



STATUTORY INSTRUMENTS.

S.I. No. 431 of 2009

EUROPEAN COMMUNITIES (MARKETING OF SEEDS)
REGULATIONS 2009.

(Prn. A9/1487)

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I, BRENDAN SMITH, Minister for Agriculture, Fisheries and Food, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), for the purpose of giving effect to Commission Directive No. 2008/62/EC of 20 June 2008¹, hereby make the following regulations:

1. These Regulations may be cited as the European Communities (Marketing of Seeds) Regulations 2009.

2. (1) In these Regulations-

“authorised officer” means—

- (a) a person who, immediately before the making of these Regulations, was an authorised officer within the meaning of any of the Regulations cited in Regulation 4(1),
- (b) a person appointed under Regulation 10,
- (c) a member of the Garda Síochána, or
- (d) an officer of Customs and Excise;

“Commission Directive” means Commission Directive No. 2008/62/EC of 20 June 2008;

“Minister” means Minister for Agriculture, Fisheries and Food;

“seed business” includes seed importer, seed packer or seed processor;

“sell” includes supply, offer or expose for sale and have in possession for sale;

“supply” includes giving without payment.

(2) A word or expression that is used in the Commission Directive and is also used in these Regulations has, in these Regulations, the same meaning as in the Commission Directive.

3. (1) The Minister may register a conservation variety in the national catalogue maintained under the European Communities (National Catalogue of

¹ O.J. L 162 of 21.6.2008, p.13.

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 30th October, 2009.*

Agricultural Plant Varieties) Regulations (S.I. No. 525 of 2002) if the conservation variety conforms to Articles 4 and 5 of the Commission Directive unless-

- (a) it is listed, or in the previous two years has been listed, in the common catalogue as a variety other than a conservation variety, or
- (b) it is the subject of an application for, or is protected by, a national plant variety right or a community plant variety right.

(2) The Minister may, in respect of a denomination of a conservation variety known before 25 May 2000, derogate from Regulation (EC) No. 930/2000 of 4 May 2000² unless to do so would violate a right protected under Article 2 of that Regulation.

(3) The Minister may register more than one name in respect of a conservation variety if he or she is satisfied that the names are historically in use.

4. (1) Notwithstanding anything relating to certification contained in—

- (a) the European Communities (Seed Potatoes) Regulations 1980 (S.I. No. 343 of 1980),
- (b) the European Communities (Cereal Seed) Regulations (S.I. No. 640 of 2001),
- (c) the European Communities (Seed of Fodder Plants) Regulations (S.I. No. 198 of 2002),
- (d) the European Communities (Seed of Oil Plants and Fibre Plants) Regulations (S.I. 280 of 2003), or
- (e) the European Communities (Beet Seed) Regulations 2005 (S.I. no. 142 of 2005),

A person may sell or supply seed of a conservation variety to which those Regulations would otherwise apply if the seed conforms to Article 10 of the Commission Directive.

(2) A person may sell seed potatoes of a conservation variety notwithstanding any restriction on the size of seed potatoes contained in the European Communities (Seed Potatoes) Regulations 1980 (S.I. No. 343 of 1980).

5. (1) A person shall not maintain, produce, sell or supply a conservation variety except in the region of origin of that variety.

(2) A person may produce seed of a conservation variety in an additional region approved in accordance with Article 11 of the Commission Directive.

² O.J L 108 of 5.5.2000, p.3-6

(3) A person may sell or supply seed of a conservation variety in an additional region of the State approved in accordance with Article 13 of the Commission Directive.

6. A person shall not sell or supply a package or container of seed of a conservation variety unless—

- (a) the package or container is sealed using a sealing device, applied by the supplier and comprising at least the label or fixing of a seal, that cannot be opened without damaging the sealing device or leaving evidence of tampering on the label, package or container, and
- (b) the package or container bears a label or a stamped or printed notice applied by the supplier containing the information specified in Article 18 of the Commission Directive.

7. (1) A person may only produce seed of a conservation variety in accordance with a permit (“conservation variety permit”).

(2) The Minister may grant a conservation variety permit, attach conditions to the conservation variety permit, vary a condition, revoke a conservation variety permit or refuse an application.

(3) An application for a conservation variety permit shall be made no later than two months before the planting date to which it relates, be in a form and contain such information as the Minister may determine.

(4) Without prejudice to the generality of paragraph (2), if it appears to the Minister that production of a conservation variety, having regard to the number of applications received, may exceed a quantitative restriction established by Article 14 of the Commission Directive, the Minister may restrict the quantity of seed that may be produced or the area that may be used for production.

(5) Without prejudice to paragraph (2), the Minister may revoke a conservation variety permit or refuse an application, if, in his or her opinion—

- (a) an act of the institutions of the European Communities or these Regulations has not, are not or will not be, complied with,
- (b) the applicant or holder of a conservation variety permit has committed an offence, relating to seeds, plant health or the environment,
- (c) the applicant or holder of a conservation variety permit has failed to comply with a permit condition,
- (d) in relation to an application, information required has not been furnished or information that is false or misleading in a material respect has been furnished,
- (e) the applicant or holder of a conservation variety permit is not a fit and proper person to be registered,

- (f) the holder of a conservation variety permit has ceased to carry out the activity to which the permit relates on the premises to which the permit relates,
- (g) it is necessary for the protection of plant health or the environment, or
- (h) it is necessary, ancillary or supplementary for an act of the institutions of the European Communities to have full effect.

(6) Other than in the case of paragraph (5)(g) or (h), if the Minister proposes to refuse an application or suspend or revoke a conservation variety permit, he or she shall-

- (a) notify the applicant or holder of a conservation variety permit of the proposal and the reasons for the proposal, and that he or she may make representations in relation to the proposal to the Minister within 14 days of notification,
- (b) consider a representation duly made before deciding whether to proceed with, modify or annul the proposal, and
- (c) notify the applicant or holder of a conservation variety permit of the decision and the reasons for the decision.

(7) If the Minister is of the opinion that—

- (a) it is necessary for the protection of plant health, or the environment, or
- (b) it is necessary, ancillary or supplementary for an act of the institutions of the European Communities to have full effect,

he or she may suspend or revoke a permit in accordance with paragraph (8).

(8) If the Minister suspends or revokes a conservation variety permit in accordance with this paragraph, he or she shall—

- (a) notify the applicant or holder of a conservation variety permit of the decision and the reasons for the decision, and that he or she may make representations in relation to the decision to the Minister within 14 days of notification,
- (b) consider a representation made, and
- (c) confirm, modify or annul the decision and notify the applicant or holder of a conservation variety permit of the decision and the reasons for the decision.

8. (1) A person shall not forge or utter knowing it to be forged a certificate, official label or other document issued for the purposes of these Regulations, a record purporting to be kept and maintained under the these Regulations or a

document purporting to be an extract from such a document (hereafter in this Regulation referred to as “a forged document”).

(2) A person shall not alter with intent to defraud or deceive, or utter knowing it to be so altered a certificate, official label or other document for the purposes of these Regulations, a record kept and maintained under these Regulations or an extract from such a document (hereafter in this Regulation referred to as “an altered document”).

(3) A person shall not have, without lawful authority, in his or her possession or under his or her control a forged document or an altered document.

9. A person shall not—

- (a) obstruct or impede an authorised officer in the exercise of his or her powers under Regulation 11,
- (b) fail, without reasonable cause, to comply with a requirement or direction of an authorised officer under Regulation 11,
- (c) in making an application for registration in the national catalogue or the register of seed businesses, in applying for a permit or in purporting to give information to an authorised officer for the performance of the officer’s powers under Regulation 11—
 - (i) make a statement that he or she knows to be false in a material particular or recklessly make a statement which is false in a material particular, or
 - (ii) fail to disclose a material particular,
- (d) tamper or otherwise interfere with a sample taken under Regulation 11, or
- (e) aid or abet a contravention of an act of the institutions of the European Communities or these Regulations.

10. (1) The Minister may, by instrument in writing, appoint such and so many persons as he or she thinks fit to be authorised officers for the purposes of some or all of these Regulations as may be specified in the instrument.

(2) The Minister may terminate the appointment of an authorised officer appointed by him or her, whether or not the appointment was for a fixed period.

(3) An appointment as an authorised officer ceases—

- (a) if it is terminated pursuant to paragraph (2),
- (b) if it is for a fixed period, on the expiry of that period, or
- (c) if the person appointed is an officer of the Minister, upon the person ceasing to be such an officer.

(4) Nothing in paragraph (3) is to be construed so as to prevent the Minister from reappointing as an authorised officer a person to whom that paragraph relates.

(5) An authorised officer shall be furnished with a warrant of his or her appointment as an authorised officer and, when exercising a power conferred on him or her, the officer, an officer of Customs and Excise or a member of the Garda Síochána shall, if requested by a person affected, produce the warrant or evidence that he or she is such an officer or member to the person.

11. (1) If an authorised officer has cause to suspect that—

- (a) any seed to which these Regulations apply is present, has been present or may be present on a premises,
- (b) a seed is or has been processed, stored or otherwise dealt with on a premises,
- (c) a sample taken from seed is or has been processed, stored, analysed or otherwise dealt with on a premises.
- (d) a premises is entered in the seed register, is the subject of an application for registration, is required to be registered or is ancillary to a premises registered, subject to an application for registration or required to be registered, or
- (e) a document relating to seed is present, was present or may be present on a premises, or,
- (f) an offence is being or has been committed under these Regulations, the authorised officer may enter the premises and he or she may—
 - (i) search the premises,
 - (ii) stop a person, vehicle, vessel or container,
 - (iii) board and search a vehicle, vessel or container,
 - (iv) search a person, where the authorised officer considers it necessary,
 - (v) examine a vehicle, vessel, container or other thing that may consist of or contain seed,
 - (vi) take, without payment, samples of seed or other thing or an article as he or she may reasonably require and carry out or cause to be carried out on a sample such tests, analyses, examinations or inspections as he or she considers necessary or expedient,
 - (vii) seize and detain (for so long as is necessary) any seed, vehicle or container,

- (viii) require the production of a document or thing relating to seed, a vehicle, vessel or container,
- (ix) retain a document or thing (for so long as is necessary),
- (x) make a record, including by means of writing, sound recording, photograph, video or other means,
- (xi) dispose of, or require the owner or person in charge of or in possession of seed to deal with or dispose of it or any equipment, machinery, plant or other thing used in connection with, or that may have been in contact with, the seed in a manner that the authorised officer sees fit,
- (xii) give a direction to, or request information of, a person regarding seed or a premises as he or she considers necessary,
- (xiii) require the name and address of a person and the name and address of any other relevant person including the person to whom seed is being delivered or who is causing it to be delivered,
- (xiv) require of a person the ownership, identity and origin of seed, or
- (xv) mark or otherwise identify seed taken under subparagraph (f)(xi).

(2) An authorised officer shall not enter, except with the consent of the occupier, a private dwelling, unless he or she has obtained a search warrant under Regulation 12 other than if he or she has reasonable cause to suspect that before a search warrant could be sought in relation to the dwelling anything to which paragraph (1) relates is being or is likely to be destroyed or disposed of.

(3) An authorised officer may use reasonable force, if necessary, in exercise of his or her powers under this Regulation.

(4) An authorised officer, when exercising a power under this Regulation may be accompanied by other persons and may take with him or her, or those persons may take with them, any equipment or materials to assist the officer in the exercise of the power.

(5) An authorised officer is not liable in any proceedings for anything done in the purported exercise of his or her powers under these Regulations if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

(6) Without prejudice to the generality of paragraph (1), a direction or requirement of an authorised officer may include conditions prohibiting, restricting or otherwise controlling the use, processing or movement of seed as may be specified by the authorised officer.

(7) Nothing in this Regulation operates to prejudice any power to search, or to seize or detain property, which may, apart from these Regulations, be exercised by a member of the Garda Síochána or an officer of Customs and Excise.

(8) If a member of the Garda Síochána has reasonable grounds to suspect that a person has committed an offence under these Regulations, the member may without warrant arrest the person.

(9) Nothing in section 17 of the Industrial and Provident Societies Act 1893 prevents an authorised officer from exercising a power conferred on him or her by these Regulations.

12. (1) If a judge of the District Court is satisfied by information on oath of an authorised officer that there are reasonable grounds for suspecting—

- (a) evidence of or relating to the commission or intended commission of an offence under these Regulations is to be found on a premises,
- (b) there is or was seed or equipment or other thing made, used or adapted for use (including manufacture and transport) in connection with seed or
- (c) a document or other record related to a thing to which subparagraph (a) or (b) refers is or may be on the premises,

the judge may issue a search warrant.

(2) A search warrant under this Regulation shall be expressed and operate to authorise a named authorised officer, accompanied by any authorised officers or other persons as the named authorised officer thinks necessary, at any time, within one month from the date of issue of the warrant, on production if so requested of the warrant, to enter (if necessary by use of reasonable force) the premises named in the warrant.

(3) If a premises is entered in accordance with a warrant issued under this Regulation, an authorised officer so entering may exercise all or any of the powers conferred on an authorised officer under these Regulations.

13. (1) A direction or requirement of an authorised officer (if in written form) or a fixed payment notice shall, subject to paragraph (2), be addressed to the person concerned by name and may be served on a person—

- (a) by giving it to the person,
- (b) by leaving it at the address at which the person ordinarily resides or, where an address for service has been furnished, at that address,
- (c) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides or, where an address for service has been furnished, at that address,
- (d) by electronic communication,

- (e) if the address at which the person ordinarily resides cannot be ascertained by reasonable enquiry and the notice relates to a premises, by delivering a copy to the premises or by affixing a copy in a conspicuous position on or near the premises, or
- (f) if the Minister or an authorised officer considers that the immediate giving of the notice, direction or requirement of an authorised officer (if in written form) is required, by sending a copy, by means of a facsimile machine, to a device or facility for the reception of facsimiles located at the address at which the person ordinarily resides or carries on business or, if an address for the service of notices has been furnished by the person, that address, provided that the sender's facsimile machine generates a message confirming successful transmission of the total number of pages of the notice.

(2) If a direction or requirement of an authorised officer is to be served on a person who is the owner or keeper of a thing to which the notice relates and the name of the person cannot be ascertained by reasonable enquiry, it may be addressed to that person by using the words “the occupant”.

(3) A person shall not, at any time within 6 months after a direction or requirement of an authorised officer delivered or affixed under paragraph (1)(e), remove, damage or deface the notice without lawful authority.

(4) For the purposes of this Regulation, a company within the meaning of the Companies Acts is considered to be ordinarily resident at its registered office and every other body corporate or unincorporated body is considered to be ordinarily resident at its principal office or place of business.

14. (1) The Minister may charge a fee in respect of an application for registration in the national catalogue, for certification or for the performance of another function under these Regulations, such fee, not exceeding the cost, estimated by the Minister charging the fee of providing the service to which the fee relates.

(2) If the Minister charges a fee under these Regulations, he or she shall not consider the application unless the fee accompanies the application.

(3) A fee payable to the Minister pursuant to this Regulation shall be disposed of for the benefit of the Exchequer in such manner as the Minister for Finance may direct.

Prosecutions

15. (1) A person who contravenes Regulation 4, 5, 6, 7(1), 8 or 9 commits an offence and is liable on summary conviction to a fine not exceeding €5,000 or to a term of imprisonment not exceeding 6 months or to both.

(2) A summary offence under these Regulations may be prosecuted by the Minister.

(3) If an offence under these Regulations is committed by a body corporate and it is proved to have been so committed with the consent or connivance of or to be attributable to any neglect on the part of any person who, when the offence is committed, is a director, manager, secretary or other officer of the body corporate, or a person purporting to act in any such capacity, that person, as well as the body corporate, is guilty of an offence and liable to be proceeded against and punished as if guilty of the first-mentioned offence.

(4) If the affairs of a body corporate or unincorporated body are managed by its members, paragraph (3) applies in relation to the acts and defaults of a member in connection with functions of management as if the member is a director or manager of the body corporate.



GIVEN under my Official Seal,
23 October 2009

BRENDAN SMITH
Minister for Agriculture, Fisheries and Food

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations provide 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.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
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TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
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