Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Seed Potatoes (England) Regulations 2015. 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

2015 No. 1953

SEEDS, ENGLAND

The Seed Potatoes (England) Regulations 2015

Made - - - -	*30th November 2015*
Laid before Parliament	*2nd December 2015*
Coming into force - -	*1st January 2016*

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 16(1) to (5) and 36 of the Plant Varieties and Seeds Act 1964(**1**).

The Secretary of State has consulted with representatives of such interests as appear to the Secretary of State to be concerned with the following Regulations in accordance with section 16(1) of that Act.

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;

(**1**) 1964 c.14; section 16(1) was amended, and section 16(1A) was inserted, by paragraph 5 of Schedule 4 to the European Communities Act 1972 (c.68); and section 16(3) was amended by S.I. 1977/1112. See section 38(1) for the definition of "the Minister". The functions of the Minister of Agriculture, Fisheries and Food were transferred to the Secretary of State by article 2(2) of the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794).

(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 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(**2**);

"National Lists Regulations" means the Seeds (National Lists of Varieties) Regulations 2001(**3**);

[[F1]"the Official Controls (Plant Health) Regulations" means the Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019;**]**

"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;

"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—

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

(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—

(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(**4**).

F1 Words in reg. 2(1) inserted (14.1.2020) by The Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019 (S.I. 2019/1517), reg. 1, **Sch. 5 para. 4(2)**

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(**5**)**[**F2, 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(**6**);

"the Directive" means Council Directive 2002/56/EC on the marketing of seed potatoes(**7**)**[**F3, as last amended by Commission Implementing Directive (EU) 2016/317**]**;

"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(**8**);

"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(**9**);

[F4"Directive 2014/21/EU" means Commission Implementing Directive 2014/21/EU determining minimum conditions and Union Grades for pre-basic seed potatoes;**]**

"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**).

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(a)**

(**4**) 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).
(**5**) OJ No L 362, 9.12.2004, p 21.
(**6**) 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).
(**7**) 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).
(**8**) OJ No L 162, 21.6.2008, p 13.
(**9**) OJ No L 38, 7.2.2014, p 32.
(**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).