
STATUTORY INSTRUMENTS

2002 No. 3176

The Seed (Registration, Licensing and Enforcement) (England) Regulations 2002

PART VII

MISCELLANEOUS AND SUPPLEMENTAL

Arrangements for official measures

34.—(1) Subject to the following provisions of this regulation, the Secretary of State may make arrangements, in such form as she is of the opinion may be necessary or desirable, for the purpose of enabling any person to act under her responsibility or control to carry out official measures.

(2) The Secretary of State shall not make arrangements under this regulation unless she is satisfied that it will make provision for the purpose of preventing the person with whom the arrangement is made, and any other person, from—

- (a) deriving any private gain from any official measures carried out under the arrangement; and
- (b) carrying out any official measures under the arrangement except under the supervision of the Secretary of State.

(3) An arrangement under this regulation may include such conditions as the Secretary of State is of the opinion are necessary or desirable for the purposes referred to in paragraphs (1) and (2), including conditions—

- (a) specifying—
 - (i) the official measures that the person with whom the arrangement is made shall carry out under it;
 - (ii) the fees that may be charged by the person with whom the arrangement is made in relation to the official measures he carries out; and
 - (iii) the records that must be kept by the person with whom the arrangement is made in connection with the official measures he carries out; and
- (b) prohibiting the person with whom the arrangement is made from—
 - (i) carrying out the official measures except under official supervision; and
 - (ii) charging fees in relation to official measures he carries out under the arrangement except to the extent that these do not exceed the costs he incurs in carrying them out.

(4) The Secretary of State may vary, suspend or revoke an arrangement or the conditions of an arrangement made under this regulation, by giving notice to the person with whom the arrangement is made.

(5) A notice of a variation, suspension or revocation of any arrangement or of a condition of an arrangement shall specify—

- (a) in respect of a variation or a revocation, a date on and after which the variation or revocation shall have effect, and
 - (b) in respect of a suspension, a period during which the suspension shall have effect,
- and the variation, suspension or revocation shall have effect in accordance with the notice.

(6) When a variation, suspension or revocation has effect the Secretary of State may, for any purposes in relation to these Regulations or a determination under these Regulations, continue to have regard to such of the official measures carried out under an arrangement which was varied, suspended or revoked as appear to her to be official measures carried out in accordance with the provisions of these Regulations.

Fees

35.—(1) The Secretary of State may charge any person, including any person with whom an arrangement has been made under regulation 34, reasonable fees in respect of the costs the Secretary of State reasonably incurs in carrying out official measures for the purposes of these Regulations.

(2) A person with whom an arrangement has been made in accordance with regulation 34, may charge any other person reasonable fees in respect of costs reasonably incurred in carrying out official measures under the responsibility or control of the Secretary of State in accordance with these Regulations.

(3) Where a person has been given notice—

- (a) by or on behalf of the Secretary of State of a fee duly charged in accordance with paragraph (1); or
- (b) by a person with whom an arrangement has been made under regulation 34 of a fee duly charged in accordance with paragraph (2),

the person given the notice shall pay as specified in the notice the amount of the fee so charged.

Right to make representations

36.—(1) The Secretary of State shall not—

- (a) refuse to register a person as a person who may engage in a seed industry activity;
- (b) revoke the registration of a person as a person who may engage in a seed industry activity;
- (c) refuse to grant or vary a crop inspector's licence;
- (d) vary a crop inspector's licence pursuant to regulation 12(4);
- (e) suspend or revoke a licensed crop inspector's licence;
- (f) refuse to grant a seed sampler's licence;
- (g) vary a licensed seed sampler's licence;
- (h) suspend or revoke a licensed seed sampler's licence;
- (i) refuse to grant or vary a LSTS licence;
- (j) vary a LSTS licence pursuant to regulation 26(4); or
- (k) suspend or revoke a LSTS licence;

unless she has complied with the provisions of this regulation.

(2) The Secretary of State shall—

- (a) give the person concerned notice stating what she is proposing to do and the reasons for it; and

- (b) inform the person concerned of his right to make representations to her and of the manner in which and the time (not being less than 21 days from the giving of the notice) within which such representations may be made.
- (3) In this regulation, the person concerned in the case of any notice served in connection with a LSTS shall be the person in charge of the LSTS.
- (4) Subject to paragraph (5), the Secretary of State shall not proceed with her proposed refusal, variation, suspension or revocation (as the case may be) until the period allowed for making representations has passed.
- (5) Where the Secretary of State considers it necessary to suspend a crop inspector's licence, a seed sampler's licence or a LSTS licence, with immediate effect, she may do so notwithstanding the right of the person concerned to make representations and when she gives notice of her decision under paragraph (7) she shall—
 - (a) indicate whether the suspension should for the time being remain in force; or
 - (b) withdraw the suspension of the licence.
- (6) A person who makes representations to the Secretary of State shall provide the Secretary of State with a copy of any document upon which that person seeks to rely within the time allowed for the making of such representations.
- (7) The Secretary of State shall consider any representations made to her under this regulation before giving the person concerned notice of her decision together with the reasons for it and, where appropriate, of the date from which the decision shall have effect.
- (8) A notice under paragraph (7) shall where applicable inform the person concerned of—
 - (a) his right to appeal to the Tribunal against the Secretary of State's decision; and
 - (b) the time within which such an appeal may be brought.
- (9) There shall be no right of appeal to the Tribunal where the Secretary of State—
 - (a) has refused to grant a crop inspector's licence or a seed sampler's licence for the sole reason that he failed to pass the relevant examination for the grant of the licence;
 - (b) has refused to vary a crop inspector's licence for the sole reason that he failed to pass the relevant examination for the variation of the licence; or
 - (c) has decided that a licensed crop inspector or licensed seed sampler is no longer qualified to inspect crops or sample seed (as the case may be) and has—
 - (i) in the case of a crop inspector varied, suspended or revoked his licence, or
 - (ii) in the case of a licensed seed sampler suspended or revoked his licence,for the sole reason that he failed to pass an examination which he was required to undergo as a condition of his licence.
- (10) The Secretary of State may charge any person making representations under this regulation reasonable fees in that connection which shall be payable on making the representations to her.

Appeals

- 37.—**(1) A person notified of his right to appeal under regulation 36(8) may bring an appeal to the Tribunal.
- (2) The Secretary of State shall take such steps as may be necessary to give effect to any decision of the Tribunal given on the final determination of an appeal under paragraph (1).

Extension of time

38. Where any document is to be delivered or given or any act is to be done in a time prescribed by these Regulations the Secretary of State may, if in all the circumstances of the case she considers it reasonable, extend the time for such period and upon such terms as she thinks fit.

Form of records

39. Any record required to be kept under these Regulations may be in written or electronic form and shall be kept for at least three years.

Form of lists

40. Any list required to be kept by the Secretary of State under these Regulations may be in written or electronic form.

Service of notices

41.—(1) Any notice required by virtue of these Regulations to be given to any person by the Secretary of State may be given by her—

- (a) by delivering it to him or by leaving it at his proper address or by sending it by post to him at that address;
- (b) if the person is a body corporate other than a limited liability partnership, by giving it in accordance with paragraph (a) on the secretary of the body;
- (c) if the person is a limited liability partnership, by giving it in accordance with paragraph (a) on a member of the partnership; or
- (d) if the person is a partnership, by giving it in accordance with paragraph (a) on a partner or a person having control of the management of the partnership business.

(2) For the purposes of this regulation and section 7 of the Interpretation Act 1978⁽¹⁾ (service of documents by post) in its application to this regulation, the proper address of any person to whom a notice is to be given shall be his last known address, except that—

- (a) in the case of a body corporate (other than a limited liability partnership) or its secretary, it shall be the address of the registered or principal office of the body;
- (b) in the case of a limited liability partnership or a member of the partnership, it shall be the address of the registered or principal office of the partnership; and
- (c) in the case of a partnership or a partner or a person having the control or management of a partnership business, it shall be the address of the principal office of the partnership.

(3) Paragraph (4) applies if a person to be given a notice under these Regulations by the Secretary of State has specified to her an address within the United Kingdom other than his proper address (as determined under paragraph (2)) as the one at which he or someone on his behalf will accept notices of that description.

(4) In relation to that notice, that address shall be treated as his proper address for the purposes of this regulation and section 7 of the Interpretation Act 1978 in its application to this regulation, instead of that determined under paragraph (2).

Revocations, transitional and savings provisions

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

(1) 1978 c. 30.

- (a) the Seeds (Registration, Licensing and Enforcement) Regulations 1985(2) (“the 1985 Regulations”) as respects England; and
- (b) the Seed (Fees) Regulations 1985(3) (“the 1985 Fees Regulations”) in relation to matters arising under the 1985 Regulations as respects England.

(2) The revocations in paragraph (1) shall not apply in relation to seed harvested on or before 31st December 2002 until 1st July 2003; and the remaining provisions of this regulation shall have effect only in relation to anything done under the 1985 Regulations or the 1985 Fees Regulations as respects England.

(3) Any application made to the Secretary of State in accordance with regulation 4(2) of the 1985 Regulations but not determined at the coming into force of these Regulations shall be treated as an application referred to in regulation 4(1) of these Regulations and shall be determined in accordance with these Regulations.

(4) Any registration made pursuant to regulation 4(3) of the 1985 Regulations and having effect at the coming into force of these Regulations shall have effect as though it were a registration made pursuant to regulation 5 of these Regulations.

(5) Subject to paragraph (6)—

- (a) any licence granted to a seed testing station pursuant to regulation 9(1) of the 1985 Regulations and having effect at the coming into force of these Regulations shall have effect as though it were a licence granted pursuant to regulation 25 of these Regulations; and
- (b) any licence granted to a crop inspector or seed sampler pursuant to regulation 10(1) of the 1985 Regulations and having effect at the coming into force of these Regulations shall have effect as though it were a licence granted pursuant to regulation 11 of these Regulations in the case of a crop inspector and regulation 18 of these Regulations in the case of a seed sampler.

(6) The right to make representations pursuant to regulation 36 of these Regulations and to appeal to the Tribunal pursuant to regulation 37 of these Regulations shall not apply in respect of any licence which was granted under the 1985 Regulations and which is varied within three months of the coming into force of these Regulations.

(7) Any fee arising (whether wholly or in part) under the 1985 Regulations or the 1985 Fees Regulations but not paid at the coming into force of these Regulations shall be treated as a fee arising under these Regulations and shall be recoverable accordingly.

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

(3) S.I. 1985/981, as last amended by S.I. 1990/610, S.I. 1999/1865 and, as respects England, S.I. 2002/1563.