i>Ribes</i> L. | <p>Fungi <i>Phytophthora cactorum</i></p> <p>Bacteria <i>Agrobacterium tumefaciens</i> <i>Pseudomonas syringae</i> pv. <i>morsprunorum</i></p> <p>Insects and mites <i>Dasyneura tetensi</i> <i>Ditylenchus dipsaci</i> <i>Pseudaulacaspis pentagona</i></p> |

Status: Point in time view as at 01/07/2017.**Changes to legislation:** There are currently no known outstanding effects for the The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017. (See end of Document for details)

| | |
|-----------------|---|
| | <i>Quadraspidotus perniciosus</i> |
| | <i>Tetranychus urticae</i> |
| | <i>Cecidophyopsis ribis</i> |
| | Fungi |
| | <i>Sphaerotheca mors-uvae</i> |
| | <i>Microsphaera grossulariae</i> |
| | <i>Diaporthe strumella (Phomopsis ribicola)</i> |
| <i>Rubus L.</i> | Fungi |
| | <i>Peronospora rubi</i> |

TABLE IB**PESTS FROM WHICH FREEDOM (OR PRACTICAL FREEDOM) IS REQUIRED OR WHICH MAY ONLY BE PRESENT TO THE TOLERANCE PRESCRIBED.**

| <i>Column 1 Pests per genus or species</i> | <i>Column 2 Tolerance levels (%)</i> | | |
|--|--------------------------------------|-----------------|---------------------|
| | <i>a) Pre-basic</i> | <i>b) Basic</i> | <i>c) Certified</i> |
| <i>Fragaria L.</i> | | | |
| Insects and mites | | | |
| <i>Chaetosiphon fragaefoliae</i> | 0 | 0.5 | 1 |
| <i>Phytonemus pallidus</i> | 0 | 0 | 0.1 |
| Nematodes | | | |
| <i>Aphelenchoides fragariae</i> | 0 | 0 | 1 |
| <i>Ditylenchus dipsaci</i> | 0 | 0.5 | 1 |
| <i>Meloidogyne hapla</i> | 0 | 0.5 | 1 |
| <i>Pratylenchus vulnus</i> | 0 | 1 | 1 |

TABLE II**PESTS FOR THE PRESENCE OF WHICH VISUAL INSPECTION AND, IN PARTICULAR CASES, SAMPLING AND TESTING IS REQUIRED.**

| <i>Column 1 Genus or species</i> | <i>Column 2 Pests</i> |
|--|--|
| <i>Citrus L., Fortunella Swingle and Poncirus Raf.</i> | Viruses <i>Citrus variegation virus (CVV)</i> <i>Citrus psorosis virus (CPsV)</i> <i>Citrus leaf Blotch virus (CLBV)</i> |
| | Virus-like diseases Impietratura Cristacortis |
| | Viroids <i>Citrus exocortis viroid (CEVd)</i> <i>Hop stunt viroid (HSVd) Cachexia variant</i> |
| <i>Corylus avellana L.</i> | Viruses <i>Apple mosaic virus (ApMV)</i> |

Status: Point in time view as at 01/07/2017.

Changes to legislation: There are currently no known outstanding effects for the The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017. (See end of Document for details)

| | |
|--|--|
| | <p>Phytoplasmas <i>Hazelnut maculatura lineare phytoplasma</i></p> |
| <i>Cydonia oblonga</i> Mill. and <i>Pyrus</i> L. | <p>Viruses <i>Apple chlorotic leaf spot virus (ACLSV)</i> <i>Apple stem-grooving virus (ASGV)</i> <i>Apple stem-pitting virus (ASPV)</i></p> <p>Virus-like diseases Bark split, bark necrosis Rough bark Rubbery wood, quince yellow blotch</p> <p>Viroids <i>Pear blister canker viroid (PBCVd)</i></p> |
| <i>Fragaria</i> L. | <p>Nematodes <i>Aphelenchoides blastoforus</i> <i>Aphelenchoides fragariae</i> <i>Aphelenchoides ritzemabosi</i> <i>Ditylenchus dipsaci</i></p> <p>Fungi <i>Phytophthora cactorum</i> <i>Colletotrichum acutatum</i></p> <p>Viruses <i>Strawberry mottle virus (SMoV)</i></p> |
| <i>Juglans regia</i> L. | <p>Viruses <i>Cherry leaf roll virus (CLRV)</i></p> |
| <i>Malus</i> Mill. | <p>Viruses <i>Apple chlorotic leaf spot virus (ACLSV)</i> <i>Apple mosaic virus (ApMV)</i> <i>Apple stem-grooving virus (ASGV)</i> <i>Apple stem-pitting virus (ASPV)</i></p> <p>Virus-like diseases Rubbery wood, flat limb Horseshoe wound Fruit disorders: chat fruit, green crinkle, bumpy fruit of Ben Davis, rough skin, star crack, russet ring, russet wart</p> <p>Viroids <i>Apple scar skin viroid (ASSVd)</i> <i>Apple dimple fruit viroid (ADFVd)</i></p> |
| <i>Olea europaea</i> L. | <p>Fungi <i>Verticillium dahliae</i></p> <p>Viruses <i>Arabidopsis mosaic virus (ArMV)</i> <i>Cherry leaf roll virus (CLRV)</i> <i>Strawberry latent ringspot virus (SLRV)</i></p> |
| <i>Prunus amygdalus</i> Batsch | <p>Viruses <i>Apple chlorotic leaf spot virus (ACLSV)</i> <i>Apple mosaic virus (ApMV)</i></p> |

Status: Point in time view as at 01/07/2017.

Changes to legislation: There are currently no known outstanding effects for the The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017. (See end of Document for details)

| | |
|--|---|
| | <i>Prune dwarf virus</i> (PDV) <i>Prunus necrotic ringspot virus</i> (PNRSV) |
| <i>Prunus armeniaca</i> L. | Viruses <i>Apple chlorotic leaf spot virus</i> (ACLSV) <i>Apple mosaic virus</i> (ApMV) <i>Apricot latent virus</i> (ApLV) <i>Prune dwarf virus</i> (PDV) <i>Prunus necrotic ringspot virus</i> (PNRSV) |
| <i>Prunus avium</i> and <i>P. cerasus</i> | Viruses <i>Apple chlorotic leaf spot virus</i> (ACLSV) <i>Apple mosaic virus</i> (ApMV) <i>Arabis mosaic virus</i> (ArMV) <i>Cherry green ring mottle virus</i> (CGRMV) <i>Cherry leaf roll virus</i> (CLRV) <i>Cherry necrotic rusty mottle virus</i> (CNRMV) <i>Little cherry virus 1 and 2</i> (LChV1, LChV2) <i>Cherry mottle leaf virus</i> (ChMLV) <i>Prune dwarf virus</i> (PDV) <i>Prunus necrotic ringspot virus</i> (PNRSV) <i>Raspberry ringspot virus</i> (RpRSV) <i>Strawberry latent ringspot virus</i> (SLRSV) <i>Tomato black ring nepovirus</i> (TBRV) |
| <i>Prunus domestica</i> and <i>P. salicina</i> | Viruses <i>Apple chlorotic leaf spot virus</i> (ACLSV) <i>Apple mosaic virus</i> (ApMV) <i>Myrobalan latent ringspot virus</i> (MLRSV) <i>Prune dwarf virus</i> (PDV) <i>Prunus necrotic ringspot virus</i> (PNRSV) |
| <i>Prunus persica</i> | Viruses <i>Apple chlorotic leaf spot virus</i> (ACLSV) <i>Apple mosaic virus</i> (ApMV) <i>Apricot latent virus</i> (ApLV) <i>Prune dwarf virus</i> (PDV) <i>Prunus necrotic ringspot virus</i> (PNRSV) <i>Strawberry latent ringspot virus</i> (SLRSV) Viroids <i>Peach latent mosaic viroid</i> (PLMVd) |
| <i>Ribes</i> L. | Viruses as appropriate for the species concerned <i>Arabis mosaic virus</i> (ArMV) <i>Blackcurrant reversion virus</i> (BRV) <i>Cucumber mosaic virus</i> (CMV) <i>Gooseberry vein banding associated viruses</i> (GVBaV) <i>Strawberry latent ringspot virus</i> (SLRSV) <i>Raspberry ringspot virus</i> (RpRSV) |
| <i>Rubus</i> L. | Fungi <i>Phytophthora</i> spp. infecting <i>Rubus</i> Viruses as appropriate for the species concerned |

Status: Point in time view as at 01/07/2017.

Changes to legislation: There are currently no known outstanding effects for the The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017. (See end of Document for details)

Apple mosaic virus (ApMV)
Black raspberry necrosis virus (BRNV)
Cucumber mosaic virus (CMV)
Raspberry leaf mottle (RLMV)
Raspberry leaf spot (RLSV)
Raspberry vein chlorosis virus (RVCV)
Rubus yellow net virus (RYNV)
Raspberry bushy dwarf virus (RBDV)

Phytoplasmas

Rubus stunt phytoplasma

Virus like-diseases

Raspberry yellow spot

Vaccinium L.

Viruses

Blueberry shoestring virus (BSSV)
Blueberry red ringspot virus (BRRV)
Blueberry scorch virus (BIScV)
Blueberry shock virus (BIShV)

Phytoplasmas

Blueberry stunt phytoplasma
Blueberry witches' broom phytoplasma
Cranberry false blossom phytoplasma

Virus like diseases

Blueberry mosaic agent
 Cranberry ringspot agent

TABLE III

PESTS THE PRESENCE OF WHICH IN SOIL IS REGULATED

| <i>Column 1 Genus or Species</i> | <i>Column 2 Specific pests</i> |
|--|--|
| <i>Fragaria L.</i> | Nematodes <i>Longidorus attenuatus</i> <i>Longidorus elongatus</i> <i>Longidorus macrosoma</i> <i>Xiphinema diversicaudatum</i> |
| <i>Juglans regia L.</i> | Nematodes <i>Xiphinema diversicaudatum</i> |
| <i>Olea europaea L.</i> | Nematodes <i>Xiphinema diversicaudatum</i> |
| <i>Pistacia vera L.</i> | Nematodes <i>Xiphinema index</i> |
| <i>Prunus avium</i> and <i>P. cerasus</i> | Nematodes <i>Longidorus attenuatus</i> <i>Longidorus elongatus</i> <i>Longidorus macrosoma</i> <i>Xiphinema diversicaudatum</i> |
| <i>P. domestica</i> , <i>P. persica</i> and <i>P. salicina</i> | Nematodes |

Status: Point in time view as at 01/07/2017.

Changes to legislation: There are currently no known outstanding effects for the The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017. (See end of Document for details)

| | |
|-----------------|--|
| | <i>Longidorus attenuatus</i> <i>Longidorus elongatus</i> <i>Xiphinema diversicaudatum</i> |
| <i>Ribes</i> L. | Nematodes <i>Longidorus elongatus</i> <i>Longidorus macrosoma</i> <i>Xiphinema diversicaudatum</i> |
| <i>Rubus</i> L. | Nematodes <i>Longidorus attenuatus</i> <i>Longidorus elongatus</i> <i>Longidorus macrosoma</i> <i>Xiphinema diversicaudatum</i> |

SCHEDULE 7

Schedule 2, paragraphs 10(4),17(4) and 23(4)

Visual inspections, sampling and testing per genera or species and category

| Column 1 Genus or Species | Column 2 Category | Column 3 Frequency of visual inspections | Column 4 Requirements relating to sampling and testing |
|--|--------------------------|---|---|
| <i>Castanea sativa</i> Mill. | All categories | Annually | Sampling and testing to be carried out in the case of doubts concerning the presence of any pest listed in Table IA of schedule 6. |
| <i>Citrus</i> L., <i>Fortunella</i> Swingle and <i>Poncirus</i> Raf. | Pre-basic | Twice annually | Each pre-basic mother plant must be sampled and tested 6 years after its acceptance as a pre-basic mother plant and with subsequent intervals of 6 years concerning the presence of pests listed in Table II of schedule 6 and in the case of doubts concerning the presence of pests listed in Table IA of schedule 6. |
| | Basic | Annually | A representative portion of basic mother plants must be sampled and tested every six years on the basis of an assessment of the risk of infection of those plants concerning the presence of pests listed in Table IA and Table II of schedule 6. |
| | Certified | Annually | Sampling and testing must be carried out in the case of doubts concerning the presence of pests |

Status: Point in time view as at 01/07/2017.

Changes to legislation: There are currently no known outstanding effects for the The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017. (See end of Document for details)

| | | | |
|--|----------------|----------|---|
| | CAC | Annually | listed in Table IA and Table II of schedule 6. Sampling and testing must be carried out in the case of doubts concerning the presence of pests listed in Table IA and Table II of schedule 6. |
| <i>Corylus avellana</i> L. | All categories | Annually | Sampling and testing must be carried out in the case of doubts concerning the presence of pests listed in Table IA and Table II of schedule 6. |
| <i>Cydonia oblonga</i> Mill., <i>Malus</i> Mill and <i>Pyrus</i> L. | Pre-basic | Annually | Each pre-basic mother plant must be sampled and tested 15 years after its acceptance as a pre-basic mother plant and with subsequent intervals of 15 years concerning the presence of pests other than virus-like diseases and viroids listed in Table II of schedule 6, and in the case of doubts concerning the presence of pests listed in Table IA of schedule 6. |
| | Basic | Annually | A representative portion of basic mother plants must be sampled and tested every 15 years on the basis of an assessment of the risk of infection of those plants concerning the presence of pests other than virus-like diseases and viroids listed in Table II of schedule 6, and in the case of doubts concerning the presence of pests listed in Table IA of schedule 6. |
| | Certified | Annually | A representative portion of certified mother plants must be sampled and tested every 15 years on the basis of an assessment of the risk of infection of those plants concerning the presence of pests other than virus-like diseases and viroids listed in Table II of schedule 6, and in the case of doubts concerning the presence of pests listed in Table IA of schedule 6. Certified fruit plants must be sampled and tested in case of doubts concerning the presence of |

Status: Point in time view as at 01/07/2017.

Changes to legislation: There are currently no known outstanding effects for the The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017. (See end of Document for details)

| | | | |
|------------------------|----------------|--|--|
| | | | pests listed in Table IA and Table II of schedule 6. |
| | CAC | Annually | Sampling and testing must be carried out in the case of doubts concerning the presence of pests listed Table IA and Table II of schedule 6. |
| <i>Ficus carica</i> L. | All categories | Annually | Sampling and testing must be carried out in the case of doubts concerning the presence of pests listed in Table IA of schedule 6. |
| <i>Fragaria</i> L. | Pre-basic | Visual inspections must be carried out twice annually during the growing season. For plants and material produced by micropropagation which is maintained for a period shorter than three months, only one inspection during this period is necessary | Each pre-basic mother plant must be sampled and tested one year after its acceptance as a pre-basic mother plant and with subsequent intervals of one year concerning the presence of pests listed in Table II of schedule 6, and in the case of doubts concerning the presence of pests listed in Table IB of schedule 6. |
| | Basic | Visual inspections must be carried out twice annually during the growing season. For plants and material produced by micropropagation which is maintained for a period shorter than three months, only one inspection during this period is necessary. | Sampling and testing must be carried out in the case of doubts concerning the presence of pests listed in Table IB and Table II of schedule 6. |
| | Certified | Visual inspections must be carried out twice annually during the growing season. For plants and material produced by micropropagation which is maintained for a period shorter than three months, only one inspection during this period is necessary | Sampling and testing must be carried out in the case of doubts concerning the presence of pests listed in Table IB and Table II of schedule 6. |

Status: Point in time view as at 01/07/2017.

Changes to legislation: There are currently no known outstanding effects for the The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017. (See end of Document for details)

| | | | |
|-------------------------|-----------|---|---|
| | CAC | Visual inspections must be carried out twice annually during the growing season. For plants and material produced by micropropagation which is maintained for a period shorter than three months, only one inspection during this period is necessary | Sampling and testing must be carried out in the case of doubts concerning the presence of pests listed in Table IB and Table II of schedule 6. |
| <i>Juglans regia</i> L. | Pre-basic | Annually | Each flowering pre-basic mother plant must be sampled and tested one year after its acceptance as a pre-basic mother plant and with subsequent intervals of one year concerning the presence of pests listed in Table II of schedule 6 and in the case of doubts concerning the presence of pests listed in Table IA of schedule 6 . |
| | Basic | Annually | A representative portion of basic mother plants must be sampled and tested every year on the basis of an assessment of the risk of infection of those plants concerning the presence of pests listed in Table IA and Table II of schedule 6. |
| | Certified | Annually | A representative portion of certified mother plants must be sampled and tested every three years on the basis of an assessment of the risk of infection of those plants concerning the presence of pests listed in Table IA and Table II of schedule 6. Certified fruit plants shall be sampled and tested in the case of doubts concerning the presence of pests listed in Table IA and Table II of schedule 6. |
| | CAC | Annually | Sampling and testing must be carried out in the case of doubts concerning the presence of pests listed in Table IA and Table II of schedule 6. |

| | | | |
|-------------------------|----------------|----------|---|
| <i>Olea europaea</i> L. | Pre-basic | Annually | Each pre-basic mother plant must be sampled and tested 10 years after its acceptance as a pre-basic mother plant and with subsequent intervals of 10 years concerning the presence of pests listed in Table II of schedule 6, and in the case of doubts concerning the presence of pests listed in Table IA of schedule 6 . |
| | Basic | Annually | A representative portion of basic mother plants must be sampled in order to have all plants tested within an interval of 30 years on the basis of an assessment of the risk of infection of those plants concerning the presence of pests listed in Table IA and Table II of schedule 6. |
| | Certified | Annually | In the case of mother plants used for the production of seeds (hereinafter: ‘seed mother plants’), a representative portion of those seed mother plants must be sampled in order to have all plants tested within an interval of 40 years on the basis of an assessment of the risk of infection of those plants concerning the presence of pests listed in Table IA and Table II of schedule 6. In the case of mother plants other than seed mother plants, a representative portion of those plants must be sampled in order to have all plants tested within an interval of 30 years on the basis of an assessment of the risk of infection of those plants concerning the presence of pests listed in Table IA and Table II of schedule 6. |
| | CAC | Annually | Sampling and testing must be carried out in the case of doubts concerning the presence of pests listed in Table IA and Table II of schedule 6. |
| <i>Pistacia vera</i> L. | All categories | Annually | Sampling and testing must be carried out in the case of doubts |

Status: Point in time view as at 01/07/2017.

Changes to legislation: There are currently no known outstanding effects for the The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017. (See end of Document for details)

| | | | |
|--|------------------|-----------------|---|
| <p><i>Prunus amygdalus</i>,; <i>P. armeniaca</i>; <i>P. domestica</i>; <i>P. persica</i>; and <i>P. salicina</i></p> | <p>Pre-basic</p> | <p>Annually</p> | <p>concerning the presence of pests listed in Table IA of schedule 6</p> <p>Each flowering pre-basic mother plant must be sampled and tested for <i>Prune dwarf virus</i> (referred to in the remainder of this table as “PDV”) and <i>Prunus necrotic ringspot virus</i> (referred to in the remainder of this table as “PNRSV”) one year after its acceptance as a pre-basic mother plant and with subsequent intervals of one year.</p> <p>Each tree planted intentionally for pollination and, where appropriate, the major pollinating trees in the environment must be sampled and tested for PDV and PNRSV. In the case of <i>P. persica</i>, each flowering pre-basic mother plant must be sampled one year after its acceptance as a pre-basic mother plant and tested for <i>Peach latent mosaic viroid</i> (referred to in the remainder of this table as “PLMVD”). Each pre-basic mother plant must be sampled 10 years after its acceptance as a pre-basic mother plant, and with subsequent intervals of 10 years, and tested for viruses, other than PDV and PNRSV, relevant for the species as listed in Table II of schedule 6, and tested in the case of doubts concerning the presence of pests listed in Table IA of schedule 6.</p> |
| | <p>Basic</p> | <p>Annually</p> | <p>A representative portion of flowering basic mother plants must be sampled every year and tested for PDV and PNRSV on the basis of an assessment of the risk of infection of those plants.</p> <p>A representative portion of trees planted intentionally for pollination and, where appropriate, the major pollinating trees in the environment must be sampled and tested for PDV and PNRSV on the basis of an assessment of the risk of infection of those plants.</p> |

Status: Point in time view as at 01/07/2017.

Changes to legislation: There are currently no known outstanding effects for the The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017. (See end of Document for details)

In the case of *P. persica*, a representative portion of flowering basic mother plants must be sampled once a year and tested for PLMVd on the basis of an assessment of the risk of infection of those plants.

A representative portion of non-flowering basic mother plants must be sampled every 3 years and tested for PDV and PNRSV on the basis of an assessment of the risk of infection of those plants.

A representative portion of basic mother plants must be sampled every 10 years and tested for pests, other than PDV and PNRSV, relevant for the species as listed in Table IA and Table II of schedule 6 on the basis of an assessment of the risk of infection of those plants.

Certified Annually

A representative portion of flowering certified mother plants must be sampled every year and tested for PDV and PNRSV on the basis of an assessment of the risk of infection of those plants.

A representative portion of trees planted intentionally for pollination and, where appropriate, the major pollinating trees in the environment must be sampled and tested for PDV and PNRSV on the basis of an assessment of the risk of infection of those plants.

In the case of *P. persica*, a representative portion of flowering certified mother plants must be sampled once a year and tested for PLMVd on the basis of an assessment of the risk of infection of those plants.

A representative portion of non-flowering certified mother plants must be sampled every 3 years and tested for PDV and PNRSV on the basis of an assessment of the risk of infection of those plants.

A representative portion of certified mother plants must be sampled every 15 years and tested

Status: Point in time view as at 01/07/2017.

Changes to legislation: There are currently no known outstanding effects for the The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017. (See end of Document for details)

| | | | |
|--|-----------|----------|--|
| | CAC | Annually | <p>for pests, other than PDV and PNRSV, relevant for the species as listed in Table IA and Table II of schedule 6 on the basis of an assessment of the risk of infection of those plants.</p> <p>Sampling and testing must be carried out in the case of doubts concerning the presence of pests listed in Table IA and Table II of schedule 6.</p> |
| <i>Prunus avium</i> and <i>P.cerasus</i> | Pre-basic | Annually | <p>Each flowering pre-basic mother plant must be sampled and tested for PDV and PNRSV one year after its acceptance as a pre-basic mother plant and with subsequent intervals of one year. Each tree planted intentionally for pollination and, where appropriate, the major pollinating trees in the environment must be sampled and tested for PDV and PNRSV.</p> <p>Each pre-basic mother plant must be sampled 10 years after its acceptance as a pre-basic mother plant, and with subsequent intervals of 10 years, and tested for viruses, other than PDV and PNRSV, relevant for the species as listed in Table II of schedule 6, and tested in the case of doubts concerning the presence of pests listed in Table IA of schedule 6.</p> |
| | Basic | Annually | <p>A representative portion of flowering basic mother plants must be sampled every year and tested for PDV and PNRSV on the basis of an assessment of the risk of infection of those plants.</p> <p>A representative portion of trees planted intentionally for pollination and, where appropriate, the major pollinating trees in the environment must be sampled and tested for PDV and PNRSV on the basis of an assessment of the risk of infection of those plants.</p> <p>A representative portion of non-flowering basic mother plants</p> |

Status: Point in time view as at 01/07/2017.

Changes to legislation: There are currently no known outstanding effects for the The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017. (See end of Document for details)

| | | | |
|-----------------|-----------|----------------|---|
| | | | <p>must be sampled every 3 years and tested for PDV and PNRSV on the basis of an assessment of the risk of infection of those plants.</p> <p>A representative portion of basic mother plants shall be sampled every 10 years and tested for pests, other than PDV and PNRSV, relevant for the species as listed in Table IA and Table II of schedule 6 on the basis of an assessment of the risk of infection of those plants.</p> |
| | Certified | Annually | <p>A representative portion of flowering certified mother plants must be sampled every year and tested for PDV and PNRSV on the basis of an assessment of the risk of infection of those plants.</p> <p>A representative portion of trees planted intentionally for pollination and, where appropriate, the major pollinating trees in the environment must be sampled and tested for PDV and PNRSV on the basis of an assessment of the risk of infection of those plants.</p> <p>A representative portion of non-flowering certified mother plants must be sampled every 3 years and tested for PDV and PNRSV on the basis of an assessment of the risk of infection of those plants.</p> <p>A representative portion of certified mother plants must be sampled every 15 years and tested for pests, other than PDV and PNRSV, relevant for the species as listed in Table IA and Table II of schedule 6 on the basis of an assessment of the risk of infection of those plants.</p> |
| | CAC | Annually | <p>Sampling and testing must be carried out in the case of doubts concerning the presence of pests listed in Table IA and Table II of schedule 6.</p> |
| <i>Ribes</i> L. | Pre-basic | Twice annually | <p>Each pre-basic mother plant must be sampled and tested 4 years after its acceptance as a pre-basic mother plant and with subsequent</p> |

Status: Point in time view as at 01/07/2017.

Changes to legislation: There are currently no known outstanding effects for the The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017. (See end of Document for details)

| | | | |
|-----------------|-----------|---|---|
| | | | intervals of 4 years concerning the presence of pests listed in Table II of schedule 6, and in the case of doubts concerning the presence of pests listed in Table IA and Table IB of schedule 6. |
| | Basic | Annually | Sampling and testing must be carried out in the case of doubts concerning the presence of pests listed in Table IA, Table IB and Table II of schedule 6. |
| | Certified | Annually | Sampling and testing must be carried out in the case of doubts concerning the presence of pests listed in Table IA, Table IB and Table II of schedule 6. |
| | CAC | Annually | Sampling and testing must be carried out in the case of doubts concerning the presence of pests listed in Table IA, Table IB and Table II of schedule 6. |
| <i>Rubus L.</i> | Pre-basic | Twice annually | Each pre-basic mother plant must be sampled and tested 2 years after its acceptance as a pre-basic mother plant and with subsequent intervals of 2 years concerning the presence of pests listed in Table II of schedule 6, and in the case of doubts concerning the presence of pests listed in Table IA and Table IB of schedule 6. |
| | Basic | Where plants are grown in the field or in pots, visual inspections must be carried out twice annually. For plants and material produced by micropropagation which is maintained for a period shorter than 3 months, only one inspection during this period is necessary. | Sampling and testing must be carried out in the case of doubts concerning the presence of pests listed in Table IA, Table IB and Table II of schedule 6. |
| | Certified | Annually | Sampling and testing must be carried out in the case of doubts concerning the presence of pests |

Status: Point in time view as at 01/07/2017.**Changes to legislation:** There are currently no known outstanding effects for the The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017. (See end of Document for details)

| | | | |
|---------------------|-----------|----------------|--|
| | CAC | Annually | listed in Table IA, Table IB and Table II of schedule 6. Sampling and testing must be carried out in the case of doubts concerning the presence of pests listed in Table IA, Table IB and Table II in schedule 6. |
| <i>Vaccinium L.</i> | Pre-basic | Twice annually | Each pre-basic mother plant must be sampled and tested 5 years after its acceptance as a pre-basic mother plant and with subsequent intervals of 5 years concerning the presence of pests listed in Table II in schedule 6, and in the case of doubts concerning the presence of pests listed in Table IB of schedule 6. |
| | Basic | Twice annually | Sampling and testing must be carried out in the case of doubts concerning the presence of pests listed in Table IB and Table II of schedule 6. |
| | Certified | Annually | Sampling and testing must be carried out in the case of doubts concerning the presence of pests listed in Table IB and Table II of schedule 6. |
| | CAC | Annually | Sampling and testing must be carried out in the case of doubts concerning the presence of pests listed in Table IB and Table II of schedule 6. |

SCHEDULE 8

Regulation 18(2)

Powers of inspectors

Powers of entry etc.

1.—(1) An inspector may, on producing a duly authenticated authorisation if so required, enter any premises in Scotland of a supplier, at any reasonable time, if the inspector reasonably suspects that any activity to which these Regulations apply is being carried out on those premises, for the purposes of ascertaining whether there is, or has been, any contravention of these Regulations.

(2) An inspector entering premises under sub-paragraph (1) may—

(a) be accompanied by—

(i) such other persons as the inspector considers necessary; and

Status: Point in time view as at 01/07/2017.

Changes to legislation: There are currently no known outstanding effects for the The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017. (See end of Document for details)

- (ii) any representative of the European Commission acting for the purpose of the enforcement of a European Union obligation;
 - (b) take onto those premises any equipment or materials that the inspector considers necessary for the enforcement of these Regulations;
 - (c) open any container;
 - (d) carry out any searches, inspections, measurements and tests;
 - (e) take samples;
 - (f) have access to, and inspect, any books, documents or records (in whatever form they are held) relating to these Regulations and remove them to enable them to be copied;
 - (g) photograph or copy anything, the production of which the inspector has the power to require under head (f);
 - (h) photograph anything which the inspector has reasonable cause to believe may be relevant in connection with the enforcement of these Regulations; and
 - (i) seize any computers and associated equipment for the purpose of copying documents, provided that they are returned as soon as practicable.
- (3) Any person who accompanies an inspector in accordance with this paragraph may perform any of the inspector's functions but only under the supervision of that inspector.

Information notice

2. An inspector may, by notice served on any person, require that person to provide such information as is specified in the notice in such form and within such period following service of the notice or at such time as is so specified (in this schedule, “an information notice”).

Prohibition on movement

3. An inspector may, by notice served on any person, prohibit that person from moving plant material from any premises if the inspector has reasonable grounds to suspect that the plant material fails to comply with a requirement to which it is subject by virtue of schedule 2, 3 or 5 (in this schedule, “a movement notice”).

Enforcement and prohibition notices

4.—(1) An inspector may serve a notice on any person who contravenes, or who the inspector has reasonable grounds to suspect may contravene, these Regulations—

- (a) requiring that person to act in accordance with the Regulations (in this schedule, an “enforcement notice”); or
- (b) prohibiting that person from acting in breach of the Regulations (in this schedule, a “prohibition notice”).

(2) The notice must give reasons for serving it and, if appropriate, specify what action must be taken and specify the time limit for taking any such action.

Appeals against enforcement and prohibition notices

5.—(1) Any person who is aggrieved by a decision of an inspector to serve a notice under this schedule may appeal by application to the sheriff.

(2) The period within which an appeal must be brought is 28 days from the service of the notice or, in the case of an enforcement notice, the period specified in the notice, whichever ends earlier.

- (3) A notice served under this schedule must state—
- (a) the right of appeal to the sheriff by the person on whom the notice is served; and
 - (b) the period in which such an appeal may be brought.

(4) On an appeal under this paragraph, the sheriff may either cancel or affirm the notice and, if the sheriff affirms the notice, the sheriff may do so either in its original form or with such modifications as the sheriff thinks fit.

Compliance with notices

6.—(1) A notice served under this schedule must be complied with at the expense of the person on whom it is served and, if it is not complied with, an inspector may make arrangements to secure compliance with the notice.

(2) Where an inspector makes arrangements pursuant to sub-paragraph (1), the Scottish Ministers may recover all reasonable expenses in connection with the arrangements as a debt from the person on whom the notice was served.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply in Scotland, continue to implement Council Directive [2008/90/EC](#) on the marketing of fruit plant propagating material and fruit plants intended for fruit production (OJ No L 267, 8.10.2008, p.8). They also implement—

Commission Implementing Directive 2014/96/EU on the requirements for the labelling, sealing and packaging of fruit plant propagating material and fruit plants intended for fruit production, falling within the scope of Council Directive [2008/90/EC](#) (OJ L 298, 16.10.2014, p.12);

Commission Implementing Directive 2014/97/EU implementing Council Directive [2008/90/EC](#) as regards the registration of suppliers and of varieties and the common list of varieties (OJ L 298, 16.10.2014, p.16);

Commission Implementing Directive 2014/98/EU implementing Council Directive [2008/90/EC](#) as regards specific requirements for the genus and species of fruit plants referred to in Annex I thereto, specific requirements to be met by suppliers and detailed rules concerning official inspections (OJ No L, 298, 16.10.2014, p.22).

They revoke and replace the Marketing of Fruit Plant Material Regulations (S.I. 2010/2079) as regards Scotland (see regulation 24).

Part 1 of the Regulations is introductory. The fruit plants and propagating material (plant material) to which the Regulations apply is set out in regulation 3 and schedule 1.

Part 2 contains requirements for marketing plant material (regulation 5). In order to be marketed, plant material must comply with requirements set out for certification (regulation 5(1) and schedule 2) and packaging, sealing and labelling (regulation 8 and schedule 5). Plant material must be, or be in the process of being, registered (schedule 4) and have been granted, or an application made for, plant variety rights (regulation 7). CAC material must comply with requirements set out in schedule 3 and be accompanied by a supplier's document (schedule 5, part 2). Regulation 6 sets out exceptions to these general requirements.

Status: Point in time view as at 01/07/2017.

Changes to legislation: There are currently no known outstanding effects for the The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017. (See end of Document for details)

Part 3 requires the registration of suppliers (regulation 10) and a register of suppliers (regulation 11). Suppliers are required to monitor the production of plant material (regulation 14), remove non-compliant materials (regulation 15), separate plant materials (regulation 16) and keep records (regulation 17).

Part 4 deals with the enforcement and administration of these Regulations and sets out inspectors' (appointed by the Scottish Ministers) powers, including a power to serve a notice on any person to require that person to provide information and a power to prohibit the movement of plant material suspected of failing to comply with these Regulations (schedule 8). An inspector also has a power to serve a notice on any person acting in contravention of these Regulations to require that person to comply with the Regulations or to prohibit that person from acting in breach of them. Under regulation 20(1) a person who fails to comply with any such notice or to give assistance to the inspector commits an offence. Under regulation 20(2) a person who commits an offence under the Regulations is liable on summary conviction to a fine not exceeding level 3 on the standard scale. Regulation 22 makes provision for arrangements for official measures.

Part 5 sets out a transitional provision (regulation 23) and a revocation provision (regulation 24). No business and regulatory impact assessment has been prepared for these Regulations as no impact or no significant impact upon business, charities or voluntary bodies is foreseen.

Status:

Point in time view as at 01/07/2017.

Changes to legislation:

There are currently no known outstanding effects for the The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017.