

2009 No. 1273

AGRICULTURE

**The Seeds (National Lists of Varieties) (Amendment)
Regulations 2009**

<i>Made</i> - - - -	<i>20th May 2009</i>
<i>Laid before Parliament</i>	<i>27th May 2009</i>
<i>Laid before the National Assembly for Wales</i>	<i>27th May 2009</i>
<i>Coming into force</i> - -	<i>30th June 2009</i>

The Secretary of State and the Welsh Ministers are each designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to the common agricultural policy of the European Community.

These Regulations make provision for a purpose mentioned in section 2(2) of that Act, and it appears to the Secretary of State and the Welsh Ministers that it is expedient for the reference in these Regulations to Commission Directive 2003/90/EC (setting out implementing measures for the purposes of Article 7 of Council Directive 2002/53/EC as regards the characteristics to be covered as a minimum by the examination and the minimum conditions for examining certain varieties of agricultural plant species(c)) to be construed as a reference to that Commission Directive as amended from time to time.

The Secretary of State and the Welsh Ministers (the Welsh Ministers acting only in relation to Wales) make these Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972(d).

Citation and commencement

1. These Regulations may be cited as the Seeds (National Lists of Varieties) (Amendment) Regulations 2009; they come into force on 30th June 2009.

Amendment

2. The Seeds (National Lists of Varieties) Regulations 2001(e) are amended as follows.

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- (a) For the Secretary of State, see S.I. 1972/1811; for the Welsh Ministers, see S.I.2005/2766 (by virtue of sections 59 and 162 of, and paragraphs 28 and 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32), functions conferred on the National Assembly for Wales are exercisable by the Welsh Ministers).
- (b) 1972 c. 68. The power of the Secretary of State, as a designated Minister, to make regulations which extend to Scotland and Northern Ireland remains exercisable by virtue of section 57(1) of the Scotland Act 1998 (c. 46) and article 3(2) of S.I. 2000/2812 respectively.
- (c) OJ No L 254, 8.10.03, p 7; last amended by Commission Directive 2007/48/EC (OJ No L 195, 27.7.07, p 29).
- (d) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c. 51).
- (e) S.I. 2001/3510, as amended by S.I. 2004/2949 and 2007/1871. There are further amendments in relation to Scotland which are not relevant to this instrument.

Regulation 2 (interpretation)

3. In regulation 2(1)—

(a) after the definition of “the Common Catalogue Directive”, insert—

““conservation variety” means a landrace or plant variety of a species specified in paragraph 1 of Part I of Schedule 1 that is naturally adapted to the local and regional conditions and threatened by genetic erosion, 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;”;

(b) after the definition of “person affected”, insert—

““region of origin” means the region identified by the National Authorities when a conservation variety is accepted on to a National List as being the region in which the variety has historically been grown and to which it is naturally developed;”.

Regulation 5 (acceptance of plant varieties)

4.—(1) Regulation 5 is amended in accordance with this regulation.

(2) After paragraph (2), insert—

“(2A) In respect of a conservation variety, the requirement in paragraph (1) to base acceptance on to a National List on the results of official measures does not apply if the National Authorities are satisfied that other information is sufficient for such acceptance.”.

(3) For paragraph (3)(b), substitute—

“(b) the variety is stable and sufficiently uniform as described in paragraphs 2 and 3 of Part I of Schedule 2, and distinct as described in—

(i) paragraph 1A of that Part, in the case of a conservation variety; or

(ii) paragraph 1 of that Part, in any other case;”.

(4) After paragraph (3)(c), insert—

“(ca) in respect of a conservation variety, it presents an interest for the conservation of plant genetic resources;”.

(5) At the end of paragraph (3)(f) insert “(and a conservation variety may have more than one name if the names concerned are historically known and so suitable for publication)”.

(6) After paragraph (3), insert—

“(3A) The National Authorities shall not accept a plant variety as a conservation variety on to a National List if—

(a) it is already listed in the Common Catalogue of varieties of agricultural plant species as a variety other than a conservation variety;

(b) having been so listed, it has been deleted from that Catalogue and it is less than two years since the deletion or the expiry of any extended period for certification and marketing granted by the Secretary of State, the Scottish Ministers, the Welsh Ministers, the Department of Agriculture and Rural Development or the competent seed certification authority in another member State in accordance with Article 15(2) of the Common Catalogue Directive; or

(c) it is protected by a Community plant variety right as provided for in Council Regulation (EC) No 2100/94 on Community plant variety rights^(a) or by plant

(a) OJ No L 227, 1.9.94, p 1; as last amended by Council Regulation (EC) No 15/2008 (OJ No L 8, 11.1.2008, p 2).

breeders' rights granted under the Plant Varieties Act 1997^(a), or where an application for such rights has been made but not finally determined.”.

Regulation 6 (naming of plant varieties)

5.—(1) In regulation 6(1), after “A name of a plant variety” insert “, other than a conservation variety,”.

(2) After regulation 6(1), insert—

“(1A) A name of a plant variety of a conservation variety is suitable in accordance with this regulation for publication in the Gazette if the name is not unsuitable as described in paragraph (2)(a), (e) or (f).”.

Regulation 7 (maintainers of plant varieties)

6.—(1) In regulation 7(1), at the end insert—

“, and, in the case of a conservation variety, in its region of origin”;

(2) In regulation 7(5)(a), after “variety” insert—

“, including, in the case of a conservation variety, maintaining it in its region of origin”.

Regulation 12 (maintenance of accepted plant varieties)

7. After regulation 12(2), insert—

“(2A) The maintainer of a conservation variety shall not maintain that variety except in its region of origin.”.

Schedule 2 (distinctness, stability and sufficient uniformity)

8.—(1) In Part I of Schedule 2, after paragraph 1 insert—

“1A.—(1) A plant variety of a conservation variety is regarded as distinct if it satisfies the characteristics referred to in—

- (a) the technical questionnaires associated with the test protocols listed in Annex I to Directive 2003/90 applicable to the species in question, or
- (b) the technical questionnaires of the test guidelines listed in Annex II to that Directive, applicable to the species in question.

(2) In this paragraph, “Directive 2003/90” means Commission Directive 2003/90/EC setting out implementing measures for the purposes of Article 7 of Council Directive 2002/53/EC as regards the characteristics to be covered as a minimum by the examination and the minimum conditions for examining certain varieties of agricultural plant species^(b), as amended from time to time.”.

(2) In Part III of Schedule 2—

- (a) omit the word “or” immediately preceding paragraph (d); and
- (b) at the end of paragraph (d), add—

“or

- (e) any conservation variety”.

Jane Kennedy
Minister of State

17th May 2009

Department for Environment, Food and Rural Affairs

(a) 1997 c. 66.

(b) OJ No L 254, 8.10.03, p 7; last amended by Commission Directive 2007/48/EC (OJ No L 195, 27.7.07, p 29).

20th May 2009

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Seeds (National Lists of Varieties) Regulations 2001 (S.I.2001/3510) to implement in part 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 (OJ No L 162, 21.6.08, p 13).

The amendments made to the Seeds (National Lists of Varieties) Regulations 2001 relate to the acceptance of “conservation varieties” on to the National Lists.

Regulation 3 inserts new definitions and regulation 4 makes amendments to allow for the acceptance of conservation varieties on to a National List. Regulation 5 amends the naming provisions and regulation 6 makes amendments to provide that the National Authorities may not accept an application to be a maintainer of a conservation variety unless they are satisfied that the variety can be maintained in its region of origin. Regulation 7 provides that the maintainer of a conservation variety must not maintain that variety except in its region of origin. Regulation 8 amends the requirements in Schedule 2 relating to the distinctness of the variety and makes other consequential amendments.

An impact assessment of the effect of that this instrument will have on the costs of business and the voluntary sector has been prepared and placed in the libraries of both Houses of Parliament. Copies are available, together with a transposition note, from the Department for Environment, Food and Rural Affairs, Plant Variety Rights Office and Seeds Division, Whitehouse Lane, Huntingdon Road, Cambridge CB3 0LF. Copies in Wales are available from the Rural Affairs Directorate, Welsh Assembly Government, Cathays Park, Cardiff CF10 3NQ.

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