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STATUTORY INSTRUMENTS

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**2011 No. 994 (W.147)**

**SEEDS, WALES**

**The Vegetable Seed (Wales) (Amendment) Regulations 2011**

<i>Made</i>	- - - -	<i>29 March 2011</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>30 March 2011</i>
<i>Coming into force</i>	- -	<i>22 April 2011</i>

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 16(1), (1A), (2), (3), (4) and (5) and 36 of the Plant Varieties and Seeds Act 1964 and now vested in them<sup>(1)</sup>, and in exercise of the powers in paragraph 1A of Schedule 2 to the European Communities Act 1972<sup>(2)</sup>.

In accordance with section 16(1) of that Act the Welsh Ministers have consulted with representatives of such interests as appear to them to be concerned.

The Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Welsh Ministers that it is expedient for the references to the Directive specified in regulation 3 to be construed as references to that Directive as amended from time to time.

**Title, application and commencement**

1.—(1) The title of these Regulations is the Vegetable Seed (Wales) (Amendment) Regulations 2011.

(2) These Regulations apply in relation to Wales and come into force on 22 April 2011.

**Amendment of the Vegetable Seed (Wales) Regulations 2005**

2. The Vegetable Seed (Wales) Regulations 2005<sup>(3)</sup> are amended in accordance with the following provisions of these Regulations.

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- (1) 1964 c. 14. Section 16 was amended by section 4(1) of, and paragraph 5(1), (2) and (3) of Schedule 4 to, the European Communities Act 1972 (c. 68), S.I. 1977/1112 and section 2 of the Agriculture Act 1986. See section 38(1) for a definition of “the Minister”. Under the Transfer of Functions (Wales) (No.1) Order 1978 (S.I. 1978/272), article 2(1) and Schedule 2, the functions of the Minister of Agriculture, Fisheries and Food under the Plant Varieties and Seeds Act 1964 were, so far as they are exercisable in relation to Wales, transferred to the Secretary of State and under the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2(1) and Schedule 1, the functions transferred to the Secretary of State by the 1978 transfer Order were transferred to the National Assembly for Wales. By virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 c. 32 those functions are exercisable by the Welsh Ministers.
- (2) 1972 c. 68 as amended by the Legislative and Regulatory Reform Act 2006 c. 51.
- (3) S.I. 2005/3035 (W. 223).

## Amendment to Regulation 2

### 3. In regulation 2(1) (General interpretation)—

#### (a) After the definition of “the Act” insert—

““additional region” means the region for seed production approved by the Welsh Ministers for the purposes of the second paragraph of Article 13.1 (additional regions) of Commission Directive 2009/145;

“amateur variety” means a variety of vegetable species with no intrinsic value for commercial crop production which is developed for growing under particular conditions and is contained within a National List;”;

#### (b) After the definition of “breeder’s seed” insert—

““certified seed of a conservation variety” means seed of a conservation variety which—

- (a) is produced in the region of origin or an additional region;
- (b) descends from seed produced accordingly to well defined practices for the maintenance of the variety;
- (c) satisfies the requirements for certification of certified seed set out in the Vegetable Seed Directive, except the requirements in respect of minimal varietal purity and examination and satisfies the requirements of Part V of Schedule 4; and
- (d) has sufficient varietal purity;

“Commission Directive 2009/145” Commission Directive 2009/145” means Commission Directive [2009/145/EC](#) providing for certain derogations, for acceptance of vegetable landraces and varieties which have been traditionally grown in particular localities and regions and are threatened by genetic erosion and of vegetable varieties with no intrinsic value for commercial crop production but developed for growing under particular conditions and for marketing of seed of those landraces and varieties as amended from time to time;”;

#### (c) after the definition of “component” insert—

““conservation variety” means a landrace or variety of vegetable species which is naturally adapted to local and regional conditions and threatened by genetic erosion and is contained within a National List and for these purposes—

- (a) “landrace” means a set of populations or clones of a plant species which are naturally adapted to the environmental conditions of their region; and
- (b) “genetic erosion” means loss of genetic diversity between and within populations or varieties of the same species over time or reduction of the genetic basis of a species due to human intervention or environmental change;”;

#### (d) after the definition of “official measures” insert—

““official post control” means a control plot has been sown with seed from the relevant seed lot and has produced plants which have been examined by or on behalf of the relevant European Authority and for these purposes—

- (a) “control plot” means a plot sown by or on behalf of a European Authority with seed from a sample which is of at least the minimum weight specified in column 3 of the table in Schedule 7 taken by or on behalf of a European Authority or the person marketing the seed; and
- (b) “European Authority” means:

- (i) the Welsh Ministers;
  - (ii) the Scottish Ministers;
  - (iii) the Department of Agriculture and Rural Development in Northern Ireland;
  - (iv) the Secretary of State; or
  - (v) a competent seed certification authority of an EEA state other than the United Kingdom;” and
- (e) after the definition of “previously listed variety” insert—
- ““region of origin” means the region forming a part or the whole of the United Kingdom identified by the Welsh Ministers for the purposes of Article 8(1) (region of origin) of Commission Directive 2009/145;” and
- (f) for the definition of “the Vegetable Seed Directive” substitute—
- ““the Vegetable Seed Directive” means Council Directive [2002/55/EC](#) on the marketing of vegetable seed, as amended from time to time.”.

#### **Insertion of new regulations 19A, 19B and 19 C**

4. After regulation 19 (Exception for market testing) insert—

##### **“Marketing seed of conservation varieties**

**19A.—**(1) The prohibition in regulation 15(1) does not apply to the marketing of seed of a conservation variety, certified seed of a conservation variety and standard seed of a conservation variety, which is in accordance with this regulation.

(2) The Welsh Ministers must ascertain, so far as is practicable, whether seed of a conservation variety has sufficient varietal purity by the use of official post control and the consideration of any other relevant information.

(3) Where the results of official post control show that the seed does not have sufficient varietal purity, the Welsh Ministers must notify in writing the person marketing the relevant seed lot of that fact.

(4) Where in the case of standard seed of a conservation variety, notice is given under paragraph (3), further marketing of the relevant seed lot must not occur.

(5) A person must not market seed of a conservation variety other than in its region of origin or additional region.

(6) A person proposing to produce seed of a conservation variety must supply the Welsh Ministers, in such a manner and form as they require, with the following details in writing—

- (a) the size (in hectares); and
- (b) the location,

of the area to be used to produce the seed.

(7) For the purposes of Article 15 (quantitative restrictions) of Commission Directive 2009/145, the Welsh Ministers may specify the maximum amount of seed of a conservation variety which may be marketed in any given growing season and specify different maxima for different persons or classes of person.

(8) Where a person proposing to produce seed of a conservation variety has supplied the Welsh Ministers with details under paragraph (6), the Welsh Ministers may in writing authorise the person to market seed of a conservation variety not exceeding the amount specified in the authorisation and must give notice of that authorisation to the person.

(9) A person must not market more than the maximum amount of seed of a conservation variety specified in an authorisation given that person under paragraph (8).

(10) A person must not market a package of seed of a conservation variety unless it had been sealed by the supplier using a non-reusable sealing system or some other sealing system—

- (a) including the use of a label or the affixing of a seal; and
- (b) in such a manner that the package cannot be opened without damaging the sealing system or without leaving evidence of tampering on the label or the package.”;

**“Marketing seed of amateur varieties**

**19B.**—(1) The prohibition in regulation 15(1) does not apply to the marketing of standard seed of an amateur variety which is in accordance with this regulation.

(2) The Welsh Ministers must ascertain, so far as is practicable, whether standard seed of an amateur variety has sufficient varietal purity by the use of official post control and the consideration of an other relevant information.

(3) Where the results of official post control show that the seed does not have sufficient varietal purity, the Welsh Ministers must notify in writing the person marketing the relevant seed lot of that fact.

(4) Where, in the case of standard seed of an amateur variety, notice is given under paragraph (3), no further marketing of the relevant seed lot may occur.

(5) The seed must be in a package not exceeding the maximum net weight specified for each species in Annex II to Commission Directive [2009/145/EC](#).

(6) A person must not market a package of standard seed of an amateur variety unless it has been sealed by the supplier using a non reusable sealing system or some other sealing system—

- (a) including the use of a label or the affixing of a seal; and
- (b) in such a manner that the package cannot be opened with damaging the sealing system or without leaving evidence of tampering on the label or the package.”

**“Marketing certain seed produced and packaged elsewhere in the EU**

**19C.** The prohibition in regulation 15(1) does not apply to the marketing of standard seed of an amateur variety which has been produced and packaged in another member State (other than the United Kingdom) and which has been sealed in accordance with Article 29 and labelled in accordance with Article 30 of Commission Directive 2009/145.”.

**Amendment to regulation 22**

**5.** In regulation 22 (Sampling)—

(1) After paragraph (6) insert—

“(7) A sample of seed of a conservation variety or standard seed of an amateur variety taken for the purposes of checking compliance with these Regulations must be taken in accordance with the requirements contained in Schedule 5 of the Seed (Registration, Licensing and Enforcement) (Wales) Regulations 2005(4).

(8) If a sample of seed of a conservation variety or standard seed of an amateur variety taken for the purposes of an examination is found not to have been taken in accordance with

the requirements of seeds regulations(5), no examination or no further examination may be made of that sample and any finding is null and void.”.

### **Amendment to regulation 25**

**6.** In regulation 25 (Labelling of packages)—

(1) After paragraph (1)(d) insert—

- “(e) seed of a conservation variety; or
- (f) standard seed of an amateur variety”.

(2) At the start of paragraph (3) insert—

“Except in relation to seed of a conservation variety or standard seed of an amateur variety”.

(3) After paragraph (16) insert—

“(16A) A package of seed of a conservation variety must bear a supplier’s label or a printed or stamped notice containing the information specified in Part VIII of Schedule 8 (and for the avoidance of doubt neither an official label nor an official inner label is required).

(16B) A package of standard seed of an amateur variety must bear a supplier’s label or a printed or stamped notice containing the information specified in Part IX of Schedule 8 (and for the avoidance of doubt neither an official label nor an official inner label is required).”.

### **Amendment to Schedule 1**

**7.** In Schedule 1 (Interpretation), Part IV for paragraph (28) substitute—

“**28.** In these Regulations—

(1) “standard seed” means seed of a listed variety, other than standard seed of a conservation variety and standard seed of an amateur variety—

- (a) that is intended mainly for the production of vegetables, and
- (b) satisfies the conditions laid down in Annex II to the Vegetable Seed Directive.

(2) “standard seed of a conservation variety” means seed of a conservation variety which—

- (a) is produced in the region of origin or additional region;
- (b) descends from seed produced according to well defined practices for the maintenance of the variety;
- (c) satisfies the requirement for marketing of standard seed set out in the Vegetable Seed Directive, except the requirements in respect of minimal varietal purity and satisfies the requirements of Part V of Schedule 4; and
- (d) has sufficient varietal purity.

(3) “standard seed of an amateur variety” means seed of an amateur variety which —

- (a) satisfies the requirements for maturity of standard seed set out in the Vegetable Seed Directive, except the requirement in respect of minimal varietal purity and satisfies the requirements of Part V of Schedule 4; and
- (b) has sufficient varietal purity.”.

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(5) S.I. 2004/2881 (W.251), S.I. 2005/1207 (W.79), S.I. 2005/3035 (W.223) S.I. 2005/3036, (W.224), S.I. 2005/3037 (W.225), and S.I. 2005/3038 (W.226).

#### **Amendment to Schedule 4**

8. In Schedule 4 (Conditions to be Satisfied by the Seed) after Part IV insert—

### **“PART V**

#### **Examinations used to ascertain whether a crop or seed lot meets the conditions relating to certified seed of a conservation variety, standard seed of a conservation variety and a standard seed of an amateur variety**

9. All examinations of certified seed of a conservation variety, standard seed of a conservation variety and standard seed of an amateur variety used to ascertain whether the crops or seed lots meet the standards in this Schedule applicable to the category must be carried out in accordance with current international methods as such methods exist.”.

#### **Amendment to Schedule 8**

9. In Schedule 8 (Labelling) after Part VII insert—

### **“PART VIII**

#### **Supplier’s label for a package of seed of a conservation variety**

33. The supplier’s label for a package of a seed of a conservation variety must be a minimum size of 110 millimetres by 67 millimetres, be coloured brown and contain the following information—

- (a) the words “EU rules and standards”;
- (b) the name and address of the person responsible for affixing the label or notice or that person’s identification mark;
- (c) the year of sealing, or the year of last sampling for the purposes of the last testing of germination, expressed by the word “sealed” or “sampled” (as the case may be), followed by the year in question;
- (d) the species;
- (e) the denomination of the conservation variety;
- (f) the words “certified seed of a conservation variety” or “standard seed of conservation variety (as appropriate)”;
- (g) the region of origin;
- (h) where the region of seed production is different from the region of origin, the indication of the region of seed production;
- (i) the reference number of the lot given by the person responsible for affixing the labels;
- (j) the declared net or gross weight or declared number of seeds;
- (k) where weight is indicated and granulated pesticides, pelleting substances or other solid additives are used, the nature of the chemical treatment or additive and the approximate ratio between the weight of clusters of pure seeds and the total weight.

## PART IX

### **Supplier's label for a package of standard seed of an amateur variety**

**34.** The supplier's label for a package of standard seed of an amateur variety must contain the following information—

- (a) the words "EU rules and standards";
- (b) the name and address of the person responsible for affixing the label or notice or that person's identification mark;
- (c) the year of sealing, or the year of last sampling for the purposes of the last testing of germination, expressed by the word "sealed" or "sampled" (as the case may be), followed by the year in question;
- (d) the species;
- (e) the denomination of the amateur variety;
- (f) the words "amateur variety"
- (g) the reference number of the lot given by the person responsible for affixing the labels;
- (h) the declared net or gross weight or declared number of seeds;
- (i) where weight is indicated and granulated pesticides, pelleting substances or other solid additives are used, the nature of the chemical treatment or additive and the approximate ratio between the weight of clusters of pure seeds and the total weight."

29 March 2011

*Elin Jones*  
Minister for Rural Affairs, one of the Welsh  
Ministers

## EXPLANATORY NOTE

*(This note is not part of the Order)*

These Regulations amend the Vegetable Seed (Wales) Regulations 2005, S.I. [2005/3035](#) (W.223) (“the principal Regulations”) so as to implement Commission Directive [2009/145](#) (O.J. L312, 27.11.2009, p.44) (“the Directive”). The Directive provides for certain derogations, for acceptance of vegetable landraces and varieties which have been traditionally grown in particular localities and regions and are threatened by genetic erosion and of vegetable varieties with no intrinsic value for commercial crop production but developed for growing under particular conditions and for marketing of seed of those landraces and varieties.

Regulation 3 amends regulation 2(1) of the principal Regulations to introduce new definitions.

Regulation 4 amends regulation 19 of the principal Regulations. The new regulation 19A of the principal Regulations, inserted by regulation 4 of these Regulations, provides that seed of a conservation variety must only be marketed in its region of origin, or an additional region, and is subject to quantitative restrictions. No official examination is required although seed of a conservation variety is subject to official post control.

The Regulations also provide for the marketing of amateur varieties. Regulation 7 amends Schedule 1 of the principal Regulations to introduce a definition of standard seed of an amateur variety. The new regulation 19B of the principal Regulations, inserted by regulation 4 of these Regulations, provides that standard seed of an amateur variety is subject to the quantitative restrictions in Article 28 and Annex II of the Directive. No official examination is required although standard seed of an amateur variety is subject to official post control.

These Regulations also make consequential amendments to the principal Regulations including—

- (a) The insertion of other new definitions in the principle Regulations (regulations 3 and 7);
- (b) Various amendments to sampling, sealing, and labelling (regulations 4, 5, 6, 8 and 9).

A partial Regulatory Impact Assessment was prepared on a UK wide basis, in relation to implementing the Directive, by the UK Food and Environment Research Agency (FERA) which is available on the website of the UK Government’s Department for Food, Environment and Rural Affairs (DEFRA).