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STATUTORY INSTRUMENTS

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**2015 No. 1953**

**The Seed Potatoes (England) Regulations 2015**

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the Seed Potatoes (England) Regulations 2015 and come into force on 1st January 2016.

(2) They apply to England only.

(3) They do not apply to seed potatoes intended for export from England to any country outside the European Union.

**Interpretation: general**

2.—(1) In these Regulations—

“the Act” means the Plant Varieties and Seeds Act 1964;

“authorised officer” means an officer of the Secretary of State or a person authorised by the Secretary of State for any purpose in connection with these Regulations;

“basic seed potatoes” means—

- (a) in relation to seed potatoes produced in England, seed potatoes intended mainly for the production of certified seed potatoes and which have been certified as basic seed potatoes in accordance with regulation 10;
- (b) in relation to seed potatoes produced outside England, seed potatoes brought into England in a package or container bearing an official label in accordance with Article 13(1)(a) of the Directive stating that the potatoes were certified as basic seed potatoes and graded at a Union grade;

“category” means the category of pre-basic seed potatoes, basic seed potatoes or certified seed potatoes (or, in relation to seed potatoes produced in Switzerland, the categories having equivalent effect under the legislation of the Swiss Confederation in accordance with the Swiss trade agreement);

“certification” (and “certified” is to be construed accordingly) means—

- (c) in relation to seed potatoes produced in England, certification in accordance with regulation 10; and
- (d) in relation to seed potatoes produced outside England, certification by the Certification Authority in accordance with the Directive;

“Certification Authority” means the authority concerned with the certification of seed potatoes in the country or territory where the seed potatoes were produced;

“certified seed potatoes” means—

- (e) in relation to seed potatoes produced in England, seed potatoes intended mainly for the production of potatoes other than seed potatoes and which have been certified (as certified seed potatoes) in accordance with regulation 10;
- (f) in relation to seed potatoes produced outside England, seed potatoes brought into England in a package or container bearing an official label in accordance with Article

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13(1)(a) of the Directive stating that the potatoes were certified as certified seed potatoes and graded at a Union grade;

“Common Catalogue” means the common catalogue of varieties of species of agricultural plants published in the Official Journal of the European Union;

“genetically modified” has the same meaning as in the Deliberate Release Directive;

“grade” includes the Union grade;

“growing crop certificate” means a growing crop certificate issued by the Secretary of State in accordance with Schedule 1;

“lot” means a consignment or an identifiable part of a consignment which is recorded and listed as a separate item in an invoice, delivery note or other document provided in accordance with regulation 17;

“marketing” means—

(g) selling, holding with a view to sale or offering for sale, or

(h) any disposal, supply or transfer for the purpose of commercial exploitation of seed potatoes to third parties,

whether or not for consideration, and for these purposes “commercial exploitation” is not to be taken to include the supply of seed potatoes to official testing and inspection bodies, or the supply of seed potatoes to any person for the purpose of processing or packaging them provided that person does not acquire title to the seed potatoes supplied, and “market” and “marketed” are to be construed accordingly;

“National List” means a list of varieties of potato species prepared and published—

(i) in accordance with regulation 3 of the National Lists Regulations; or

(j) by a member State other than the United Kingdom pursuant to Article 3 of Council [Directive 2002/53/EC](#) on the common catalogue of varieties of agricultural plant species<sup>(1)</sup>;

“National Lists Regulations” means the Seeds (National Lists of Varieties) Regulations 2001<sup>(2)</sup>;

“official document” means—

(k) for seed potatoes produced in England, a document issued or approved by the Secretary of State which meets the requirements of Part 2 of Schedule 2;

(l) for seed potatoes produced outside England, a document issued or approved by the Certification Authority in the country or territory where the seed potatoes were produced which meets the requirements of Article 13(1)(b) of the Directive;

“official examination” means an examination or inspection conducted by an authorised officer, including one conducted by way of sample;

“official label” means—

(m) for seed potatoes produced in England, a label issued or approved by the Secretary of State, which has not been previously used and which meets the requirements of Part 1 of Schedule 2;

(n) for seed potatoes produced outside England, a label issued or approved by the Certification Authority in the country or territory where the seed potatoes were produced, which meets, as appropriate to the seed potatoes to which the label relates, the requirements of Article 13(1)(a) or 18(f) of the Directive or Article 9 of the Decision;

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(1) 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).

(2) S.I. 2001/3510; relevant amending instruments are S.I. 2004/2949 and 2011/464.

“package or container” means—

- (o) any package which has not been previously used for any purpose and is capable of being closed and sealed; or
- (p) any container which has not been previously used for any purpose or which, since having been previously used, has been cleaned and disinfected, provided that the use of any container in respect of seed potatoes produced in England is subject to the approval of the Secretary of State;

“potato” means any tuber or part of a tuber or any plant or part of a plant of *Solanum tuberosum* L or other tuber-forming species or hybrids of *Solanum*;

“pre-basic seed potatoes” means—

- (q) in relation to seed potatoes produced in England, seed potatoes intended mainly for the production of basic seed potatoes and which have been certified as pre-basic seed potatoes in accordance with regulation 10;
- (r) in relation to seed potatoes produced outside England, seed potatoes brought into England in a package or container bearing an official label in accordance with Article 18(f) of the Directive stating that the potatoes were certified as pre-basic seed potatoes and graded at a Union grade;

“protected region” means the county of Cumbria (excluding the districts of Barrow-in-Furness and South Lakeland) and the county of Northumberland (excluding the districts of Blyth Valley and Wansbeck);

“seed potatoes” means—

- (s) potatoes which bear that description or any description indicating their suitability for planting and propagation and which are capable of being used for planting and propagation; or
- (t) any potatoes that are intended to be used for planting and propagation;

“seed potatoes of a conservation variety” means any variety of seed potatoes accepted by any member State into its national catalogue of varieties of agricultural plant species in accordance with Article 3 of [Directive 2008/62/EC](#);

“seed potatoes produced outside England” means—

- (u) seed potatoes produced in any part of the British Islands other than England;
- (v) seed potatoes produced in any member State other than the United Kingdom; or
- (w) seed potatoes produced in Switzerland;

“test and trial seed potatoes” means—

- (x) in relation to seed potatoes produced in England, seed potatoes which have been authorised by the Secretary of State in accordance with regulation 9;
- (y) in relation to seed potatoes produced outside England, seed potatoes brought into England in a package or container which bears an official label in accordance with Article 9 of the Decision;

“Union grade” means—

- (z) in relation to seed potatoes produced in England, the Union grade determined in accordance with Schedule 4 during certification, this being—
  - (i) in the case of pre-basic seed potatoes, Union grade PBTC or Union grade PB;
  - (ii) in the case of basic seed potatoes, Union grade S, Union grade SE or Union grade E;
  - (iii) in the case of certified seed potatoes, Union grade A or Union grade B;
- (aa) in relation to seed potatoes produced outside England—

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- (i) in the case of pre-basic seed potatoes, Union grade PBTC or Union grade PB, the minimum conditions for which are set out in Articles 2 and 3 of, and the Annex to, Directive 2014/21/EU;
- (ii) in the case of basic seed potatoes, Union grade S, Union grade SE or Union grade E, the minimum conditions for which are set out in Article 1 of, and Annex I to, Directive 2014/20/EU;
- (iii) in the case of certified seed potatoes, Union grade A or Union grade B, the minimum conditions for which are set out in Article 2 of, and Annex II to, Directive 2014/20/EU.

(2) In relation to seed potatoes produced in Switzerland, any reference in these Regulations to the Directive or the Decision or any provision of the Directive or the Decision is to be construed as a reference to the legislation of the Swiss Confederation having equivalent effect in accordance with the Swiss trade agreement.

(3) Any reference in these Regulations to a tolerance in relation to seed potatoes comprised in a sample is to be construed—

- (a) in relation to a tolerance for any disease or pest, damage and defect specified in Schedule 3, as a reference to the proportion of the weight of seed potatoes in the sample affected by the disease or pest, damage and defect, or any combination of such disease or pest, damage and defect, in relation to the total weight of the sample, expressed as a percentage;
- (b) in relation to a tolerance for dirt or other extraneous matter specified in Schedule 3, as a reference to the proportion of the weight of such matter in relation to the total weight of the sample, expressed as a percentage;
- (c) in relation to a tolerance for a deviation or disease specified in the tables in Schedule 4, as a reference to the number of plants of seed potatoes affected by the deviation or disease in relation to the total number of plants in the sample, expressed as a percentage.

(4) In this regulation, “Swiss trade agreement” means the Agreement between the European Community and the Swiss Confederation on trade in agricultural products<sup>(3)</sup>.

### **Interpretation: European instruments**

#### **3. In these Regulations—**

“the Decision” means Commission [Decision 2004/842/EC](#) concerning implementing rules whereby Member States may authorise the placing on the market of seed belonging to varieties for which an application for entry in the national catalogue of varieties of agricultural plant species or vegetable species has been submitted<sup>(4)</sup><sup>F1</sup>, as last amended by Commission Implementing Decision (EU) 2016/320];

“the Deliberate Release Directive” means [Directive 2001/18/EC](#) of the European Parliament and of the Council on the deliberate release into the environment of genetically modified organisms<sup>(5)</sup>;

“the Directive” means Council [Directive 2002/56/EC](#) on the marketing of seed potatoes<sup>(6)</sup><sup>F2</sup>, as last amended by Commission Implementing Directive (EU) 2016/317];

<sup>(3)</sup> OJ No L 114, 30.4.2002, p 13, as amended by Commission Decision 2010/724/EU (OJ No L 312, 27.11.2010, p 31). This Agreement, together with six other Agreements with the Swiss Confederation, was approved by the Council and the Commission by way of Council and Commission [Decision 2002/309/EC](#), Euratom (OJ No L 114, 30.4.2002, p 1).

<sup>(4)</sup> OJ No L 362, 9.12.2004, p 21.

<sup>(5)</sup> OJ No L 106, 17.4.2001, p 1, as last amended by Directive (EU) 2015/412 (OJ No L 68, 13.3.2015, p. 1).

<sup>(6)</sup> OJ No L 193, 20.7.2002, p 60, as last amended by Commission Implementing Decision 2014/367/EU (OJ No L 178, 18.6.2014, p 26).

“[Directive 2008/62/EC](#)” means 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(7);

“[Directive 2014/20/EU](#)” means Commission [Implementing Directive 2014/20/EU](#) determining Union grades of basic and certified seed potatoes, and the conditions and designations applicable to such grades(8);

“[Directive 2014/21/EU](#)” means Commission [Implementing Directive 2014/21/EU](#) determining minimum conditions and Union grades for pre-basic seed potatoes(9);

“the Food and Feed Regulation” means [Regulation \(EC\) No 1829/2003](#) of the European Parliament and of the Council on genetically modified food and feed(10).

#### Textual Amendments

- F1** Words in reg. 3 inserted (1.6.2018) by [The Environment, Food and Rural Affairs \(Miscellaneous Amendments\) \(England\) Regulations 2018 \(S.I. 2018/575\)](#), regs. 1(2), **29(a)**
- F2** Words in reg. 3 inserted (1.6.2018) by [The Environment, Food and Rural Affairs \(Miscellaneous Amendments\) \(England\) Regulations 2018 \(S.I. 2018/575\)](#), regs. 1(2), **29(b)**

#### Marketing of seed potatoes

4.—(1) No person may market any seed potatoes other than—

- (a) pre-basic seed potatoes;
- (b) basic seed potatoes;
- (c) certified seed potatoes;
- (d) scientific and selection seed potatoes; or
- (e) test and trial seed potatoes.

(2) No person may market any seed potatoes treated with a product which is produced primarily as an application for inhibiting germination.

(3) In this regulation, “scientific and selection seed potatoes” means—

- (a) in relation to seed potatoes produced in England, seed potatoes which have been authorised by the Secretary of State for marketing in accordance with regulation 8;
- (b) in relation to seed potatoes produced outside England, seed potatoes which have been authorised by the Certification Authority in the country or territory where the potatoes were produced for marketing in accordance with Article 6(1)(a) of the Directive.

#### Marketing of conservation varieties

5.—(1) No person may market seed potatoes of a conservation variety unless—

- (a) the variety is listed in the National List of varieties of potato species prepared and published in accordance with regulation 3 of the National Lists Regulations; and
- (b) those seed potatoes have been produced in the United Kingdom.

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

(8) OJ No L 38, 7.2.2014, p 32.

(9) OJ No L 38, 7.2.2014, p 39.

(10) OJ No L 268, 18.10.2003, p 1, as last amended by Regulation [\(EC\) No 298/2008](#) (OJ No L 97, 9.4.2008, p 64).

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(2) A person proposing to produce seed potatoes of a conservation variety must, before doing so, supply the Secretary of State, in such manner and form as the Secretary of State requires, with details in writing of the size and location of the area to be used to produce that seed.

(3) For the purposes of Articles 14 and 15(2) of [Directive 2008/62/EC](#), the Secretary of State may specify the maximum amount of seed potatoes of a conservation variety that may be marketed in any given production season, and may specify different maximum amounts for different persons or classes of persons.

(4) The amount of seed potatoes of a conservation variety marketed by a person must not exceed any maximum amount specified under paragraph (3) in relation to that person.

(5) Any person marketing seed potatoes of a conservation variety must supply the Secretary of State, if requested to do so in writing, with written details of the amount and variety of the seed potatoes placed on the market during each production season.

### **Marketing in the protected region**

6. No person may market any seed potatoes within the protected region other than—
- (a) pre-basic seed potatoes;
  - (b) for seed potato production, basic seed potatoes, the grade for which fulfil the conditions for—
    - (i) “Union grade S” as set out in points 1(a)(ii) to (v) and 1(b)(i) to (iv) of Annex I to Directive 2014/20/EU; or
    - (ii) “Union grade SE” as set out in points 2(a)(ii) to (v) and 2(b)(i) to (iv) of Annex I to Directive 2014/20/EU;
  - (c) for potato production, basic seed potatoes, the grade for which fulfil the conditions for—
    - (i) “Union grade S” as set out in points 1(a)(ii) to (v) and points 1(b)(i) to (iv) of Annex I to Directive 2014/20/EU;
    - (ii) “Union grade SE” as set out in points 2(a)(ii) to (v) and points 2(b)(i) to (iv) of Annex I to Directive 2014/20/EU; or
    - (iii) “Union grade E” as set out in points 3(a)(ii) to (v) and points 3(b)(i) to (iv) of Annex I to Directive 2014/20/EU.

### **Size of seed potatoes**

7.—(1) No person may market any seed potatoes other than pre-basic seed potatoes of grade PBTC unless the tubers have a minimum size such that they do not pass through a square mesh of 25 millimetres x 25 millimetres.

(2) No person may market any seed potatoes in a lot in which the maximum variation in size between tubers is such that the difference between the lower size limit and the upper size limit exceeds 25 millimetres.

(3) The requirements of paragraph (2) are to be treated as being met provided that no more than 3% of the total weight of tubers in the lot consist of—

- (a) tubers which are smaller than the lower size limit; or
- (b) tubers which are larger than the upper size limit.

(4) Where the size of seed potatoes is required to be stated in accordance with these Regulations, the following must be stated—

- (a) where the lower size limit and the upper size limit are the same, the dimensions of the square mesh through which the tubers do not pass;

- (b) where they are not the same, the lower size limit and the upper size limit.
- (5) For the purposes of paragraph (4), dimensions of more than 35 millimetres must be stated to the nearest 5 millimetres.
- (6) For the purposes of this regulation—
  - (a) “the lower size limit” means the dimensions of the largest square mesh through which the smallest tuber does not pass;
  - (b) “the upper size limit” means the dimensions of the largest square mesh through which the largest tuber does not pass.

### **Marketing of seed potatoes for scientific purposes or selection work**

- 8.—**(1) The Secretary of State may authorise marketing of small quantities of seed potatoes for scientific purposes or selection work in accordance with this regulation.
- (2) The Secretary of State may not authorise marketing of seed potatoes which contain any genetically modified material unless an authorisation is in force under the Food and Feed Regulation or Part C of the Deliberate Release Directive.
- (3) An application for authorisation to market seed potatoes in accordance with paragraph (1) must be made in writing to the Secretary of State and must be accompanied by such information as the Secretary of State may require.

### **Marketing of seed potatoes for test and trial purposes**

- 9.—**(1) The Secretary of State may authorise marketing of seed potatoes for tests or trials carried out at agricultural enterprises to gather information on the cultivation or use of a variety of potato species in accordance with this regulation and Schedule 5.
- (2) The Secretary of State may not authorise marketing—
  - (a) of an amount of seed potatoes in excess of that permitted by Article 7 of the Decision;
  - (b) of seed potatoes which contain any genetically modified material unless that material is authorised under the Food and Feed Regulation or Part C of the Deliberate Release Directive.
- (3) An application for authorisation or renewal of authorisation to market seed potatoes in accordance with paragraph (1) must be made in writing to the Secretary of State and must be accompanied by such information as the Secretary of State may require.
- (4) Authorisation given in accordance with paragraph (1), or the renewal of such authorisation, is for a period of one year or such shorter period as the Secretary of State may specify.
- (5) In authorising marketing in accordance with paragraph (1), the Secretary of State may impose such conditions as the Secretary of State thinks necessary or desirable having regard to the nature of the tests or trials and the nature of the seed potatoes to which the application relates, including a condition relating to the keeping of records in respect of the marketing of the seed potatoes.
- (6) Authorisation given in accordance with paragraph (1) ceases to have effect where—
  - (a) the application referred to in paragraph (3)(a) of Schedule 5 is withdrawn or rejected in accordance with the National Lists Regulations; or
  - (b) the variety of potato species to which the authorisation relates is entered in a National List or the Common Catalogue.
- (7) The Secretary of State may withdraw authorisation given in accordance with paragraph (1) where there is a breach of any condition referred to in paragraph (5).

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(8) The Secretary of State may require the person to whom authorisation has been given in accordance with paragraph (1) to provide information about—

- (a) the results of the tests or trials to which the authorisation relates;
- (b) the quantities of seed potatoes marketed during the authorised period and the name of the member State in which the seed potatoes are intended to be marketed.

### **Certification of seed potatoes**

**10.**—(1) Certification of seed potatoes produced in England must be in accordance with this regulation.

(2) If the requirements of paragraph (3) are satisfied, an authorised officer must certify seed potatoes produced in England as being—

- (a) pre-basic seed potatoes;
- (b) basic seed potatoes; or
- (c) certified seed potatoes.

(3) The requirements are that—

- (a) a growing crop certificate has been issued in relation to the seed potatoes; and
- (b) on official examination the seed potatoes have been found not to exceed any of the tolerances for diseases or pests, damage or defects specified in the relevant provisions of Schedule 3.

(4) An application for certification of seed potatoes produced in England must be made in writing to the Secretary of State and must be accompanied by such information as the Secretary of State may require.

(5) For the purposes of paragraph (2), an official label issued in accordance with these Regulations in relation to pre-basic seed potatoes, basic seed potatoes or certified seed potatoes is sufficient evidence that an authorised officer has certified the seed potatoes to which the official label relates as being pre-basic seed potatoes, basic seed potatoes or certified seed potatoes, as the case may be.

### **Composition of lots of seed potatoes**

**11.**—(1) No person may market pre-basic seed potatoes, basic seed potatoes or certified seed potatoes otherwise than in a lot consisting wholly of seed potatoes of—

- (a) one category;
- (b) one variety; and
- (c) one grade.

(2) No person may market test and trial seed potatoes otherwise than in a lot consisting wholly of seed potatoes of one variety.

(3) For the purposes of this regulation, a lot of seed potatoes is to be treated as if it consists wholly of one variety provided that—

- (a) in relation to seed potatoes produced in England, the number of seed potatoes in the lot which are not true to variety or are of a different variety in relation to the total number of seed potatoes in the lot—
  - (i) in the case of pre-basic seed potatoes, is no more than 0.01%;
  - (ii) in the case of basic seed potatoes, is no more than 0.1%;
  - (iii) in the case of certified seed potatoes or test and trial seed potatoes, is no more than 0.2%;



- (b) in relation to seed potatoes produced outside England, the lot is sufficiently homogeneous in accordance with the standards imposed by the Certification Authority pursuant to the Directive in respect of the marketing of those potatoes.

### **Packages and containers for seed potatoes**

**12.** Subject to regulation 18, no person may market any seed potatoes otherwise than in a package or container.

### **Labelling of packages and containers of seed potatoes**

**13.—**(1) Subject to regulation 18, no person may market, other than in a properly labelled package or container—

- (a) pre-basic seed potatoes;
- (b) basic seed potatoes;
- (c) certified seed potatoes; or
- (d) test and trial seed potatoes.

(2) For the purposes of this regulation, a properly labelled package or container means a package or container that—

- (a) has affixed to the outside an official label; and
- (b) subject to paragraph (3), contains an official document.

(3) Paragraph (2)(b) does not apply where—

- (a) the particulars specified in paragraph 16 of Schedule 2 are indelibly printed on the package or container; or
- (b) the official label is of an adhesive or wear and tear resistant material.

(4) An application to the Secretary of State for an official label or official document must be made in writing and must be accompanied by such information as the Secretary of State may require.

(5) The Secretary of State may only issue an official label or official document if satisfied that—

- (a) the seed potatoes are pre-basic seed potatoes, basic seed potatoes, certified seed potatoes or test and trial seed potatoes;
- (b) the seed potatoes comply with the minimum size requirements specified in regulation 7 and that the maximum variation in size between tubers does not exceed that specified in regulation 7;
- (c) the seed potatoes are contained in a package or container;
- (d) the seed potatoes have not been treated with a product which is produced primarily as an application for inhibiting germination;
- (e) the seed potatoes have been harvested, stored, transported and handled so as to minimise the risk of contamination by any of the diseases or pests specified in Schedule 3;
- (f) on a sample taken in accordance with regulation 19, the seed potatoes do not exceed any of the tolerances for diseases or pests, damage or defects specified in the appropriate Part of Schedule 3; and
- (g) there has been no other failure to comply with these Regulations in respect of any of the seed potatoes.

(6) If a package or container has been re-sealed by an authorised officer in accordance with regulation 14(3), the official label must state—

- (a) that the package or container has been so re-sealed;

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- (b) the date of re-sealing; and
- (c) the name of the authorised officer responsible for re-sealing.

(7) Where any pre-basic seed potatoes, basic seed potatoes, certified seed potatoes or test and trial seed potatoes have been treated with any chemical product, the type and function or the proprietary name of that product must be—

- (a) stated on a label affixed to the package or container; and
- (b) either—
  - (i) stated on a document contained in the package or container; or
  - (ii) indelibly printed on the package or container.

(8) For the purposes of section 16(7)(a) of the Act, information relating to a variety of seed potatoes contained in a statutory statement is not held to be false in a material particular by reason only that it is false—

- (a) in the case of pre-basic seed potatoes, in respect of no more than 0.01% of the seed potatoes;
- (b) in the case of basic seed potatoes, in respect of no more than 0.1% of the seed potatoes;
- (c) in the case of certified seed potatoes and test and trial seed potatoes, in respect of no more than 0.2% of the seed potatoes.

(9) No person may, in connection with the marketing or the preparation for the marketing of any seed potatoes, wilfully reproduce, remove, alter, deface, conceal or misuse in any way any official label or official document, or any label affixed or document supplied in accordance with paragraph (2), except in accordance with the requirements of the Act, these Regulations or Orders made under the Plant Health Act 1967<sup>(11)</sup>.

### **Sealing of packages and containers**

**14.**—(1) Subject to regulation 18, no person may market, other than in a properly sealed package or container—

- (a) pre-basic seed potatoes;
- (b) basic seed potatoes;
- (c) certified seed potatoes; or
- (d) test and trial seed potatoes.

(2) For the purposes of this regulation, a properly sealed package or container means—

- (a) for seed potatoes produced in England, a closed package or container that has been sealed with an unbroken sealing device by or under the supervision of an authorised officer;
- (b) for seed potatoes produced outside England, a closed package or container that has been sealed in accordance with Article 11(1) of the Directive.

(3) Where a sealing device on a package or container is broken, the package or container must not be re-sealed with a sealing device otherwise than by or under the supervision of an authorised officer.

(4) For the purposes of this regulation, a “sealing device” means a device applied in such a manner to a package or container that when the package or container is opened the device will be broken.

### **Identification of genetically modified seed potatoes**

**15.** No person may market genetically modified seed potatoes unless—

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(11) 1967 c.8.

- (a) it is clearly indicated in any marketing information, including any sales catalogue or other marketing representations provided by the person marketing the seed potatoes, that the seed potatoes have been genetically modified; and
- (b) any official label or official document, or other label or document, affixed to, accompanying or relating to the seed potatoes clearly indicates that they have been genetically modified.

### **Seed potatoes from outside the European Union: information**

16. Any person marketing more than 2 kilograms of seed potatoes that have been imported into England from a country outside the European Union must supply the Secretary of State, in writing and within one month of the first marketing of the seed potatoes, with the particulars specified in Schedule 6.

### **Separate particulars**

17. Subject to regulation 18, a person who sells pre-basic seed potatoes, basic seed potatoes, certified seed potatoes or test and trial seed potatoes must issue to the buyer not later than 14 days after the sale or, if the seed potatoes are not delivered at the time of sale, not later than 14 days after delivery, a sale note, delivery note, invoice or similar document specifying in relation to the seed potatoes the particulars specified in Schedule 7.

### **Retail sales of seed potatoes**

18. Regulations 12, 13, 14 and 17 do not apply to a sale by retail of less than 50 kilograms of seed potatoes—

- (a) in circumstances where at the time of sale there is displayed conspicuously on a label affixed to a package containing the seed potatoes or on a document or notice placed in close proximity to the seed potatoes a statement of the particulars specified in Schedule 7; or
- (b) in containers that have not been previously used for any purpose, upon each of which has been printed or otherwise legibly and indelibly marked the particulars specified in Schedule 7, or attached to or inserted in each of which is a label marked with those particulars.

### **Sampling of seed potatoes**

19.—(1) A sample of seed potatoes taken for any purpose in connection with these Regulations must be taken in accordance with this regulation.

(2) A sample must be taken by an authorised officer and may be of such quantity or number and from such part or parts of the growing or harvested crop as the authorised officer considers appropriate.

(3) Paragraph (4) applies where a sample is required other than for a purpose in connection with certification of seed potatoes produced in England, and the bulk consists of seed potatoes—

- (a) comprising more than one consignment; or
- (b) associated with more than one growing crop certificate.

(4) The seed potatoes must be divided so that each consignment or, as the case may be, the quantity of potatoes associated with each growing crop certificate, constitutes a separate lot and each lot must, if the authorised officer considers it necessary, be separately sampled.

### **Keeping of records**

**20.**—(1) A person who produces seed potatoes which are intended for marketing must retain for a period of not less than two years records of purchase of the seed potatoes from which those seed potatoes were produced and particulars of the crops grown.

(2) A person who markets seed potatoes must retain for a period of not less than two years a record of the marketing of such seed potatoes.

### **Enforcement: powers of examination and production**

**21.**—(1) An authorised officer may conduct an examination and take samples of seed potatoes and inspect and take copies of a relevant document for the purpose of ensuring compliance with any provision of these Regulations.

(2) For the purposes of this regulation, a person must permit, at any reasonable time, an authorised officer to—

- (a) examine and take samples of seed potatoes in his possession or control; and
- (b) inspect and take copies of any relevant document in his possession or control.

(3) For the purposes of this regulation, an authorised officer may by written notice served on a person require that person to—

- (a) produce or make available for examination any seed potatoes or relevant document;
- (b) provide information within that person's knowledge or belief relating to the production, certification or marketing of the seed potatoes.

(4) A person on whom a notice is served in accordance with paragraph (3) must comply with the requirements of that notice within seven days of such service or such longer time as may be specified in the notice.

(5) For the purposes of this regulation, "relevant document" means any growing crop certificate, official label, official document, other document or label, record or invoice relating to the planting, production, certification or marketing of seed potatoes.

### **Enforcement: power to withdraw official labels, official documents and growing crop certificates**

**22.**—(1) The Secretary of State may withdraw an official label or official document—

- (a) where satisfied that the seed potatoes to which the official label or official document relates—
  - (i) have not been harvested, stored, transported or handled so as to minimise the risk of contamination by any of the diseases or pests specified in Schedule 3;
  - (ii) on a sample taken in accordance with regulation 19, exceed any of the tolerances for diseases or pests, damage or defects specified in the appropriate Part of Schedule 3; or
  - (iii) otherwise fail to comply with these Regulations; or
- (b) where satisfied that the official label or official document contains any particular which is false in a material respect.

(2) The Secretary of State may withdraw a growing crop certificate where satisfied that—

- (a) the requirements of Schedule 1 are not, or are no longer, complied with; or
- (b) the growing crop certificate contains any particular which is false in a material respect.

(3) Where an official label or official document is withdrawn in accordance with paragraph (1)(a)(ii), the seed potatoes from which the sample was taken may be the subject of an official examination in order to determine whether any of them do not exceed the tolerances specified in Schedule 3.

(4) Where an official examination is conducted in accordance with paragraph (3), the Secretary of State may issue an official label or official document in relation to such seed potatoes as are found not to exceed the tolerances in Schedule 3.

(5) Where an official label, official document or growing crop certificate is withdrawn in accordance with this regulation, an authorised officer may—

- (a) remove and retain the official label, official document or growing crop certificate; or
- (b) require any person in possession or charge of the official label, official document or growing crop certificate to deliver it to the authorised officer within such time as the authorised officer may specify.

(6) A person in possession or charge of an official label, official document or growing crop certificate that has been withdrawn in accordance with this regulation must—

- (a) permit an authorised officer to remove the official label, official document or growing crop certificate in accordance with paragraph (5)(a);
- (b) comply with any requirement made in accordance with paragraph (5)(b).

### Service of notices

**23.**—(1) For the purposes of regulation 21(3), a notice is to be treated as having been served on any person if it is delivered to that person personally or left for them at their last known place of abode or business or sent through the post in a letter addressed to them there.

(2) A notice may—

- (a) in the case of a body corporate (other than a limited liability partnership), be served on the secretary or clerk of that body at the address of the registered or principal office of that body;
- (b) in the case of a partnership including a Scottish partnership (other than a limited liability partnership), be served on a partner or person having the control or management of the partnership business at the address of the principal office of the partnership;
- (c) in the case of a limited liability partnership, be served on a member of the partnership at the address of the registered or principal office of that partnership.

(3) For the purposes of paragraph (2), the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.

### Modification of provisions of the Act

**24.**—(1) In connection with the provisions of these Regulations, the operation of the following provisions of the Act is modified or excluded in accordance with the provisions of this regulation.

(2) Section 25 is modified as if for the purposes of the section any reference to “premises” were a reference to premises as defined in paragraph (6) and any reference to a subsection containing a reference to premises were a reference to that subsection as so modified.

(3) Section 25(1) is modified as if the reference to subsection (4) of that section were a reference to that subsection as modified by the provision of paragraph (4).

(4) In section 25(4), the words from “potatoes” (where it first occurs) to the end are omitted.

(5) In section 26, subsections (2) and (4) to (9) are omitted.

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*Status: Point in time view as at 28/03/2019.*

*Changes to legislation: There are currently no known outstanding effects for the The Seed Potatoes (England) Regulations 2015. (See end of Document for details)*

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(6) In paragraph (2), “premises” includes any land or building, other than a private dwelling house, and any fixed or moveable structure, vehicle, vessel, aircraft, hovercraft or freight container.

### **Amendment and revocations**

**25.**—(1) In regulation 2(1) of the National Lists Regulations, in the definition of “the Seeds Marketing Regulations”, in sub-paragraph (a)(ii), for “2006”, substitute “2015”.

(2) The following are revoked—

- (a) the Seed Potatoes (England) Regulations 2006<sup>(12)</sup>;
- (b) the Seed Potatoes (England) (Amendment) Regulations 2008<sup>(13)</sup>;
- (c) the Seed Potatoes (England) (Amendment) Regulations 2009<sup>(14)</sup>;
- (d) the Seed Potatoes (England) (Amendment) Regulations 2010<sup>(15)</sup>.

### **Review**

**26.**—(1) Before the end of each review period, the Secretary of State must—

- (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 Directive, Commission [Decision 2004/3/EC](#) authorising, in respect of the marketing of seed potatoes in all or part of the territory of certain Member States, more stringent measures against certain diseases than are provided for in Annexes I and II to Council [Directive 2002/56/EC](#)<sup>(16)</sup>, the Decision, Directive 2014/20 and Directive 2014/21/EU are implemented in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved 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 in a less burdensome way.

(4) The first review period is the period of five years beginning with the date on which these Regulations come into force.

(5) Each subsequent review period is a period of five years beginning with the date on which the preceding review was published.

*Gardiner of Kimble*  
Lords Spokesman  
Department for Environment, Food and Rural  
Affairs

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<sup>(12)</sup> [S.I. 2006/1161](#), amended by [S.I. 2008/560](#), [2009/2342](#), [2010/1511](#) and [2011/1043](#).

<sup>(13)</sup> [S.I. 2008/560](#).

<sup>(14)</sup> [S.I. 2009/2342](#).

<sup>(15)</sup> [S.I. 2010/1511](#).

<sup>(16)</sup> OJ No L 2, 6.1.2004, p 47, as last amended by Commission Implementing Decision 2014/105/EU (OJ No L 56, 26.2.2014, p 16).

**Status:**

Point in time view as at 28/03/2019.

**Changes to legislation:**

There are currently no known outstanding effects for the The Seed Potatoes (England) Regulations 2015.