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## STATUTORY INSTRUMENTS

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# 2011 No. 463

## The Seed Marketing Regulations 2011

### PART 1

#### Introduction

##### **Title, application and commencement**

1. These Regulations may be cited as the Seed Marketing Regulations 2011; they apply in England and come into force on 1st April 2011.

##### **Meaning of “marketing”**

2.—(1) In these Regulations “marketing” means the sale, holding with a view to sale, offer for sale or any disposal, supply or transfer aimed in each case at commercial exploitation of seed to third parties, whether or not for consideration.

(2) But marketing does not include trade that is not aimed at commercial exploitation, such as—

- (a) the supply of seed to official testing and inspection bodies; or
- (b) the supply of seed to a person who provides processing services but who does not acquire title to the seed.

##### **Interpretation of other terms**

3.—(1) For the purposes of these Regulations—

- (a) the “United Kingdom National List” is the list of plant varieties published by the Secretary of State in accordance with the provisions of the Seeds (National Lists of Varieties) Regulations 2001<sup>(1)</sup>;
- (b) the “Common Catalogue” is the catalogue provided for in Council Directive [2002/53/EC](#) on the common catalogue of varieties of agricultural plant species<sup>(2)</sup> and in Council Directive [2002/55/EC](#) on the marketing of vegetable seed<sup>(3)</sup>.

(2) In these Regulations all references to—

- (a) Council Directive [2002/54/EC](#) on the marketing of beet seed<sup>(4)</sup>,
- (b) Council Directive [66/402/EEC](#) on the marketing of cereal seed<sup>(5)</sup>,
- (c) Council Directive [66/401/EEC](#) on the marketing of fodder plant seed<sup>(6)</sup>,
- (d) Council Directive [2002/57/EC](#) on the marketing of seed of oil and fibre plants<sup>(7)</sup>,

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(1) [S.I. 2001/3510](#), as amended by [S.I. 2004/2949](#), [2007/1871](#), [2008/2683](#), [2009/1273](#), [2010/1195](#) and [2011/464](#).

(2) OJ No L 193, 20.7.2002, p. 1, as last amended by Regulation (EC) No 1829/2003 (OJ No L 268, 18.10.2003, p. 1).

(3) OJ No L 193, 20.7.2002, p. 33, as last amended by Commission Directive [2009/74/EC](#) (OJ No L 166, 27.6.2009, p. 40).

(4) OJ No L 193, 20.7.2002, p. 12, as last amended by Council Directive [2004/117/EC](#) (OJ No L 14, 18.1.2005, p. 18).

(5) OJ No L 125, 11.7.1966, p. 2309, as last amended by Commission Directive [2009/74/EC](#) (OJ No L 166, 27.6.2009, p. 40).

(6) OJ No L 125, 11.7.1966, p. 2298, as last amended by Commission Directive [2009/74/EC](#) (OJ No L 166, 27.6.2009, p. 40).

(7) OJ No L 193, 20.7.2002, p. 74, as last amended by Commission Directive [2009/74/EC](#) (OJ No L 166, 27.6.2009, p. 40).

*Status: Point in time view as at 31/12/2012.*

*Changes to legislation: There are currently no known outstanding effects for the The Seed Marketing Regulations 2011. (See end of Document for details)*

- (e) Council Directive [2002/55/EC](#) on the marketing of vegetable seed,
- (f) Commission Directive [2008/62/EC](#) providing for certain derogations for acceptance of agricultural landraces and varieties which are naturally adapted to the local and regional conditions and threatened by genetic erosion and for marketing of seed and seed potatoes of those landraces and varieties<sup>(8)</sup>,<sup>F1</sup>...
- (g) Commission Directive [2009/145/EC](#) providing for certain derogations, for acceptance of vegetable landraces and varieties which have been traditionally grown in particular localities and regions and are threatened by genetic erosion and of vegetable varieties with no intrinsic value for commercial crop production but developed for growing under particular conditions and for marketing of seed of those landraces and varieties<sup>(9)</sup>,<sup>F2</sup><sup>F3</sup>...
- (h) Commission Directive [2010/60/EU](#) providing for certain derogations for marketing of fodder plant seed mixtures intended for use in the preservation of the natural environment,<sup>F4</sup>and
- (i) Council Decision [2003/17/EC](#) on the equivalence of field inspections carried out in third countries on seed-producing crops and on the equivalence of seed produced in third countries,]

are references to <sup>F5</sup>those instruments] as amended from time to time.

#### Textual Amendments

- F1** Word in reg. 3(2)(f) omitted (6.1.2012) by virtue of [The Seed Marketing \(Amendment\) Regulations 2011 \(S.I. 2011/2992\)](#), regs. 1, **3(a)**
- F2** Word in reg. 3(2)(g) omitted (31.12.2012) by virtue of [The Seed Marketing \(Amendment\) Regulations 2012 \(S.I. 2012/3035\)](#), regs. 1, **3(a)**
- F3** Reg. 3(2)(h) and preceding word inserted (6.1.2012) by [The Seed Marketing \(Amendment\) Regulations 2011 \(S.I. 2011/2992\)](#), regs. 1, **3(b)**
- F4** Reg. 3(2)(i) and preceding word inserted (31.12.2012) by [The Seed Marketing \(Amendment\) Regulations 2012 \(S.I. 2012/3035\)](#), regs. 1, **3(b)**
- F5** Words in reg. 3(2) substituted (31.12.2012) by [The Seed Marketing \(Amendment\) Regulations 2012 \(S.I. 2012/3035\)](#), regs. 1, **3(c)**

## PART 2

### Categories of seed

#### Seed to which these Regulations apply

4.—(1) These Regulations apply in relation to seed of the plants in the first column of the table in Schedule 1 intended to be used for agricultural or horticultural production, but do not apply in relation to seed intended to be used for ornamental plants.

(2) They do not apply in relation to seed intended for export outside the European Union (other than regulation [26](#) which relates to certification for export).

#### Categories of seed

5. Seed is divided into the following categories, commonly known by the abbreviations given—

(8) OJ No L 162, 21.6.2008, p. 13.

(9) OJ No L 312, 27.11.2009, p. 44.

- (a) breeder's seed ("BR");
- (b) pre-basic seed ("PB");
- (c) basic seed ("BS");
- (d) certified seed ("CS");
- (e) certified seed, first generation ("C1");
- (f) certified seed, second generation ("C2");
- (g) certified seed, third generation ("C3");
- (h) commercial seed ("CM");
- (i) standard seed (vegetables only) ("ST");
- (j) seed of a higher voluntary standard ("HVS").

#### **Breeder's seed**

6. Breeder's seed is seed produced by or under the responsibility of the breeder and intended for the production of pre-basic seed or basic seed.

#### **Maintainers for pre-basic and basic seed**

7. Pre-basic seed and basic seed may only be produced with the written authorisation of the person listed as the maintainer of that seed in the United Kingdom National List or the Common Catalogue.

## **PART 3**

### **Marketing seed**

#### **Marketing seed**

8. Seed to which these Regulations apply may only be marketed as seed if it is—
- (a) certified under regulation 10 and 11 as being one of the categories in regulation 5;
  - (b) packaged and sealed in accordance with regulation 16;
  - (c) labelled in accordance with regulation 17;
  - (d) marketed by a person licensed to do so in accordance with regulation 20.

#### **Exceptions**

- 9.—(1) The requirement for certification does not apply in relation to breeder's seed.  
(2) Schedule 4 makes provision for the marketing of seed not fully complying with regulation 8.

#### **Overriding requirements: the building blocks necessary for certification**

10. To be certified under these Regulations as one of the categories in regulation 5 seed must—
- (a) be a variety entered in the United Kingdom National List or the Common Catalogue;
  - (b) be grown from a seed eligible to produce that category in accordance with Schedule 2;
  - (c) come from a crop inspected under these Regulations and certified as complying with the requirements of Schedule 2;
  - (d) be tested in accordance with these Regulations.

*Status: Point in time view as at 31/12/2012.*

*Changes to legislation: There are currently no known outstanding effects for the The Seed Marketing Regulations 2011. (See end of Document for details)*

### **Detailed requirements for certification**

**11.**—(1) In order to be certified a sample of the seed from which the crop is going to be produced must be entered with the Secretary of State in sufficient time for the Secretary of State to grow a control plot.

(2) The Secretary of State may accept the entry of a sample of the seed after this time, but in this case the crop grown to produce the seed must be inspected by an official crop inspector in accordance with regulation 12.

(3) The crop used to produce the seed must be inspected by a crop inspector in accordance with the provisions relating to that crop in Schedule 2, and the crop inspector must certify that—

- (a) the crop meets the standard for that crop specified in Schedule 2, or
- (b) the crop meets a lower standard but still meets one of the standards in Schedule 2,

and lodge a report to that effect with the Secretary of State.

(4) The crop inspector may indicate that remedial action or further inspection is necessary before the crop is certified as meeting the required standard.

(5) Once the crop has been harvested and processed, a sample of the seed must be taken by a licensed seed sampler (using current international sampling methods in so far as they exist) in accordance with the provisions relating to that crop in Schedule 2 (for the avoidance of doubt the seed lot sizes and sample weights are specified in each of the Directives in that Schedule dealing with the seed).

(6) The seed must be tested in a seed testing station (either licensed or operated by the Secretary of State), which must test the seed (using current international sampling and testing methods in so far as they exist) to ensure that the certification standards in Schedule 2 are complied with and issue a seed test report stating the results and lodge the report with the Secretary of State.

### **Crop inspections**

**12.** A crop inspection for certification must be carried out by a licensed crop inspector; except for the inspection of—

- (a) a crop intended for the production of pre-basic or basic seed, or
- (b) a crop producing seed when the entry of the seed under regulation 11 was too late to allow the Secretary of State to grow a control plot,

when the inspection must be carried out by an official crop inspector appointed by the Secretary of State for the purposes of such inspection.

### **Standard of seed at the time of marketing**

**13.** At the time of marketing the seed must as a minimum comply with the standards in Schedule 2 relating to that type of seed.

### **Re-grading a crop or seed**

**14.** For the avoidance of doubt, if a crop or seed has been certified as belonging to one category, but complies with the requirements of another category for that seed, it may be re-graded as any category for which it satisfies the requirements.

### **Control plots and tests**

**15.**—(1) The Secretary of State must carry out any necessary tests on the entered seed, and in particular must grow the seed in a control plot.

(2) If the tests or the control plot meets the requirements for varietal identity and varietal purity no further action is taken.

(3) Otherwise the Secretary of State must obtain more information from crops grown from that seed and, if the Secretary of State decides that the crop is not satisfactory, notify the applicant that the crop may not be certified, or must be downgraded to a lower category.

### **Packaging and sealing**

**16.**—(1) All seed, other than loose sales (for which see Part 5 of Schedule 3) must be supplied in a sealed package by a person licensed to do so under regulation 20.

(2) The packaged seed must be in homogeneous lots.

(3) A package must be sealed by or under the supervision of a licensed seed sampler.

(4) It must either have a non-re-useable sealing system or be sealed in such a manner that opening the package—

(a) damages the sealing system; or

(b) leaves evidence of tampering on either the label or the package.

(5) If a package is opened other than by the final consumer it must be re-labelled and re-sealed by or under the supervision of a licensed seed sampler, and the fact of resealing, the most recent date of resealing and the authority responsible for it must be stated on the label.

(6) This regulation does not apply in relation to the marketing of small packages of seed as defined in Schedule 3.

### **Labelling**

**17.**—(1) All seed must be labelled in accordance with Schedule 3 by a person licensed to do so under regulation 20.

(2) No person may reproduce, remove, alter, deface, conceal or misuse in any way any label produced for the purposes of these Regulations.

### **Mixtures of seed**

**18.** A mixture of seed may only be marketed if the mixture is permitted under the following table.

#### **Permitted mixtures**

<i>Column header</i>	<i>Beet</i>	<i>Cereals</i>	<i>Fodder</i>	<i>Oil and fibre</i>	<i>Vegetable</i>	<i>Seed outside the scope of these Regulations</i>
Beet	No	No	No	No	No	No
Cereals	No	Yes	Yes	No	No	No
Fodder	No	Yes	Yes	Yes	Yes	Yes
Oil and fibre	No	No	Yes	No	No	No

(i) A mixture of varieties of one species of cereal seed is permitted only if it is effective against the propagation of a harmful organism. All the seed must comply with these Regulations before mixing.

(ii) [F6A mixture of different varieties of standard seed of the same species must be marketed in a package containing not more than 5kg of seed (in the case of legumes), 500g of seed (in the case of asparagus, beetroot, carrot, chard or spinach beet, gourd, marrow, onion, radish, spinach or turnip) or 100g of seed (in the case of any other species)]

**Status:** Point in time view as at 31/12/2012.

**Changes to legislation:** There are currently no known outstanding effects for the The Seed Marketing Regulations 2011. (See end of Document for details)

Column header	Beet	Cereals	Fodder	Oil and fibre	Vegetable	Seed outside the scope of these Regulations
Vegetable	No	No	Yes	No	Yes	No
(i)	A mixture of varieties of one species of cereal seed is permitted only if it is effective against the propagation of a harmful organism. All the seed must comply with these Regulations before mixing.					
(ii)	[ <sup>F6</sup> A mixture of different varieties of standard seed of the same species must be marketed in a package containing not more than 5kg of seed (in the case of legumes), 500g of seed (in the case of asparagus, beetroot, carrot, chard or spinach beet, gourd, marrow, onion, radish, spinach or turnip) or 100g of seed (in the case of any other species)]					

#### Textual Amendments

**F6** Words in [reg. 18](#) substituted (6.1.2012) by [The Seed Marketing \(Amendment\) Regulations 2011 \(S.I. 2011/2992\)](#), regs. 1, 4

#### Records

**19.**—(1) Any person who—

- (a) markets seed,
- (b) packs, seals, labels, re-packs, re-seals or re-labels seed for marketing,
- (c) prepares mixtures of seed for marketing, or
- (d) cleans, treats or in any other way processes seed intended for marketing,

must make sufficient records (either written or electronic) to create an audit trail so that the identity and provenance of any seed marketed or otherwise dealt with in the course of the operation can be established.

(2) Records must be kept for at least 3 years and produced on demand to an officer of the Secretary of State (in the case of electronic records a printout must be provided).

## PART 4

### Licensing

#### Operations requiring a licence from the Secretary of State

**20.**—(1) Any person carrying out any of the following operations must be licensed to do so by the Secretary of State—

- (a) marketing seed;
- (b) packing, sealing or labelling seed;
- (c) re-packing, re-sealing or re-labelling seed;
- (d) preparing mixtures of seed for marketing;
- (e) cleaning, treating or in any other way processing seed intended for marketing.

(2) But the requirement for a licence does not apply in relation to the marketing of—

- (a) small packages of seed as defined in Schedule 3;
- (b) unpacketed seed; or

- (c) seed, as grown, for processing, provided the identity of the seed is ensured under paragraph 2 of Schedule 4.

### **Licensing crop inspectors, seed samplers and seed testing stations**

**21.**—(1) The Secretary of State may license crop inspectors, seed samplers and seed testing stations to act under these Regulations.

(2) Before licensing a crop inspector or seed sampler the Secretary of State must be satisfied that the person is competent to act as such, and has passed an examination specified by the Secretary of State.

(3) Before licensing a seed testing station the Secretary of State must be satisfied that the station has adequate premises, qualified personnel and equipment to test for the purposes of these Regulations.

(4) A licensed crop inspector, seed inspector or seed testing station may charge reasonable fees for carrying out functions under these Regulations but may not derive any private gain in connection with the carrying out of such functions.

### **[<sup>F7</sup>Licences for temporary experiments**

**21A.** The Secretary of State may by licence exempt any person or class of person from compliance with any provision of these Regulations for the purposes of a temporary experiment organised under—

- (a) Article 19 of Council Directive [2002/54/EC](#) on the marketing of beet seed;
- (b) Article 13a of Council Directive [66/402/EEC](#) on the marketing of cereal seed;
- (c) Article 13a of Council Directive [66/401/EEC](#) on the marketing of fodder plant seed;
- (d) Article 16 of Council Directive [2002/57/EC](#) on the marketing of seed of oil and fibre plants; or
- (e) Article 33 of Council Directive [2002/55/EC](#) on the marketing of vegetable seed.]

#### **Textual Amendments**

**F7** [Reg. 21A](#) inserted (31.12.2012) by [The Seed Marketing \(Amendment\) Regulations 2012 \(S.I. 2012/3035\)](#), regs. 1, 4

### **General provisions relating to licences**

**22.**—(1) A licence must be in writing, and may be subject to such conditions as the Secretary of State considers appropriate.

(2) The Secretary of State may vary, suspend or revoke a licence by notice in writing at any time.

## **PART 5**

### **Administration and revocations**

#### **Withdrawing certification**

**23.**—(1) The Secretary of State may withdraw certification from any seed if satisfied that—

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- (a) the seed, or the seed from which the crop producing the seed was grown, was incorrectly sampled;
  - (b) the crop from which the seed was harvested did not meet the conditions in Schedule 2; or
  - (c) the seed—
    - (i) did not meet the conditions in Schedule 2 when it was tested; or
    - (ii) no longer meets those conditions.
- (2) If certification is withdrawn the Secretary of State must notify the certification applicant.
- (3) Within 7 days of being notified the applicant must notify any person to whom they have sold or supplied the seed.

### **Sampling for enforcement purposes**

**24.**—(1) A sample of seed taken for the purposes of enforcing these Regulations must be taken by an authorised officer of the Secretary of State, who must divide it into three parts.

(2) One part must be given to the owner of the seed (or a representative of the owner) and the other two parts must be sent to an official testing station, one for testing and the other for retention pending production to a court in accordance with section 26(7) of the Plant Varieties and Seeds Act 1964<sup>(10)</sup>.

### **Forms of certificates used for enforcement**

**25.**—(1) For the purposes of section 26(3) of the Plant Varieties and Seeds Act 1964, a certificate of how a sample was taken for the purpose of enforcing these Regulations must—

- (a) make reference to these Regulations, and must certify that the sample was taken and treated in accordance with regulation 24;
- (b) specify—
  - (i) the name and address of the person taking the sample;
  - (ii) the premises at which the sample was taken;
  - (iii) the type of seed sampled;
  - (iv) the date the sample was taken;
  - (v) the reference number of the seed lot;
  - (vi) the quantity sampled.

(2) For the purposes of section 24(5) of the Plant Varieties and Seeds Act 1964, a certificate of the result of a test at an official seed testing station of a sample taken by an authorised officer for the purposes of that Act must—

- (a) make reference to these Regulations;
- (b) identify the seed tested;
- (c) contain all test results relating to the standard required for that seed.

### **Certification for export**

**26.** The Secretary of State may certify the quality of any seed intended for export outside the European Union.

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<sup>(10)</sup> 1964 c. 14.



### **Importation from outside the European Union**

27.—(1) Seed imported from outside the European Union must be labelled with a label approved by the Organisation for Economic Cooperation and Development<sup>(11)</sup> for the varietal certification on the control of seed moving in international trade.

(2) If the seed is to be further multiplied the person intending to multiply it must first submit a sample to the Secretary of State for verification.

(3) Any person marketing seed that has been imported from a third country and exceeds two kilograms must supply the Secretary of State, in writing and within one month of the first marketing of the seed, with the following particulars relating to the seed—

- (a) the species;
- (b) the variety;
- (c) the category;
- (d) the country of production and the official inspection authority;
- (e) the country of despatch;
- (f) the importer; and
- (g) the quantity of seed.

### **Appeals**

28.—(1) Any person who is aggrieved by a decision of the Secretary of State to—

- (a) vary, suspend, revoke or refuse to grant a licence of a crop inspector, seed sampler, seed testing station, or a person requiring a licence under regulation 20,
- (b) refuse to certify seed,
- (c) withdraw certification of seed,

may, within 21 days of being notified of the decision, appeal against it to a person appointed for the purpose by the Secretary of State.

(2) The appointed person must consider the appeal and any representations made by the Secretary of State, and within 21 days report in writing with a recommended course of action to the Secretary of State.

(3) The Secretary of State must then make a final decision and notify the appellant, together with the reasons.

### **Fees**

29. The Secretary of State may charge a reasonable fee for anything done under these Regulations.

### **Marketing seed under a specific derogation**

30. The Secretary of State acts as the member State for the purposes of [Commission Regulation \(EC\) No 217/2006](#) laying down rules for the application of Council Directives [66/401/EEC](#), [66/402/EEC](#), [2002/54/EC](#), [2002/55/EC](#) and [2002/57/EC](#) as regards the authorisation of Member States to permit temporarily the marketing of seed not satisfying the requirements in respect of the minimum germination<sup>(12)</sup>.

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<sup>(11)</sup> Details of these labels are available on the OECD's website.

<sup>(12)</sup> OJ No L 38, 9.2.2006, p. 17.

*Status: Point in time view as at 31/12/2012.*

*Changes to legislation: There are currently no known outstanding effects for the The Seed Marketing Regulations 2011. (See end of Document for details)*

## Confidentiality

31. If the breeder so requests, the description of genealogical components of seed must not be disclosed by the Secretary of State.

## Licensing and certifying in another part of the United Kingdom

32.—(1) Any seed certified in another part of the United Kingdom may be marketed in England.

(2) A crop inspector, seed sampler or seed testing station licensed to act as such in another part of the United Kingdom may act as such under these Regulations.

## Transitional provisions

33.—(1) A crop inspector, seed sampler or seed testing station licensed at the time these Regulations come into force under the Seed Marketing Regulations 2010(13) continues to be licensed as such under these Regulations.

(2) A person requiring to be licensed under regulation 20 of these Regulations who was licensed at the time these Regulations come into force to act for such activity under the Seed Marketing Regulations 2010 is now licensed to act as such under these Regulations subject to such conditions as may be notified by the Secretary of State, and continues to be licensed unless the licence is subsequently suspended or revoked by the Secretary of State under these Regulations.

## [<sup>F8</sup>Review

33A.—(1) The Secretary of State must from time to time—

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the Directives referred to in regulation 3(2) are implemented in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years beginning on 6th January 2012.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.]

### Textual Amendments

**F8** Reg. 33A inserted (6.1.2012) by [The Seed Marketing \(Amendment\) Regulations 2011 \(S.I. 2011/2992\)](#), regs. 1, 5

## **Revocation**

- 34.** The Seed Marketing Regulations 2010**(14)** are revoked.

*Henley*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural  
Affairs

**Status:**

Point in time view as at 31/12/2012.

**Changes to legislation:**

There are currently no known outstanding effects for the The Seed Marketing Regulations 2011.