Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Marketing of Fruit Plant and Propagating Material (England) Regulations 2017. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY INSTRUMENTS

2017 No. 595

PLANT HEALTH, ENGLAND

SEEDS, ENGLAND

The Marketing of Fruit Plant and Propagating Material (England) Regulations 2017

Made - - - -	*25th April 2017*
Laid before Parliament	*26th April 2017*
Coming into force - -	*1st June 2017*

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972 [F1] in relation to the common agricultural policy [F2].

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and paragraph 1A of Schedule 2 to the European Communities Act 1972 [F3].

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Secretary of State that it is expedient for any reference to Annexes I to V to Commission Implementing Directive 2014/98/EU [F4] to be construed as a reference to those Annexes as amended from time to time.

F1 1972 c.68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7).

F2 S.I. 1972/1811.

F3 Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 and amended by Part 1 of the Schedule to the European Union (Amendment) Act 2008 and S.I. 2007/1388.

F4 Commission Implementing Directive 2014/98/EU implementing Council Directive 2008/90/EC as regards specific requirements for the genus and species of fruit plants referred to in Annex I thereto, specific requirements to be met by suppliers and detailed rules concerning official inspections (OJ No L 298, 16.10.2014, p. 22).

PART 1

Introduction

Citation, commencement, extent and application

1.—(1) These Regulations may be cited as the Marketing of Fruit Plant and Propagating Material (England) Regulations 2017 and come into force on 1st June 2017.

(2) They extend to England and Wales but only apply to England.

Interpretation: general

2. In these Regulations—

"basic material" means propagating material intended for the production of certified material, which has been—

(a) in relation to propagating material produced in England, certified as basic material in accordance with regulation 9;

(b) in relation to propagating material produced outside England, certified as basic material by a responsible authority in accordance with Article 15 of Directive 2014/98/EU;

"basic mother plant" means a mother plant intended for the production of basic material;

"CAC material" means—

(a) in relation to propagating material and fruit plants produced in England, material and plants that meet the requirements for CAC material in Schedule 1;

(b) in relation to propagating material and fruit plants produced outside England, material and plants that meet the requirements for CAC material in Article 23 of Directive 2014/98/EU;

"certification" means the certification of plant material in accordance with regulation 9 and "certified" is to be construed accordingly;

"certified material" means any propagating material or fruit plants intended for the production of fruit plants, which has been—

(a) in relation to propagating material and fruit plants produced in England, certified as certified material in accordance with regulation 9;

(b) in relation to propagating material and fruit plants produced outside England, certified as certified material by a responsible authority in accordance with Article 20 of Directive 2014/98/EU;

"certified mother plant" means a mother plant intended for the production of certified material;

"certified plant material" means plant material that is certified (as the case may be) as pre-basic material, basic material or certified material;

"cryopreservation" means the maintenance of plant material by cooling to ultra-low temperatures in order to retain the viability of the material;

"defects" include injuries, discoloration, scar tissues or desiccation that affect the quality and usefulness of a mother plant or plant material as propagating material;

"fruit plant" means a plant intended to be planted or replanted, after marketing;

"inspector" means a person appointed under regulation 16;

"lot" means a number of units of a single commodity, identifiable by its homogeneity of composition and origin;

"micropropagation" means the multiplication of plant material in order to produce a large number of plants, using in vitro culture of differentiated vegetative buds or differentiated vegetative meristems taken from a plant;

"mother plant" means an identified plant intended for propagation;

"official description" means the description of a variety provided for—

(a) registration as a variety; or

(b) the grant of plant variety rights;

"official examination" means an examination or inspection conducted by an inspector, including one conducted by way of sample;

"official label" means—

(a) for certified plant material produced in England, a label issued or approved in accordance with regulation 10(2);

(b) for certified plant material produced outside England, a label issued or approved by the responsible authority in the country or territory where the plant material was produced and which meets, as appropriate to the plant material to which the label relates, the requirements of Article 2 of Directive 2014/96/EU;

"officially recognised description" means a description of key morphological features that enable the variety to be identified;

"outside England" means any part of the United Kingdom other than England or any member State other than the United Kingdom;

"plant material" means the plants and materials described in regulation 4;

"plant variety rights" means rights granted under—

(a) Part 1 of the Plant Varieties Act 1997 [F5];

(b) Council Regulation (EC) No 2100/94 on Community plant variety rights [F6]; or

(c) domestic legislation in countries or territories, other than those forming part of the United Kingdom, that affords plant variety protection in accordance with UPOV;

"practically free from defects"' means that defects likely to impair the quality and usefulness of the propagating material or fruit plants, are present at a level equal to, or lower than, the level expected to result from good cultivating and handling practices, and that level is consistent with good cultivating and handling practices;

"pre-basic material" means propagating material intended for the production of basic or certified material, which has been—

(a) in relation to propagating material produced in England, certified as pre-basic material in accordance with regulation 9;

(b) in relation to propagating material produced outside England, certified as pre-basic material by a responsible authority in accordance with Articles 3 or 4 of Directive 2014/98/EU;

"pre-basic mother plant" means a mother plant intended for the production of pre-basic material;

"propagating material" means seeds, parts of plants and all plant material, including rootstocks, intended for the propagation and production of fruit plants;

[[F7]"RNQP" means a Union regulated non-quarantine pest within the meaning given by Article 36 of Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants;**]**

"responsible authority" means the authority responsible for the quality of plant material in the country or territory where the plant material was produced;

"supplier" means any person involved professionally in the reproduction, production, preserving, treating, importing or marketing of plant material;

"supplier's document" means a document accompanying CAC material and which meets the requirements in Part 2 of Schedule 2;

"UPOV" means the International Union for the Protection of New Varieties of Plants [F8];

"variety" means a plant grouping within a single botanical taxon of the lowest known rank, which can be—

(a) defined by the expression of the characteristics resulting from a given genotype or combination of genotypes;

(b) distinguished from any other plant grouping by the expression of at least one of the said characteristics; and

(c) considered as an entity in view of its ability to be propagated unchanged;

"visual inspection" means the examination of plants or parts of plants in facilities, fields and lots, by an inspector or, where appropriate, the supplier, using the unaided eye, lens, stereoscope or microscope.

F5 1997 c. 66. Part I was amended by S.I. 2000/311, 2005/2726 and 2011/1043.
F6 OJ No L 227, 1.9.1994, p.1 as last amended by Council Regulation (EC) No 15/2008 (OJ L 8, 2 11.1.2008, p. 2).
F7 Words in reg. 2 inserted (24.7.2020) by The Marketing of Seed, Plant and Propagating Material (England) Regulations 2020 (S.I. 2020/682), regs. 1(1), **6(2)**
F8 The International Union for the Protection of New Varieties of Plants (UPOV) was established by the International Convention for the Protection of New Varieties of Plants ("UPOV Convention"). The UPOV Convention was adopted on 2nd December 1961 by a Diplomatic Conference held in Paris, revised in 1972 and 1991 and ratified by the United Kingdom on 3rd December 1998.

Interpretation: Directives

3.—(1) In these Regulations—

[F9]...

"Directive 2008/90/EC" means Council Directive 2008/90/EC on the marketing of fruit plant propagating material and fruit plants intended for fruit production [F10];

"Directive 2014/96/EU" means Commission Implementing Directive 2014/96/EU on the requirements for the labelling, sealing and packaging of fruit plant propagating material and fruit plants intended for fruit production, falling within the scope of Council Directive 2008/90/EC[F11];

"Directive 2014/97/EU" means Commission Implementing Directive 2014/97/EU implementing Council Directive 2008/90/EC as regards the registration of suppliers and of varieties and the common list of varieties [F12];

[[F13]"Directive 2014/98/EU" means Commission Implementing Directive 2014/98/EU implementing Council Directive 2008/90/EC as regards specific requirements for the genus and species of fruit plants referred to in Annex I thereto, specific requirements to be met by suppliers and detailed rules concerning official inspections.**]**

(2) References in these Regulations to Annexes I, II, III, IV or V to Directive 2014/98/EU are references to that Annex as amended from time to time.

F9 Words in reg. 3(1) omitted (14.1.2020) by virtue of The Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019 (S.I. 2019/1517), reg. 1, **Sch. 5 para. 6(2)**

F10 OJ No L 267, 8.10.2008, p. 8; as last amended by Regulation (EU) No 652/2014 of the European Parliament and of the Council (OJ No L 189, 27.6.2014, p. 1).

F11 OJ No L 298, 16.10.2014, p. 12.

F12 OJ No L 298, 16.10.2014, p. 16.

F13 Words in reg. 3(1) substituted (24.7.2020) by The Marketing of Seed, Plant and Propagating Material (England) Regulations 2020 (S.I. 2020/682), regs. 1(1), **6(3)**

Plant material to which these Regulations apply

4.—(1) These Regulations apply in relation to fruit plants and propagating material of the genera and species listed in Schedule 3 and their hybrids.

(2) They also apply in relation to parts of plants, including rootstocks, of other genera or species and their hybrids if material from fruit plants listed in Schedule 3 (or any hybrid of such fruit plants) is, or is to be, grafted on to them.

(3) They do not apply in relation to plant material intended for export from England to any country outside the European Union provided the plant material is identified as such and kept sufficiently isolated.

PART 2

Marketing of Plant Material

Marketing of plant material

5.—(1) A supplier may only market plant material if—

(a) the supplier is registered in accordance with regulation 11; and

(b) the plant material meets the requirements in paragraph (2).

(2) The plant material must be—

(a) certified plant material or CAC material;

(b) a variety that may be marketed in accordance with regulation 7;

(c) marketed with a reference to the variety to which the plant material belongs in accordance with regulation 8;

(d) in relation to certified plant material, labelled, sealed and packaged in accordance with regulation 10; and

(e) in relation to CAC material, accompanied by a supplier's document.

[[F14](3) The Secretary of State may authorise the marketing of plant material from any country outside the European Union if satisfied that the plant material has been produced under conditions equivalent to the requirements in these Regulations for plant material.**]**

F14 Reg. 5(3) substituted for reg. 5(3)(4) (26.9.2019) by The Animal Health, Invasive Alien Species, Plant Breeders Rights and Seeds (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/1220), regs. 1(2)(a), **4**