

SCHEDULE 5

Certification of plant material

Modifications etc. (not altering text)

- C1** Sch. 5: power to amend conferred (31.12.2020) by [The Aquatic Animal Health and Alien Species in Aquaculture, Animals, and Marketing of Seed, Plant and Propagating Material \(Legislative Functions and Miscellaneous Provisions\) \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1463\)](#), regs. 1(2)(b), **20(1)** (with reg. 20(2))

PART 2

Certification of pre-basic material

Propagating material (other than mother plants and rootstocks)

3.—(1) Propagating material (other than mother plants and rootstocks) may be certified as pre-basic material if that material meets the requirements in sub-paragraph (2).

(2) The requirements are that the propagating material—

- (a) is directly propagated from a mother plant—
 - (i) accepted in accordance with paragraph 5;
 - (ii) obtained by multiplication or micropropagation in accordance with paragraph 13;
- (b) has been verified by an inspector as being true to the description of its variety in accordance with paragraph 7;
- (c) has been maintained in accordance with paragraph 8;
- (d) complies with the health requirements in paragraph 10;
- (e) where authorised under paragraph 8(2) to be grown in the field under non-insect proof conditions, is grown in soil that is found, by sampling and testing, to comply with paragraph 11;
- (f) complies with paragraph 12 concerning defects;

[^{F1}(g) complies with the production site requirements in paragraph 12A.]

(3) Where the mother plant or propagating material no longer fulfils the relevant requirements in sub-paragraph (2), the supplier—

- (a) must remove the plant or material from the vicinity of other pre-basic mother plants and pre-basic material;
- (b) may take appropriate measures in order to ensure that the mother plant or material complies with those requirements again.

(4) A supplier may use any mother plant or material removed in accordance with sub-paragraph (3)(a) as basic, certified or CAC material provided the plant or material fulfils the requirements set out in these Regulations for the respective categories.

Textual Amendments

- F1** Sch. 5 para. 3(2)(g) inserted (29.8.2020) by [The Marketing of Seed, Plant and Propagating Material \(Wales\) Regulations 2020 \(S.I. 2020/833\)](#), regs. 1, **6(7)(a)**

Commencement Information

I1 Sch. 5 para. 3 in force at 19.6.2017, see [reg. 1\(1\)](#)

Rootstocks not belonging to a variety

4.—(1) A rootstock not belonging to a variety may be certified as pre-basic material if it meets the requirements in sub-paragraph (2).

(2) The requirements are that the rootstock—

(a) is directly propagated from a mother plant—

(i) by vegetative or sexual propagation, and in the case of sexual propagation, by pollinating trees (pollinisers) that are directly produced by vegetative propagation from a mother plant;

(ii) accepted in accordance with paragraph 5;

(iii) obtained by multiplication or micropropagation in accordance with paragraph 13;

(b) has been verified by an inspector as being true to the description of its variety in accordance with paragraph 7;

(c) has been maintained in accordance with paragraph 8;

(d) complies with the health requirements in paragraph 10;

(e) where authorised under paragraph 8(2) to be grown in the field under non-insect proof conditions, is grown in soil that is found, by sampling and testing, to comply with paragraph 11;

(f) complies with paragraph 12 concerning defects;

[^{F2}(g) complies with the production site requirements in paragraph 12A.]

(3) Where a rootstock, which is a pre-basic mother plant or pre-basic material, no longer fulfils the relevant requirements in sub-paragraph (2), the supplier—

(a) must remove the mother plant or material from the vicinity of other pre-basic mother plants and pre-basic material;

(b) may take appropriate measures to ensure the mother plant or the material complies with those requirements again.

(4) A supplier may use any mother plant or material removed in accordance with sub-paragraph (3)(a) as basic, certified or CAC material provided the mother plant or material fulfils the requirements set out in these Regulations for the respective categories.

Textual Amendments

F2 Sch. 5 para. 4(2)(g) inserted (29.8.2020) by [The Marketing of Seed, Plant and Propagating Material \(Wales\) Regulations 2020 \(S.I. 2020/833\)](#), regs. 1, [6\(7\)\(a\)](#)

Commencement Information

I2 Sch. 5 para. 4 in force at 19.6.2017, see [reg. 1\(1\)](#)

Requirements for the acceptance of a pre-basic mother plant

5.—(1) A plant may be accepted as a pre-basic mother plant if an official inspection confirms—

(a) compliance with paragraphs 7 to [^{F3}12A]; and

- (b) its trueness to the description of its variety is established in accordance with this regulation.
- (2) An inspector must establish the trueness of the pre-basic mother plant to the description of its variety by the observation of the expression of the characteristics of the variety.
- (3) That observation must be based on one of the following elements—
- (a) the official description for varieties registered in a register of varieties, and for varieties legally protected by a plant variety right;
 - (b) the description accompanying the application for varieties which are the subject of an application for registration in a register of varieties;
 - (c) the description accompanying the application for varieties which are the subject of an application for registration of a plant variety right;
 - (d) the officially recognised description, if the variety subject to that description is registered in a register of varieties.
- (4) Where sub-paragraph (3)(b) or (c) applies—
- (a) the pre-basic mother plant may only be accepted if a report, produced by an inspector or by a responsible authority [^{F4}in any part of the United Kingdom other than Wales or in another country which is a member of UPOV], is available proving that the respective variety is distinct, uniform and stable;
 - (b) pending the registration of the variety, the mother plant concerned and the material produced from it may only be used for the production of basic or certified material and must not be marketed as pre-basic, basic or certified material.
- (5) Where the establishment of the trueness to the description of the variety is only possible on the basis of the characteristics of a fruiting plant—
- (a) the observation of the expression of the characteristics of the variety must be carried out on the fruits of a fruiting plant propagated from the pre-basic mother plant; and
 - (b) those fruiting plants must be kept separate from the pre-basic mother plants and pre-basic material.
- (6) Fruiting plants must be visually inspected in the most appropriate periods of the year taking into account climatic and growing conditions of plants of the genera or species concerned.
- (7) In this paragraph—
- “fruiting plant” (“*planhigyn sy’n dwyn ffrwyth*”) means a plant propagated from a mother plant and grown for the production of fruit in order to permit the verification of the varietal identity of that mother plant;
- [^{F5}“register of varieties” (“*cofrestr amrywogaethau*”) means, in relation to the registration of varieties, the register maintained—
- (a) in Wales, under paragraph 4(1) of Schedule 4;
 - (b) in England, under paragraph 4(1) of Schedule 4 to the Marketing of Fruit Plant and Propagating Material (England) Regulations 2017;
 - (c) in Scotland, under paragraph 2(1) of Schedule 4 to the Marketing of Fruit Plant and Propagating Material (Scotland) 2017;
 - (d) in Northern Ireland, for the purposes of paragraph 1 of Schedule 3 to the Marketing of Fruit Plant and Propagating Material Regulations (Northern Ireland) 2017;]

Textual Amendments

- F3** Word in *Sch. 5 para. 5(1)(a)* substituted (29.8.2020) by *The Marketing of Seed, Plant and Propagating Material (Wales) Regulations 2020 (S.I. 2020/833)*, regs. 1, **6(7)(b)**

Changes to legislation: There are currently no known outstanding effects for the *The Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017, PART 2*. (See end of Document for details)

- F4** Words in Sch. 5 para. 5(4)(a) substituted (31.12.2020) by [The Marketing of Seeds and Plant Propagating Material \(Amendment\) \(Wales\) \(EU Exit\) Regulations 2019 \(S.I. 2019/368\)](#), regs. 1(2)(b), **5(17)(a)(i)**; 2020 c. 1, Sch. 5 para. 1(1)
- F5** Words in Sch. 5 para. 5(7) substituted (31.12.2020) by [The Marketing of Seeds and Plant Propagating Material \(Amendment\) \(Wales\) \(EU Exit\) Regulations 2019 \(S.I. 2019/368\)](#), regs. 1(2)(b), **5(17)(a)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)

Commencement Information

- I3** Sch. 5 para. 5 in force at 19.6.2017, see [reg. 1\(1\)](#)

Requirements for the acceptance of a rootstock not belonging to a variety

6. An inspector may accept a rootstock not belonging to a variety as a pre-basic mother plant if it is true to the description of its species and if it complies with paragraphs 8 to [F612A].

Textual Amendments

- F6** Word in Sch. 5 para. 6 substituted (29.8.2020) by [The Marketing of Seed, Plant and Propagating Material \(Wales\) Regulations 2020 \(S.I. 2020/833\)](#), regs. 1, **6(7)(b)**

Commencement Information

- I4** Sch. 5 para. 6 in force at 19.6.2017, see [reg. 1\(1\)](#)

Verification of trueness to the description of the variety

7.—(1) An inspector and, where appropriate, the supplier, must regularly verify the trueness of pre-basic mother plants and of pre-basic material to the description of their variety, in accordance with paragraph 5(2) and (3), as appropriate for the variety concerned and the propagation method used.

(2) In addition to the regular verification of pre-basic mother plants and pre-basic material, the inspector and, where appropriate, the supplier must, after each renewal of a mother plant, verify the pre-basic mother plants resulting from it.

Commencement Information

- I5** Sch. 5 para. 7 in force at 19.6.2017, see [reg. 1\(1\)](#)

Maintenance requirements: pre-basic material and pre-basic mother plants

8.—(1) A supplier must—

- (a) maintain pre-basic mother plants and pre-basic material in facilities designated for the genera or species concerned, which are insect proof and ensure freedom from infection through aerial vectors and any other possible sources throughout the production process;
- (b) grow or produce pre-basic mother plants and pre-basic material isolated from the soil, in individually labelled pots of soil-free or of sterilised growing media;
- (c) ensure pre-basic mother plants and pre-basic material are individually identified throughout the production process;

- (d) keep candidate pre-basic mother plants under insect proof conditions, and physically isolated from pre-basic mother plants in the facilities referred to in paragraph (a), until all tests concerning compliance with paragraph 9 have been concluded.
- (2) But sub-paragraph (1) does not apply where the Welsh Ministers authorise the production of pre-basic mother plants (including candidate pre-basic mother plants) and pre-basic material in a field under non-insect proof conditions, which the Welsh Ministers may do if satisfied—
 - ^{F7}(a)
 - (b) the plants and material are identified by labels that ensure traceability; and
 - (c) appropriate measures are taken to prevent infection of the plants and material by aerial vectors, root contact, cross infection by machinery, grafting tools or any other possible source.
- (3) Pre-basic mother plants and pre-basic material—
 - (a) may be maintained by cryopreservation; and
 - (b) may only be used for a period calculated on the basis of the stability of the variety or the environmental conditions under which they are grown and any other determinants having an impact on the stability of the variety.

Textual Amendments

F7 Sch. 5 para. 8(2)(a) omitted (31.12.2020) by virtue of [The Marketing of Seeds and Plant Propagating Material \(Amendment\) \(Wales\) \(EU Exit\) Regulations 2019 \(S.I. 2019/368\)](#), regs. 1(2)(b), **5(17)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

Commencement Information

I6 Sch. 5 para. 8 in force at 19.6.2017, see [reg. 1\(1\)](#)

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

9.—(1) A candidate pre-basic mother plant and a pre-basic mother plant produced by renewal must be free from the pests listed in Annex I and Annex II to [Directive 2014/98/EU](#), as regards the genus or species concerned.

- (2) This is established—
 - (a) for pests listed in Annex I to [Directive 2014/98/EU](#), by visual inspection and, in cases of doubt concerning the presence of those pests, by sampling and testing;
 - (b) for pests listed in Annex II to [Directive 2014/98/EU](#), by visual inspection and sampling and testing.
- (3) Subject to sub-paragraph (4), sampling and testing—
 - (a) must be carried out by an inspector or, where appropriate, the supplier in accordance with the appropriate protocol;
 - (b) in relation to viruses, viroids, virus-like diseases and phytoplasmas, is by means of biological indexing on indicator plants, or such other method the Welsh Ministers consider to be as reliable;
 - (c) must take place—
 - (i) in the most appropriate period of the year taking into account the climatic conditions and the growing conditions of the plant, and the biology of the pests relevant for that plant;

Changes to legislation: There are currently no known outstanding effects for the *The Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017, PART 2*. (See end of Document for details)

(ii) in case of doubts concerning the presence of those pests, at any time of the year.

(4) Where a candidate pre-basic mother plant is a seedling, visual inspection and sampling and testing is only required in respect of the viruses, viroids or virus-like diseases listed in Annex II to [Directive 2014/98/EU](#), as regards the genus or species concerned, that are transmitted by pollen if—

- (a) an official inspection confirms the seedling was grown from a seed produced by a plant free from symptoms caused by those viruses, viroids and virus-like diseases;
- (b) the seedling has been maintained in accordance with paragraph 8.

Commencement Information

I7 Sch. 5 para. 9 in force at 19.6.2017, see [reg. 1\(1\)](#)

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

10.—^{F8}(1) A pre-basic mother plant or pre-basic material must be found to be free from any RNQP listed in Annex 1 or 2 to [Directive 2014/98/EU](#) in relation to the genus or species concerned, subject to the requirements of Annex 4 to that Directive specified in relation to the genus or species concerned, and category.

(2) An inspector and, where appropriate, the supplier must sample and test the pre-basic mother plant or pre-basic material—

- (a) in cases of doubt as to the presence of any RNQP listed in Annex 1 to [Directive 2014/98/EU](#), for such pests;
- (b) for the RNPQs listed in Annex 2 to [Directive 2014/98/EU](#), subject to the requirements of Annex 4 to that Directive specified in relation to the genus or species concerned, and category.]

(3) But sub-paragraphs (1) and (2) do not apply to pre-basic mother plants or pre-basic material during cryopreservation.

^{F9}(4) Compliance with sub-paragraph (1) is established by visual inspection by an inspector and, where appropriate, the supplier.]

(5) Visual inspections and sampling and testing must be conducted in accordance with Annex IV to [Directive 2014/98/EU](#), as regards the genus or species concerned and, in the case of sampling and testing, also in accordance with the appropriate protocol.

Textual Amendments

F8 Sch. 5 para. 10(1)(2) substituted (29.8.2020) by [The Marketing of Seed, Plant and Propagating Material \(Wales\) Regulations 2020 \(S.I. 2020/833\)](#), regs. 1, [6\(7\)\(c\)\(i\)](#)

F9 Sch. 5 para. 10(4) substituted (29.8.2020) by [The Marketing of Seed, Plant and Propagating Material \(Wales\) Regulations 2020 \(S.I. 2020/833\)](#), regs. 1, [6\(7\)\(c\)\(ii\)](#)

Commencement Information

I8 Sch. 5 para. 10 in force at 19.6.2017, see [reg. 1\(1\)](#)

Soil requirements: pre-basic material

11.—(1) Pre-basic mother plants and pre-basic material must be grown in soil that is free from any of the pests listed in Annex III to [Directive 2014/98/EU](#) relevant to the genus or species concerned and which host viruses affecting that genus or species.

(2) Freedom from such pests must be established by sampling and testing by an inspector and, where appropriate, the supplier.

(3) Sampling and testing must be carried out—

- (a) before the pre-basic mother plants or the pre-basic material is planted, and must be repeated during growth where there is suspicion concerning the presence of the pests referred to in sub-paragraph (1);
- (b) taking into account the climatic conditions and the biology of the pests listed in Annex III to [Directive 2014/98/EU](#), and where those pests are relevant for the pre-basic mother plants or the pre-basic material concerned;
- (c) in accordance with the appropriate protocol.

(4) Sampling and testing is not required—

- (a) where plants, which are hosts for the pests listed in Annex III to [Directive 2014/98/EU](#) for the genus or species concerned, have not been grown in the soil of production for a period of at least five years and where there is no doubt concerning the absence of the relevant pests in that soil;
- (b) where an inspector concludes, on the basis of an official inspection, that the soil is free from any pests which are listed in Annex III to [Directive 2014/98/EU](#), for the genus or species concerned, and which host viruses affecting that genus or species.

Commencement Information

I9 Sch. 5 para. 11 in force at 19.6.2017, see [reg. 1\(1\)](#)

Requirements concerning defects likely to impair quality

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

(2) That visual inspection must be carried out by an inspector and, where appropriate, the supplier.

Commencement Information

I10 Sch. 5 para. 12 in force at 19.6.2017, see [reg. 1\(1\)](#)

[^{F10}Requirements concerning production site

12A. Pre-basic mother plants and pre-basic material must be produced in accordance with the requirements for the production site, place of production or area set out in Annex 4 to [Directive 2014/98/EU](#) and specified in relation to the genus or species concerned.]

Textual Amendments

F10 Sch. 5 para. 12A inserted (29.8.2020) by [The Marketing of Seed, Plant and Propagating Material \(Wales\) Regulations 2020 \(S.I. 2020/833\)](#), regs. 1, [6\(7\)\(d\)](#)

Changes to legislation: There are currently no known outstanding effects for the *The Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017, PART 2*. (See end of Document for details)

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

13.—(1) A supplier may multiply or renew a pre-basic mother plant accepted in accordance with paragraph 5.

(2) A supplier may propagate a pre-basic mother plant to produce pre-basic material.

(3) Multiplication, renewal and propagation (including micropropagation) of pre-basic mother plants must take place in accordance with the appropriate protocol.

(4) In the case of micropropagation, the appropriate protocol must have been tested on the relevant genus or species for a period of time considered sufficient to allow phenotype validation of the plants as regards the trueness to the description of the variety based on the observation of the fruit production or of the vegetative development of rootstocks.

(5) A supplier may only renew a pre-basic mother plant before the end of the period referred to in paragraph 8(3)(b).

Commencement Information

111 Sch. 5 para. 13 in force at 19.6.2017, see [reg. 1\(1\)](#)

Changes to legislation:

There are currently no known outstanding effects for the The Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017, PART 2.