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SCOTTISH STATUTORY INSTRUMENTS

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**2012 No. 5**

**SEEDS**

**The Fodder Plant Seed (Scotland)  
Amendment Regulations 2012**

<i>Made</i>	- - - -	<i>10th January 2012</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>12th January 2012</i>
<i>Coming into force</i>	- -	<i>10th February 2012</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 16(1), (1A), (2), (3), (4) and (5)(a) and 36 of the Plant Varieties and Seeds Act 1964<sup>(1)</sup> and all other powers enabling them to do so.

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

**Citation and commencement**

1. These Regulations may be cited as the Fodder Plant Seed (Scotland) Amendment Regulations 2012 and come into force on 10th February 2012.

**Amendment to the Fodder Plant Seed (Scotland) Regulations 2005**

2. The Fodder Plant Seed (Scotland) Regulations 2005<sup>(2)</sup> are amended in accordance with regulations 3 to 11.

**Amendment to regulation 2**

3. In regulation 2 (interpretation), in paragraph (1)—

(a) after the definition of “bulked seed lot” insert—

““collection site” means a part of the source area, where the seed has been collected;”;

(b) after the definition of “Commission Directive 2008/62” insert—

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(1) 1964 c.14. Section 16(1) was amended by the European Communities Act 1972 (c.68) (“the 1972 Act”), section 4(1) and Schedule 4, paragraph 5(1) and (2). Section 16(1A) was inserted by the 1972 Act, section 4(1) and Schedule 4, paragraph 5(1) and (2). Section 16(3) was amended by S.I. 1977/1112. See section 38(1) for the definition of “the Minister”. 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).

(2) S.S.I. 2005/329, amended by S.S.I. 2006/313 and 448, 2007/224 and 536, 2009/223 and 330 and 2010/219.

““Commission Directive 2010/60” means Commission Directive 2010/60/EU providing for certain derogations for marketing of fodder plant seed mixtures intended for use in the preservation of the natural environment(3);”;

(c) after the definition of “control plot” insert—

““crop-grown preservation mixture” means a preservation mixture produced in accordance with the following process—

- (a) seed of individual species is taken at the collection site;
- (b) the seed in paragraph (a) is multiplied outside the collection site as single species; and
- (c) the seeds of those species are then mixed to create a mixture composed of those genera, species and, where relevant, subspecies which are typical for the habitat type of the collection site;”;

(d) after the definition of “the 2001 Deliberate Release Directive” insert—

““directly harvested preservation mixture” means a preservation mixture marketed as collected at the collection site, with or without cleaning;”;

(e) after the definition of “official sticker” insert—

““preservation mixture” means a mixture (other than a mixture covered by regulation 8) of fodder plant seed of any of the species specified in Schedule 1 (and which may also contain other constituents), which the Scottish Ministers are satisfied will, when used—

- (a) assist in the conservation of genetic resource; and
- (b) reduce the loss of genetic diversity or natural habitat;”;

(f) after the definition of “small EC B package” insert—

““source area” has the same meaning as it has in Commission Directive 2010/60;”.

## **New regulation 8A**

**4.** After regulation 8 (mixtures) insert—

### **“Preservation mixtures**

**8A.—**(1) Regulation 6(1)(b) does not apply to the marketing of a preservation mixture if the producer of that mixture has obtained an authorisation in accordance with this regulation.

(2) A producer established in Scotland may apply to the Scottish Ministers for an authorisation to market a directly harvested or a crop-grown preservation mixture.

(3) An application under paragraph (2) shall be made to the Scottish Ministers in writing and shall contain such information as the Scottish Ministers may require.

(4) The Scottish Ministers may grant an authorisation to market a preservation mixture if—

- (a) the seed has been collected in its source area at a collection site which has not been sown in the 40 years prior to the date of application by the producer under paragraph (2);
- (b) the source area is located in the region of origin;

- (c) in the case of a directly harvested preservation mixture, a visual inspection has been carried out by the Scottish Ministers at the collection site during the period of growth of the seed, together with an examination, and the inspection and the examination have shown that the directly harvested preservation mixture complies with the requirements in Schedule 4B;
  - (d) in the case of a crop-grown preservation mixture, an official examination has shown that—
    - (i) the crop-grown preservation mixture complies with the requirements in Schedule 4B; and
    - (ii) the constituents of the mixture which comprise fodder plant seed comply with the requirements for Commercial Seed in Part II of Schedule 4 or comply with those requirements except in so far as those requirements relate to standards of percentage of germination; and
  - (e) in a case where the preservation mixture contains a Conservation variety, the conservation variety complies with the provisions in Commission Directive 2008/62.
- (5) An authorisation may be made subject to such conditions as the Scottish Ministers think are necessary.
- (6) An authorisation must include the information specified in paragraph 3 of Schedule 3.
- (7) An authorisation shall last for a period of one year or such shorter period as the Scottish Ministers may specify.
- (8) A producer proposing to apply for authorisation to market a preservation mixture must notify the Scottish Ministers of the quantity of seed for which that person intends to apply for authorisation under paragraph (2) before the beginning of each production season together with—
- (a) the location of the collection site;
  - (b) the size (in hectares) of the collection site; and
  - (c) in the case of a crop-grown preservation mixture, also the location and size of the multiplication site.
- (9) For the purposes of Article 8 (quantitative restriction) of Commission Directive 2010/60, the Scottish Ministers may specify the maximum amount of seed of a preservation mixture which may be marketed in any given growing season and specify different maxima for different persons or classes of person.
- (10) A preservation mixture may only be marketed in its region of origin.
- (11) In this regulation, in paragraph 3 of Schedule 3 and in paragraph 8A of Schedule 6, “region of origin” means the region forming a part or the whole of the United Kingdom identified by the Scottish Ministers for the purposes of Article 3 of Commission Directive 2010/60.”.

#### **Amendment to regulation 15**

5. In regulation 15 (sampling), in paragraph (1A), after “a Conservation Variety” insert “and of a directly harvested preservation mixture”.

#### **Amendment to regulation 16**

6. In regulation 16 (sealing of packages of fully certified seed)—
- (a) in paragraph (1)—

- (i) for “regulation 6(1), 8, 9A, 9B, 11 or 12” substitute “regulation 6(1), 8, 8A, 9A, 9B, 11 or 12”;
- (ii) after “a mixture of seeds to which regulation 8 applies,” insert “seeds of a preservation mixture,”; and
- (iii) in sub-paragraph (b), after “the Fodder Plant Seed Directive” insert “or, where appropriate, Article 10 (sealing of packages and containers of preservation mixtures) of Commission Directive 2010/60”; and
- (b) in paragraph (3), for “regulation 6(1), 8, 9A, 9B, 11 or 12” substitute “regulation 6(1), 8, 8A, 9A, 9B, 11 or 12”.

#### **Amendment to regulation 17**

- 7. In regulation 17 (labelling of packages of fully certified seed)—
  - (a) in paragraph (1)—
    - (i) for “regulation 6(1), 8, 9A, 9B, 11 or 12” substitute “regulation 6(1), 8, 8A, 9A, 9B, 11 or 12”; and
    - (ii) after “a mixture of seeds to which regulation 8 applies,” insert “a preservation mixture,”;
  - (b) in paragraph (5)—
    - (i) after “a mixture of seeds to which regulation 8 applies,” insert “seeds of a preservation mixture,”; and
    - (ii) in sub-paragraph (b), after “Fodder Plant Seed Directive” insert “and of Article 11 (labelling of preservation mixtures) of Commission Directive 2010/60”;
  - (c) in paragraph (8)—
    - (i) after “a mixture of seeds to which regulation 8 applies,” where it appears for the first time, insert “seeds of a preservation mixture,”; and
    - (ii) in sub-paragraph (a)—
      - (aa) in head (iii) at the end delete “and”; and
      - (bb) after head (iv) insert—
        - “(v) in the case of a preservation mixture to which regulation 8A applies, paragraph 8A of Part II of Schedule 6; and”;
  - (d) in paragraph (10)—
    - (i) after “a mixture of seeds to which regulation 8 applies,” insert “seeds of a preservation mixture,”; and
    - (ii) in sub-paragraph (a), after “Fodder Plant Seed Directive” insert “and in Article 11 (labelling of preservation mixtures) of Commission Directive 2010/60”.

#### **Amendment to regulation 24**

- 8. In regulation 24 (civil liabilities of sellers of seed), in paragraph (1), after “regulation 8” insert “or 8A”.

#### **Amendment to Schedule 3**

- 9. In Schedule 3 (particulars to be specified in an official certificate or a breeder’s confirmation)

- (a) for the heading of the Schedule substitute “PARTICULARS TO BE SPECIFIED IN AN OFFICIAL CERTIFICATE, A BREEDER’S CONFIRMATION OR AN AUTHORISATION TO MARKET A PRESERVATION MIXTURE”;
- (b) after paragraph 2 (particulars to be specified in a breeder’s confirmation) insert—

**“Particulars to be specified in an authorisation to market a preservation mixture**

**3.—**(1) The following particulars must be specified in an authorisation to market a preservation mixture—

- (a) name and address of producer;
- (b) harvesting method: directly harvested or crop-grown;
- (c) subject to sub-paragraph (2), percentage by weight of constituents as species and, where relevant, subspecies;
- (d) in the case of crop-grown preservation mixtures, a specific germination rate for constituents of the mixture which are specified in Schedule 1 and which do not comply with the germination requirements for Commercial Seed set out in Part II of Schedule 4;
- (e) quantity of the mixture to which the authorisation is to apply;
- (f) region of origin;
- (g) restriction to marketing in the region of origin;
- (h) source area;
- (i) collection site, and in the case of a crop-grown preservation mixture, in addition the multiplication site;
- (j) habitat type of the collection site; and
- (k) year of collection.

(2) For directly harvested preservation mixtures, it suffices to give those constituents as species and, where relevant subspecies, which are typical for the habitat type of the collection site and which are, as constituents of the mixture, of importance for the preservation of the natural environment in the context of the conservation of genetic resources.”.

**Insertion of new Schedule 4B**

**10.** After Schedule 4A (standards for certification of conservation varieties) insert Schedule 4B (requirements for preservation mixtures) contained in the Schedule to these Regulations.

**Amendment to Schedule 6**

**11.** In Schedule 6, in Part II (labels), after paragraph 8 insert—

**“Producer’s label for a package of seed of a preservation mixture**

**8A.—**(1) The producer’s label for a package of seed of a preservation mixture must contain the following information—

- (a) the words “EU rules and standards”;
- (b) name and address of the person responsible for affixing the labels and the person’s identification or mark;

- (c) harvesting method; either directly harvested or crop-grown;
  - (d) year of sealing expressed by the word “Sealed” followed by the year of sealing;
  - (e) region of origin;
  - (f) source area;
  - (g) collection area;
  - (h) habitat type of collection site;
  - (i) the words “preservation fodder plant seed mixture, intended for use in an area of the same habitat type as the collection site, not considering the biotic conditions”;
  - (j) reference number of the lot;
  - (k) subject to sub-paragraph (2), the percentage by weight of the constituents as species and, where relevant, subspecies;
  - (l) declared gross or net weight;
  - (m) where granulated pesticides, pelleting substances or other solid additives are used, the nature of the additive and also the approximate ratio between the weight of clusters or pure seeds and the total weight must be indicated; and
  - (n) in the case of crop-grown preservation mixtures, a specific germination rate for constituents of the mixture which are specified in Schedule 1 and which do not comply with the germination requirements for Commercial Seed set out in Part II of Schedule 4, or an average of the specific germination rates where more than five specific germination rates would be required.
- (2) For directly harvested preservation mixtures, it suffices to give those constituents as species and, where relevant subspecies, which are typical for the habitat type of the collection site and which are, as constituents of the mixture, of importance for the preservation of the natural environment in the context of the conservation of genetic resources.”.

St Andrew’s House, Edinburgh  
10th January 2012

*RICHARD LOCHHEAD*  
A member of the Scottish Executive

## SCHEDULE

Regulation 10

### INSERTION OF SCHEDULE 4B INTO THE FODDER PLANT SEED (SCOTLAND) REGULATIONS 2005

#### “SCHEDULE 4B

Regulation 8A(4)

#### Requirements for preservation mixtures

### PART I

#### Conditions for directly harvested preservation mixtures

1. The percentage of the constituents of the mixture that are species and, where relevant, subspecies, typical for the habitat type of the collection site is adequate for the purpose of recreating the habitat type of the collection site.
2. The germination rate of the constituent in paragraph 1 is sufficient for the purpose of recreating the habitat type of the collection site.
3. The maximum content of species which do not comply with paragraph 1 does not exceed 1% of the weight of a submitted sample.
4. The mixture does not contain *Avena fatua*, *Avena sterilis* or *Cuscuta spp.*.
5. The maximum content of *Rumex spp.*, other than *Rumex acetosella* and *Rumex maritimus*, does not exceed 0.05% of the weight of a submitted sample.

### PART II

#### Conditions for crop-grown preservation mixtures

1. The constituents are species which are typical for the habitat type of the collection site and, as constituents of the mixture, important for the preservation of the natural environment in the context of conservation of genetic resources.
2. Each constituent of the mixture has been multiplied for no more than five generations.

### PART III

#### Examinations

1. All visual inspections and examinations used to ascertain whether a preservation mixture meets the conditions specified in these Regulations must be carried out in accordance with current international methods insofar as such methods exist.”

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## EXPLANATORY NOTE

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

These Regulations implement Commission Directive 2010/60/EU (OJ L 228, 31.08.10, p.10). They amend the Fodder Plant Seed (Scotland) Regulations 2005 (“the principal Regulations”) in order to permit the marketing of preservation mixtures.

Regulation 4 inserts a new regulation 8A in the principal Regulations to provide a procedure whereby a producer established in Scotland may apply to the Scottish Ministers for an authorisation to market either a directly harvested or a crop-grown preservation mixture. In terms of the new regulation 8A, the Scottish Ministers may grant an authorisation, for a maximum period of one year, if certain conditions in relation to the seed are fulfilled. A preservation mixture may only be marketed in its region of origin.

Schedule 3 to the principal Regulations is amended to provide for the particulars which are to be specified in an authorisation to market a preservation mixture (regulation 9).

Regulations 15 and 16 of the principal Regulations are amended to include certain requirements for sampling of directly harvested preservation mixtures and sealing a package of seeds of a preservation mixture (regulations 5 and 6).

Regulation 17 of, and Part II of Schedule 6 to, the principal Regulations are amended to include certain requirements for labelling a package of seeds of a preservation mixture (regulations 7 and 11).

Regulation 3 amends regulation 2 of the principal Regulations to insert definitions of preservation mixture, collection site, crop-grown and directly harvested preservation mixture and source area.

No Business Regulatory Impact Assessment has been prepared for this instrument as it has no impact on the cost of business.