SCOTTISH STATUTORY INSTRUMENTS

2000 No. 201

SEEDS

The Seed Potatoes (Scotland) Regulations 2000

Made - - - -	*15th June 2000*
Laid before the Scottish Parliament - - - -	*16th June 2000*
Coming into force	
(except regulation 6)	*7th July 2000*
(as regards regulation 6)	*1st April 2001*

The Scottish Ministers acting in exercise of the powers conferred by sections 16(1), (1A), (2), (3), (4), (5)) and 36 as read with section 38(1) of the Plant Varieties and Seeds Act 1964(**1**) after consultation in accordance with section 16(1) with representatives of such interests as appear to them to be concerned, hereby make the following Regulations:

PART I

PRELIMINARY

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Seed Potatoes (Scotland) Regulations 2000.

(2) These Regulations, except regulation 6, shall come into force on 7 July 2000.

(3) Regulation 6 shall come into force on 1 April 2001.

(4) These Regulations extend to Scotland only,

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires–

"the Act" means the Plant Varieties and Seeds Act 1964;

(**1**) 1964 c. 14: section 16 was amended by the European Communities Act 1972 (c. 68), section 4(1) and paragraphs 5(1), (2) and (3) of Schedule 4 and by S.I. 1977/1112; section 16 is applied to seed potatoes by section 29(1); section 29 was amended by the European Communities Act 1972, section 4(1) and paragraph 5(4) of Schedule 4 and by S.I. 1977/1112; and section 38(1) was amended by S.I. 1978/272, Schedule 5, paragraph 10. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998, (c.46).

"the 1991 Regulations" means the Seed Potatoes Regulations 1991(**2**);

"agricultural unit" has the meaning assigned to that expression in section 86(2) of the Agriculture (Scotland) Act 1948(**3**);

"authorised officer" means an officer of the Scottish Ministers or a person authorised by the Scottish Ministers to execute Part II of the Act;

"basic seed potatoes" means–

(a) in the case of seed potatoes produced in Scotland, seed potatoes in relation to which a certificate of classification as basic seed potatoes has been issued and not withdrawn; and

(b) in the case of seed potatoes produced outside Scotland, seed potatoes being a lot or part of a lot moved into Scotland in a package or container, to or in which a label or document, approved by the relevant authority, has been attached or placed, stating that on examination of the potatoes they were classified as seed potatoes of a basic category in that country or place;

"certificate of classification" means a certificate of classification issued under these Regulations stating the particulars specified in Schedule 3;

"class" means–

(a) in to the case of seed potatoes produced in Scotland the class in which the seed potatoes were placed during the course of classification and specified in the certificate relating to those potatoes, being in the case of pre-basic seed potatoes any one of the classes specified in order of superiority in column 1 of Table I in Schedule 2 and in the case of basic seed potatoes any one of the classes specified in order of superiority in column 1 of Table II in Schedule 2; and

(b) in relation to seed potatoes produced outside Scotland, the class specified in a label or document approved by the relevant authority, being a label attached to or document contained in the package or container in which the seed potatoes are moved into Scotland,

and "classification", "classify" and "classified" shall be construed accordingly;

"the Common Catalogue Directive" means Council Directive 70/457EEC(**4**) on the common catalogue of varieties of agricultural plant species;

"Community grade" in relation to basic seed potatoes means EEC1, EEC2 or EEC3 being one of the grades determined by Commission Directive 93/17/EEC(**5**) determining Community grades of basic seed potatoes, together with the conditions and designations applicable to such grades;

"container" includes a chitting tray, box or crate;

"Council Directive 66/403" means Council Directive 66/403(**6**) of June 14, 1966 on the marketing of seed potatoes;

"Council Directive 90/220" means Council Directive 90/220 EEC(**7**) of 23 April 1990 on the deliberate release into the environment of genetically modified organisms;

"genetically modified" has the same meaning as for the purposes of Council Directive 90/220 EEC;

"lot" means 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 14;

(**2**) S.I. 1991/2206; amended by 1992/1031, 1993/1878, 1994/2592 and 1997/1474.
(**3**) 1948 c. 45.
(**4**) O.J. No. L225, 12.10.70, p1 (English Special Edition Supplement Series 1 (66-70) p.36); as last amended by Council Directive 98/96 EC (0.J. No. L25, 1.2.1999, p.27).
(**5**) O.J. No. L106, 30.4.93, p.7.
(**6**) O.J. No. L125, 11.7.66, p.154 as last amended by Council Directive 98/96 EC (0.J. No. L25, 1.2.1999, p.27).
(**7**) O.J. No. L117, 8.5.90, p.15.

"marketing" means marketing to which these Regulations apply by virtue of regulation 3;

"nuclear stock"means the initial propagating material which, in circumstances notified in writing as being acceptable to the Scottish Ministers, is tested and maintained free from pathogens;

"official document" means the document required by Article 10.1(b) of Council Directive 66/403;

"official examination" means an examination carried out by or on behalf of the Scottish Ministers;

"official label" means–

(a) in the case of seed potatoes produced in Scotland, a wear and tear resistant label supplied by or on behalf of the Scottish Ministers which meets the requirements set out in Schedule 6, paragraph 1 or 2; and

(b) in the case of seed potatoes produced outside Scotland, a label approved by the relevant authority and issued pursuant to Council Directive 66/403 which meets the requirements set out in Schedule 6, paragraph 1 or 2;

"package" includes a bag, box or sack;

"pre-basic seed potatoes" means–

(a) in the case of seed potatoes produced in Scotland, seed potatoes in relation to which a certificate of classification as pre-basic seed potatoes has been issued in accordance with Schedule 1 and not withdrawn; and

(b) in the case of seed potatoes produced outside Scotland, seed potatoes –

(i) produced in a country or place where the arrangements applying to pre-basic seed potatoes have been approved by Scottish Ministers as being equivalent to those applying in Scotland; and

(ii) being a lot or part of a lot moved into Scotland in a package or container, to or in which a label or document, approved by the relevant authority, has been attached or placed, stating that on examination of the potatoes they were classified as seed potatoes of a pre-basic category;

"potato" means any tuber or part thereof or any plant or part thereof of *Solanum tuberosum L.*or other tuber-forming species or hybrids of *Solanum*;

"premises" includes any land or building other than a private dwellinghouse and also includes any vehicle, vessel, aircraft, hovercraft or freight container;

"relevant authority" means the authority in the country or place where seed potatoes are produced which is concerned with the classification of seed potatoes in that country or place for the purposes of Council Directive 66/403;

"seed potatoes" means 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 any potatoes that are intended to be used for planting and propagation;

"seed potatoes produced outside Scotland" means seed potatoes produced in any part of the European Community other than Scotland or in Switzerland, the Channel Islands, or the Isle of Man or in any country or place in which seed potatoes are produced in circumstances notified in writing as being acceptable to the Scottish Ministers;

"size" in relation to seed potatoes means the size of the square mesh of the riddle or gauge through or by which the seed potatoes may be passed or retained.

(2) Unless the context otherwise requires, any reference in these Regulations to a numbered regulation or Schedule shall be construed as a reference to the regulation or Schedule bearing that

number in these Regulations and in any Schedule to these Regulations any reference to a numbered paragraph or Table shall be construed as a reference to the paragraph or Table so numbered in that Schedule.

(3) Any reference in these Regulations to a Community instrument is a reference to that instrument and any amendment of such instrument in force on the date these Regulations are made.

Application

3.—(1) Subject to paragraphs (2), (4) and (5), these Regulations apply to–

(a) the production of seed potatoes on or after 7 July 2000 with a view to marketing;

(b) the classification and grading on or after that date of seed potatoes produced in Scotland; and

(c) the marketing on or after that date of seed potatoes.

(2) In the case of regulation 6, for the reference in paragraph (1) to 7 July 2000 there is substituted reference to 1 April 2001.

(3) In paragraph (1), "marketing" means–

(a) selling, holding with a view to sale and offering for sale; and

(b) any disposal, supply or transfer,

for the purpose of commercial exploitation of seed potatoes to third parties, whether or not for consideration; and "market" and "marketed" shall be construed accordingly.

(4) The supply of seed potatoes, not aimed at commercial exploitation of the variety, such as the following operations, shall not be treated as marketing of seed potatoes of that variety–

(a) the supply of seed potatoes to official testing and inspection bodies; or

(b) the supply of seed potatoes to any person for the purpose of processing or packaging the seed potatoes provided he does not acquire title to the seed potatoes supplied.

(5) Nothing in these Regulations shall apply to the marketing by a producer under the authority of the Scottish Ministers of small quantities of seed potatoes used or to be used for the purposes of scientific investigation or in the course of a process of selection by or under the supervision of an authorised officer.

(6) In respect of genetically modified material, an authorisation may be granted under paragraph (5) only if–

(a) the deliberate release of the genetically modified material has been authorised under a Part B consent, or the genetically modified material has been accepted for marketing in accordance with a Part C consent, issued for the purposes of Council Directive 90/220/EEC;

(b) the seed potatoes are accompanied during marketing by a copy of the consent;

(c) all appropriate measures, in accordance with an environmental risk assessment in respect of the material carried out in accordance with article 7(4) of the Common Catalogue Directive, have been taken by the producer of the seed potatoes to avoid adverse effects on human health and the environment; and

(d) in the case of genetically modified material issued with a Part C consent, the conditions mentioned in paragraph (7) are met.

(7) The conditions referred to in paragraph (6)(d) are–

(a) the producer intending to market the small quantity of seed potatoes for scientific purposes or selection work has made a written application for authorisation under paragraph (5) to Scottish Ministers giving–

(i) notice of intention to market a small quantity of seed potatoes for scientific purposes or selection work; and

(ii) such information relating to the acceptance for marketing of the variety of the seed potatoes concerned under Council Directive 90/220/EEC, and the scientific purposes or selection work in respect of which the marketing is to be carried out, as the Minister may require for the purposes of identifying the marketing and determining whether or not to grant the authorisation; and

(b) the Minister is satisfied that an authorisation would be in accordance with the purpose of Article 4a.1(a) of Council Directive 66/403/EEC.

PART II

CLASSIFICATION AND GRADING

Classification of seed potatoes

4.—(1) Seed potatoes produced in Scotland shall be classified by an authorised officer as –

(a) pre-basic seed potatoes of one of the classes (Pre-basic TC, Pre-basic 1 or Pre-basic 2) specified in column 1 of Table I in Schedule 2; or

(b) basic seed potatoes of one of the classes (VTSC1, VTSC2, Super Elite 1, Super Elite 2, Super Elite 3, Elite 1, Elite 2, Elite 3 or AA) specified in column 1 of Table II in Schedule 2.

(2) Application for classification (of seed potatoes produced in Scotland) shall be made to the Scottish Ministers with such information in such form and in such manner as they may require.

Community Grading of basic seed potatoes

5. Basic seed potatoes marketed in Scotland shall be graded by an authorised officer into one of the Community grades.

Production measures in the interests of plant health

6.—(1) The production of seed potatoes shall at all stages be conducted in such manner as to ensure that they do not come into contact with any potatoes other than seed potatoes or with any plant, machinery, equipment, container, store or vehicle previously used in the production of potatoes other than seed potatoes.

(2) The Scottish Ministers may withdraw a certificate of classification where they are not satisfied that the seed potatoes covered by the certificate have been produced in compliance with paragraph (1).

(3) Paragraph (1) shall not apply where–

(a) the potatoes were produced on the same agricultural unit; or

(b) the production is conducted in accordance with arrangements approved in writing by the Scottish Ministers prior to the use of the plant, machinery, equipment, container, store or vehicle.

Separation in the interests of varietal purity

7.—(1) The production of seed potatoes shall at all stages be conducted in such manner as to ensure that they are kept separate from–

(a) seed potatoes of any other class or variety;