
STATUTORY INSTRUMENTS

2002 No. 3026

The Forest Reproductive Material (Great Britain) Regulations 2002

PART VII

Compliance

Keeping and production of documents

26.—(1) Subject to paragraph (2), any applicant under regulation 7(7) who seeks or obtains approval of basic material shall, for a period of five years from the date of his application, retain copies of any documentation referred to in Schedules 2 to 5 as he has obtained or created pursuant to his application, and in particular, in respect of basic material intended for the production of forest reproductive material to be certified as “tested”, shall keep and retain records which describe test sites, including location, climate, soil, past use, establishment, management and any damage due to abiotic or biotic factors.

(2) An applicant under regulation 7(7) who is unsuccessful in obtaining approval of basic material, shall cease to be subject to the obligations of paragraph (1) after his time has expired for appealing against a decision of the Commissioners not to approve the basic material the subject of the application, or, in the case where he lodges an appeal against such a decision, on the expiry of his time for further appeal after receiving notification of a decision of the Tribunal or other relevant appeal body rejecting his appeal.

(3) Any registered supplier and any other person who undertakes the collecting or production, storage, processing, or transportation of forest reproductive material (“relevant activities”) shall—

- (a) retain or cause to be retained such of the following documents as he has obtained or created pursuant to these Regulations or, where in accordance with these Regulations, the original is no longer retained, a copy thereof:
 - (i) notification under regulation 11 of the proposed collection of forest reproductive material and any written authorization or evidence of the collector’s authority to collect that forest reproductive material ;
 - (ii) Master Certificate;
 - (iii) evidence of any assessment undertaken for the purpose of regulation 19(2), including the date on which the assessment was made;
 - (iv) supplier’s label or document;
 - (v) licence granted under regulation 18;
 - (vi) communication required under regulation 22;
 - (vii) plant passports; and
- (b) retain or cause to be retained if so required by a notice in writing served on him by the Commissioners, such other records relating to relevant activities, or to activities undertaken as a registered supplier, in such form, as may be specified in the said notice.

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(4) All such documents and other records required to be retained by a registered supplier or other person—

- (a) pursuant to paragraph (3)(a) shall be so retained for a period of 5 years from the date of the document; and
- (b) pursuant to paragraph (3)(b) shall be so retained for the period of time specified in the notice served pursuant to that paragraph.

(5) A registered supplier or other person required pursuant to paragraph (3)(b) to retain specified records shall furnish to the Commissioners at their request such information relating to those records as they may reasonably require.

(6) Any applicant referred to in paragraph (1) (as read with paragraph (2)), any registered supplier and any other person who undertakes relevant activities shall, on the request of an authorised officer, produce to that officer or another person nominated by that officer, and allow the officer or other person to make copies of—

- (a) records and documents kept or retained by him or on his behalf pursuant to paragraphs (1) or (3); and
- (b) any other books, plans, maps, photographs, records or other documents, including those held in electronic form (“electronic material”), in his possession or control which relate to his application under regulation 7(7) or to the relevant activities or his activities as a registered supplier, as appropriate.

(7) Any applicant, registered supplier or other person required to produce electronic material under paragraph (6) shall give the authorised officer or other person referred to in that paragraph access to the computer processor or disk or any other electronic storage on which the electronic material is held, and shall provide the authorised officer or other person nominated by him with reasonable facilities for the inspection and copying of such electronic material.

Powers to inspect and take samples

27.—(1) Subject to paragraph (5), an authorised officer may, for the purposes set out in paragraph (4), and at all reasonable hours, enter and inspect any premises within the meaning of paragraph (5), and shall, if requested, produce documentary evidence of his authorisation by the Commissioners so to enter and inspect.

(2) An authorised officer entering and inspecting premises in exercise of his powers under paragraph (1) may take with him such other persons, including representatives of the Commission of the European Communities, and such equipment or vehicles as he considers necessary for the purposes of entering and inspecting the premises, or for facilitating the checks required under Article 16(6) of the Directive.

(3) Any persons who have accompanied an authorised officer in entering and inspecting premises in accordance with paragraph (2) may, for the purposes of (2) and (4), whether or not accompanied by the authorised officer and on production if so requested of documentary evidence of their authorisation from the Commission of the European Communities or an authorised officer, remain on and from time to time re-enter the premises with such equipment or vehicles as the authorised officer considers necessary.

(4) The purposes for which an authorised officer may enter and inspect premises in accordance with paragraph (1) are as follows—

- (a) to check that the requirements of regulations 16(1), 17, 21 to 25 and 31 have been and are being met;
- (b) to observe and monitor practices as to production, and in particular as to separation, identification, propagation, mixing, production and labelling of forest reproductive material intended for marketing;

- (c) to check that the conditions on which any licence granted under regulation 18 have been and are being complied with;
 - (d) to observe testing premises, practices and techniques which are used or which it is proposed be used for the assessment of seeds for purposes of regulations 19(2) and 20;
 - (e) to examine records or other documents including those held in electronic form pursuant to regulation 26;
 - (f) to examine any forest reproductive material or basic material on those premises and to take samples of such forest reproductive material and basic material as the authorised officer considers necessary; and
 - (g) to take such photographs of the premises or any material or other objects found there or of any activity carried on at the premises in connection with marketing of forest reproductive material or any relevant activity as the authorised officer considers necessary.
- (5) In this regulation, “premises” shall—
- (a) mean premises which the authorised officer exercising the powers granted him under this regulation reasonably believes are used for collection, production, storage, trade, transportation, importation or marketing of forest reproductive material;
 - (b) exclude premises used wholly or mainly for domestic purposes; and
 - (c) include any vehicle or vessel.

Treatment of seed samples

28.—(1) A sample of seed taken by an authorised officer shall be divided by him into three parts, each of which he shall seal, and one part shall be delivered or sent by him to the owner of the seed or a representative nominated by the owner, one part shall be delivered or sent to a third party for independent testing, and the remaining part shall be retained by the authorised officer and be available for production to a court in accordance with regulation 29, provided that where it appears to the person taking the sample that the seed from which the sample has been taken was purchased for use and not for re-sale, the first part of the sample shall be delivered or sent to the last seller of the seed or to his representative in place of the owner of the seed or to his representative.

(2) An authorised officer taking of a sample of seeds pursuant to this regulation shall issue to the owner of the seeds a certificate in the form set out in Schedule 12.

Use of samples in criminal proceedings

29.—(1) Evidence shall not be adduced in proceedings for an offence under regulation 30 respecting a sample of seeds taken by an authorised officer unless the sample was dealt with in accordance with the manner prescribed in regulation 28 and the provisions of this regulation have been and are observed.

(2) A certificate in the form prescribed by regulation 28(2) purporting to be issued by an authorised officer and stating that a sample was dealt with in a particular manner shall be sufficient evidence of the facts stated in the certificate.

(3) If part of a sample taken by an authorised officer is sent to a third party for independent testing, it shall be so sent as soon as practicable after the sample is taken, and the person to whom any other part of the sample is given shall be informed before the part to be sent to the third party is sent.

(4) A copy of a test result issued by an independent third party in documentary form in respect of a test of part of a sample taken by an authorised officer shall be sent to the person to whom any other part of the sample was or is being sent.

(5) In any proceedings for an offence in respect of which evidence obtained pursuant to this regulation and regulation 28 is to be relied on by the prosecutors of the offence, a copy of a test

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result issued by an independent third party in documentary form shall accompany the summons or complaint.

(6) Where proceedings are brought for an offence—

- (a) under regulation 30(1)(e) in respect of providing false information about seed assessments undertaken for the purposes of regulation 19(2) as read with regulation 20, or
- (b) under regulation 30(1)(f),

if any sample of the seeds has been taken by an authorised officer, the third part of that sample required by regulation 28(1) to be kept by the authorised officer shall be produced at the hearing, and the court may, if it thinks fit, upon the request of a party to the proceedings, cause the part so produced to be sent to an independent third party for testing.

(7) If, in a case where an appeal is brought, no action has been taken under paragraph (6), the provisions of that paragraph shall apply also to the court by which the appeal is heard.

Offences and Penalties

30.—(1) A person shall be guilty of an offence if without reasonable excuse, proof of which shall lie with him, he—

- (a) contravenes regulations 8(2), 9(2),(3) and (9)(a), 16(1), 17 and 21 to 25;
- (b) breaches any condition on which a licence has been granted to him under regulation 18;
- (c) fails to produce records or other documents when required to do so under regulation 26 or to provide access and reasonable facilities for the inspection or copying of electronic material under that regulation;
- (d) obstructs or impedes an authorised officer, or any person nominated by an authorised officer under regulation 26(6) in the exercise of powers set out in regulations 26 and 27;
- (e) provides or permits to be provided false information in any document required under these regulations; or
- (f) falsifies test results of assessments carried out for the purpose of providing the information required under regulation 19(2) as read with regulation 20, or otherwise interferes with the testing process so that the information provided pursuant to regulation 19(2) as read with regulation 20 is false.

(2) A prosecution for an offence under this regulation may begin no later than after the expiry of—

- (a) three years from the commission of the offence; or
- (b) one year from its discovery by the Commissioners.

(3) A person guilty of an offence under paragraph (1) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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