



STATUTORY INSTRUMENTS.

**S.I. No. 641 of 2015**



EUROPEAN UNION (SEED POTATOES) REGULATIONS 2015

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## S.I. No. 641 of 2015

## EUROPEAN UNION (SEED POTATOES) REGULATIONS 2015

I, Simon Coveney, Minister for Agriculture, Food and the Marine, 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 Council Directive 2002/56/EC of 13 June 2002<sup>1</sup> (as amended by Council Directive 2003/61/EC of 18 June 2003<sup>2</sup>, Commission Implementing Directive 2013/63/EU of 17 December 2013<sup>3</sup> and Commission Implementing Decision 2014/367/EU of 16 June 2014<sup>4</sup>), and Commission Decision 2004/3/EC of 19 December 2003<sup>5</sup>, Commission Decision 2004/842/EC of 1 December 2004<sup>6</sup>, Commission Implementing Directive 2014/20/EU of 6 February 2014<sup>7</sup>, and Commission Implementing Directive 2014/21/EU of 6 February 2014<sup>8</sup> hereby make the following regulations:

*Citation*

1. These Regulations may be cited as the European Union (Seed Potatoes) Regulations 2016.

*Interpretation*

2. (1) In these Regulations—

“authorised officer” means-

- (a) a person appointed under Regulation 13,
- (b) an officer of the Revenue Commissioners, or
- (c) a person appointed an authorised officer under the European Communities (Seed Potatoes) Regulations 2011 (S.I. No. 532 of 2011);

“Common Catalogue” means the common catalogue of varieties of species of agricultural plants published in the Official Journal of the European Union in accordance with Council Directive 2002/53/EC of 13 June 2002<sup>9</sup>;

“container” includes a sprouting tray, bag, box, crate or sack;

<sup>1</sup>O.J. L193, 20.7.2002, p. 60

<sup>2</sup>O.J. L165, 3.7.2003, p. 23

<sup>3</sup>OJ L 341, 18.12.2013, p. 52

<sup>4</sup>OJ L 178, 18.6.2014, p. 26

<sup>5</sup>O.J. L2, 6.1.2004, p. 47

<sup>6</sup>O.J. L362, 9.12.2004, p. 21

<sup>7</sup>OJ L 38, 7.2.2014, p. 32

<sup>8</sup>OJ L 38, 7.2.2014, p. 39

<sup>9</sup>OJ L 193, 20.7.2002, p. 1

*Notice of the making of this Statutory Instrument was published in  
“Iris Oifigiúil” of 19th January, 2016.*

“crop inspection report” means a crop inspection report issued in accordance with Article 23 of the Directive or a scheme referred to in Regulation 4;

“Directive” means Council Directive 2002/56/EC of 13 June 2002 on the sale or supply of seed potatoes, as amended by Commission Decision 2003/66/EC of 28 January 2003, Council Directive 2003/61/EC of 18 June 2003, Commission Decision 2005/908/EC of 14 December 2005, Commission Decision 2008/973/EC of 15 December 2008, Commission Implementing Decision 2011/820/EU of 7 December 2011, Commission Implementing Directive 2013/63/EU of 17 December 2013 and Commission Implementing Decision 2014/367/EU of 16 June 2014;

“Directive 2001/18/EC” means Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001<sup>10</sup> on the deliberate release into the environment of genetically modified organisms (as amended by Commission Decision 2002/623/EC of 24 July 2002<sup>11</sup>, Regulation 1829/2003/EC of the European Parliament and of the Council of 22 September 2003<sup>12</sup>, Regulation 1830/2003/EC of the European Parliament and of the Council of 22 September 2003<sup>13</sup>, Directive 2008/27/EC of the European Parliament and of the Council of 11 March 2008<sup>14</sup> and Directive (EU) 2015/412 of the European Parliament and of the Council of 11 March 2015<sup>15</sup>);

“Minister” means Minister for Agriculture, Food and the Marine;

“national catalogue” means the National Catalogue of Agricultural Plant Varieties of species of agricultural plants established by the Minister in accordance with the European Communities (National Catalogue of Agricultural Plant Varieties) Regulations 2002 (S.I. No. 525 of 2002);

“official label” means a label supplied by or on behalf of the Minister which complies with criteria set out in a scheme established by the Minister in accordance with Regulation 4 where more stringent measures are provided for than those set out in Annex I of the Directive or, in the case of seed potatoes produced outside the State, a label approved by the relevant authority in the country or place of origin which meets the requirements of Article 13(1)(a) or 18(f) of the Directive or Article 9 of Commission Decision 2004/842/EC of 1 December 2004;

“potato” means any tuber or part of a tuber or any plant or part of a plant of *Solanum Tuberosum* L or any other tuber-forming species or hybrid of the genus *Solanum*;

“pre-basic seed potatoes” means seed potatoes that satisfy the conditions of Commission Implementing Directive 2014/21/EU of 6 February 2014 and having been certified as satisfying the such condition-

<sup>10</sup>OJ L 106, 17.4.2001, p. 1

<sup>11</sup>OJ L 200, 30.7.2002, p. 22

<sup>12</sup>OJ L 268, 18.10.2003, p. 1

<sup>13</sup>OJ L 268, 18.10.2003, p. 24

<sup>14</sup>OJ L 81, 20.3.2008, p. 45

<sup>15</sup>OJ L 68, 13.3.2015, p. 1

- (a) in the case of seed potatoes produced in the State, by the Minister, or
- (b) in the case of seed potatoes produced outside the State, by the competent authority of the place origin; if the

“pre-basic TC” (pre-basic tissue culture class seed potatoes) means—

- (a) in the case of seed potatoes produced in the State, seed potatoes directly derived by micro propagation and may be tissue culture plantlets or tubers of the first generation (also referred to as “mini-tubers”) and grown in a unit officially approved for the production of pre-basic TC, and
- (b) in the case of seed potatoes produced outside the State, seed potatoes approved by the Minister as being equivalent to pre-basic TC seed potatoes produced in that state;

“premises” includes land (including land under water) with or without buildings, a vehicle (including a boat, ship, hovercraft, aircraft or offshore installation (being an offshore installation within the meaning of the Safety, Health and Welfare (Offshore Installations) Act 1987 (No. 18 of 1987)), railway wagon, container or other thing used in connection with, or ancillary to, such a thing;

“Regulation 1829/2003/EC” means Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003;

“seed potatoes” means 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 any potatoes that are intended to be used for planting and propagation;

“sell” includes offer, expose or keep for sale, invite an offer to buy, or distribute for reward or otherwise (whether directly or through another person);

“supply” means to give without reward but does not include supply of seed potatoes to an official testing and inspection body or temporary supply for the purpose of processing or packaging seed potatoes on behalf of the supplier;

“test and trial seed potatoes” means—

- (a) in the case of seed potatoes produced in the State, seed potatoes for which a crop inspection report as test and trial seed potatoes has been issued, and not withdrawn or being a lot or part of a lot in a container which bears an official label for test and trial seed potatoes in accordance with Regulation 8, or
- (b) in the case of seed potatoes produced outside the State, seed potatoes which have been moved into the State in a container which bears an official label in accordance with Article 9 of Commission Decision 2004/842/EC and to or in which a label or document, approved by the relevant authority in the country or place of origin, has been attached

or placed stating that, on examination, the potatoes satisfied the minimum conditions for basic seed potatoes of a Union grade;

“Union grade” means one of the grades of pre-basic seed potatoes or basic seed potatoes established in accordance with Commission Implementing Directive 2014/21/EU of 6 February 2014 or Commission Implementing Directive 2014/20/EU of 6 February 2014 as the case may be.

(2) A word or expression used in these Regulations and also used in an act of the institutions of the European Union cited in the preamble has, unless the contrary intention appears, the meaning in these Regulations that it has in the act of the institutions of the European Union in which it occurs.

#### *Exemptions*

3. (1) These Regulations do not apply to seed potatoes which are shown to the satisfaction of the Minister to be intended for export to a third country.

(2) Nothing in these Regulations prevents lots of pre basic seed potatoes or basic seed potatoes which do not comply with the conditions set out in Commission Implementing Directive 2014/21/EU of 6 February 2014 or Annex II of the Directive being sorted, if the tubers which are not rejected undergo a further examination by an authorised officer to ensure that the lots remaining after sorting comply with the Commission Implementing Directive or the Annex as the case may be.

(3) Regulations 5(2)(e), 8 and 9 do not apply to a sale by retail of less than 50 kg of pre-basic or basic seed potatoes—

- (a) if at the time of sale there is displayed conspicuously on or in close proximity to the seed potatoes a statement of the particulars specified in Regulation 8(1)(b), or
- (b) in a new container upon which is printed, or otherwise legibly and indelibly marked, or attached to or inserted therein a label marked with the particulars specified in Regulation 8(1)(b).

#### *Production of pre basic or basic seed potatoes*

4. A person shall not produce pre basic seed potatoes or basic seed potatoes unless he or she has applied to the Minister to enter a scheme for the certification of seed potatoes and accepted the terms and conditions attached to such a scheme.

#### *Sale or supply of seed potatoes*

5. (1) A person shall not sell or supply seed potatoes other than—

- (a) pre-basic seed potatoes that comply with Article 18 of the Directive and Commission Implementing Directive 2014/21/EU,
- (b) basic seed potatoes that comply with Commission Implementing Directive 2014/20/EU, or

(c) test and trial seed potatoes that satisfy the requirements of Article 6 of the Directive and hold an authorisation issued under Regulation 7.

(2) A person shall not sell or supply seed potatoes—

(a) as being of a grade superior to the grade stated in the crop inspection report relating to those potatoes,

(b) other than in a lot consisting wholly of seed potatoes of one grade,

(c) other than in a lot which meets the requirements as to size in accordance with Article 10 of the Directive,

(d) which have been treated with a product which is primarily for inhibiting germination, or

(e) other than in—

(i) a new container, or

(ii) subject to the approval of the Minister, a previously used container, which has been cleaned and disinfected since it was last used.

(3) A person shall not sell or supply genetically modified seed potatoes unless the seed potatoes are subject to a consent issued under the Genetically Modified Organisms (Deliberate Release) Regulations 2003 (S.I. 500 of 2003) and it is clearly indicated in the sales catalogue, information or representations provided by the seller or supplier, that the seed potatoes are genetically modified.

(4) A person who imports a container containing a net weight of more than 2 kilograms of seed potatoes produced in a country other than a Member State shall not sell or supply the seed potatoes unless that person provides the Minister with the information set out in Article 23(2) of the Directive.

#### *Certification*

6. (1) The Minister may certify seed potatoes as pre-basic seed potatoes or basic seed potatoes, if-

(a) an authorised officer has graded—

(i) pre basic seed potatoes in accordance with Commission Implementing Directive 2014/21/EU of 6 February 2014 and the Scheme established under Regulation 4,

(ii) basic seed potatoes into Union grades in accordance with Commission Implementing Directive 2014/20/EU of 6 February 2014 and the scheme established under Regulation 4,

- (b) a crop inspection report has been issued for the seed potatoes in accordance with Article 3(1) of the Directive and has not been withdrawn, and in accordance with the scheme established under Regulation 4, and
- (c) the seed potatoes satisfy the minimum conditions set out in Annexes I and II of the Directive and the scheme established under Regulation 4.

(2) A person shall not use an official label for seed potatoes unless the seed potatoes have been certified.

*Sale or supply of seed potatoes for scientific, test and trial purposes*

7. (1) A person shall not sell or supply—

- (a) seed potatoes for tests or trials carried out at agricultural enterprises to gather information on the cultivation or use of a variety of potato species, or
- (b) small quantities of seed potatoes for scientific purposes or selection work,

except in accordance with an authorisation (“scientific authorisation”).

(2) The Minister may grant a scientific authorisation, attach conditions to the authorisation, revoke an authorisation or refuse an application.

(3) An application for a scientific authorisation shall be in a form and be accompanied by such information as the Minister may require.

(4) The Minister shall not grant a scientific authorisation in respect of an application to which paragraph (1)(a) applies unless the seed potatoes subject to the application—

- (a) are of a variety for which an application has been made for entry in the national catalogue and which application has not been withdrawn or determined, and
- (b) satisfy the minimum conditions set out for a Union grade.

(5) The holder of a scientific authorisation shall make returns to the Minister regarding—

- (a) the results of the tests or trials to which the authorisation relates, or
- (b) the quantities of seed potatoes sold or supplied during the currency of the scientific authorisation and the Member State for which the seed potatoes were intended.



(6) The holder of a scientific authorisation shall not sell or supply seed potatoes—

- (a) in excess of the amount permitted by Article 7 of Commission Decision 2004/842/EC,
- (b) which contain genetically modified material unless the seed potatoes satisfy the requirements of Directive 2001/18/EC or Regulation 1829/2003/EC, or
- (c) if sale or supply would contravene a condition of the scientific authorisation.

(7) A scientific authorisation is valid for a period not exceeding one year.

(8) A scientific authorisation to which paragraph (1)(a) applies ceases to have effect if the variety of seed potato to which the authorisation relates is entered in the national catalogue or the Common Catalogue.

(9) The Minister may refuse an application or revoke a scientific authorisation if, in the opinion of the Minister—

- (a) a condition attached to an authorisation has not been complied with,
- (b) it is necessary for the protection of plant health or the environment, or
- (c) it is necessary, ancillary or supplementary for an act of the institutions of the European Union to have full effect.

(10) If the Minister proposes to revoke a scientific authorisation, or to refuse an application, he or she shall—

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

*Packaging and labelling of seed potatoes*

8. (1) A person shall not sell or supply a package or container of pre basic or basic seed potatoes unless—

- (a) the potatoes are packaged and sealed to the Minister's satisfaction in accordance with Article 12 of the Directive,

(b) the potatoes are labelled with an official label in accordance with Article 13(1)(a) and where appropriate, Articles 15 and 16 of the Directive and with the scheme established under Regulation 4, and

(c) contain an official document in accordance with Article 13(1)(b) of the Directive.

(2) A person seeking to use an official label or an official document shall apply to the Minister with such information in such form and in such manner as the Minister may require.

(3) A person shall not, in connection with the issue of an official label or official document, supply any information that is false in a material respect.

(4) A person shall not sell or supply seed potatoes that have been treated with a chemical product unless the type and function or the proprietary name of that product is stated on a label attached to the container and on a document contained in the container.

(5) A person shall not sell or supply a genetically modified variety of seed potatoes unless all labels, whether official or otherwise, attached to each lot of that variety and a document contained in the container, clearly indicate that the variety has been genetically modified.

(6) A person shall not sell or supply seed potatoes in a package or container that has been re-sealed in accordance with Regulation 9(2) unless the official label states—

(a) that the container has been re-sealed,

(b) the date of re-sealing, and

(c) the authority responsible for re-sealing.

(7) A person shall not wilfully remove, deface, conceal or misuse an official label or another label attached to, or document contained in, a container of seed potatoes.

#### *Sealing of containers*

9. (1) A person shall not sell or supply a container of pre-basic, basic or test and trial seed potatoes unless it is sealed with an unbroken sealing device, applied by, or under the supervision of, an authorised officer, or the application of which has been inspected by an authorised officer and found to be satisfactory.

(2) If a sealing device on a container is broken, a person shall not re-seal the container unless under the supervision of an authorised officer.

(3) For the purposes of this Regulation a “sealing device” means a device applied in a manner that the container cannot be opened without damaging the

system of closing or leaving evidence of tampering either on the container or on the official label.

*Withholding or withdrawal of official label*

10. The Minister may withhold or withdraw an official label in respect of a lot or a part of a lot if he or she is satisfied that—

- (a) the lot does not comply with the Directive, Commission Implementing Directive 2014/20/EU of 6 February 2014 or Commission Implementing Directive 2014/21/EU of 6 February 2014 or the Scheme established under Regulation 4,
- (b) the lot does not comply with seed potatoes of the grade stated on the label,
- (c) the seed potatoes in the lot exceed tolerance for disease, pest, damage or defect applicable to those potatoes as set out in Annex II of the Directive,
- (d) an official label contains a particular which is false in a material respect, or
- (e) there has been any other failure to comply with these Regulations in respect of the seed potatoes.

*Records and information*

11. (1) A person who produces seed potatoes shall maintain for a period of 2 years records of purchase of seed potatoes for planting and particulars of the crops grown and of the sale or supply of the produce of those crops.

(2) A person who sells or supplies seed potatoes produced by another person shall maintain for a period of 2 years, records of the sale or supply of such seed potatoes.

(3) A person who produces or sells or supplies seed potatoes or otherwise has or had seed potatoes in his or her possession or in his or her charge shall, if so required in writing by an authorised officer, give within 7 days any information he or she may possess as to the person in whose possession or under whose charge they are or have been and shall produce for examination by an authorised officer any declarations, certificates, reports, labels, records, invoices or other documents relating to the planting, examination, inspection or sale or supply of seed potatoes.

*Fees*

12. (1) The Minister may set fees for examination, inspection, certification and carrying out tests and different fees may be set for different examinations, inspections, certificates or tests.

(2) A fee payable under this Regulation may be recovered by the Minister as a simple contract debt in a court of competent jurisdiction or by deducting the costs from any sum due by the Minister to a person to whom the fee is payable.

(3) A fee payable under this Regulation shall not exceed an amount equal to the cost, estimated by the Minister, of performing the function to which the fee relates.

(4) A fee under this Regulation shall be disposed of for the benefit of the Exchequer in such manner as the Minister for Finance may direct.

*Appointment of authorised officer*

13. (1) The Minister may, by instrument in writing, appoint such and so many persons or a class of persons as he or she thinks fit to be authorised officers for the purposes of some or all of the functions of an authorised officer as may be specified in the instrument.

(2) The Minister may terminate an appointment under paragraph (1), 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 paragraph (3) relates.

(5) An officer of the Minister shall furnish an authorised officer (other than an officer of Customs and Excise or member of an Garda Síochána) with a warrant of his or her appointment as an authorised officer and, when exercising a power conferred on him or her, the officer, officer of Customs and Excise or member of an 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.

*Functions of authorised officer*

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

(a) seed potatoes or a vessel, vehicle or trailer used in connection with seed potatoes is present, has been present or may be present on a premises,

(b) seed potatoes are or have been kept, processed, stored or otherwise dealt with on a premises,

(c) seed potatoes or a vessel, vehicle or trailer, equipment, plant or machinery used in connection with seed potatoes has been held in

possession or control, imported, exported, processed, stored or otherwise dealt with in contravention of an act of an institution of the European Union,

- (d) a document relating to seed potatoes referred to in subparagraph (a), (b) or (c) is present, was present or may be present on a premises,

the authorised officer may enter the premises and he or she may—

- (i) search the premises, other than a private dwelling,
- (ii) stop a vehicle, vessel or container,
- (iii) board and search a vehicle, vessel or container,
- (iv) examine seed potatoes, a vehicle, vessel, container, equipment, machinery or other thing,
- (v) take, without payment, samples of seed potatoes or an article, substance or liquid 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,
- (vi) require the production of a document (including a document in non-legible form in a legible form) or thing relating to these Regulations, vehicle, vessel, container, equipment, machinery or other thing,
- (vii) retain a document or thing (for so long as is necessary),
- (viii) make a record using any means including writing, photography or video,
- (ix) give a direction to, or request information of, a person regarding seed potatoes, a vessel, vehicle, container, machinery, equipment, premises or other thing as he or she considers necessary,
- (x) require the name and address of a person and the name and address of any other person including the owner of, or person to whom seed potatoes or other thing is being delivered or who is causing it to be delivered,
- (xi) require of a person the ownership, identity and origin of seed potatoes, a vessel, vehicle, container, equipment, machinery or other thing,
- (xii) require a person in charge or control of a vessel, vehicle or container to refrain from moving it,
- (xiii) carry out surveys or programmes as may be required by an act of the institutions of the European Union,

(xiv) mark or otherwise identify seed potatoes, a vessel, vehicle, machinery, equipment or other thing or a sample taken under subparagraph (v).

(2) If an authorised officer has reasonable cause to suspect that—

- (a) an offence is being or has been committed under these Regulations,
- (b) a contravention of an act of the institutions of the European Union is being or has been committed, or
- (c) evidence of an offence or contravention to which subparagraph (a) or (b) relates may be, is or has been on a premises,

the authorised officer may, in addition to the powers exercisable by him or her under paragraph (1)—

- (i) seize and detain seed potatoes, a vessel, vehicle, container, equipment, machinery or other thing, or
- (ii) dispose of, or require the owner or person in charge of or in possession of seed potatoes 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 a thing) in a manner that the authorised officer sees fit.

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

(4) An authorised officer, when exercising a function under this Regulation may be accompanied by other persons and may take with him or her 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 functions under this Regulation 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 potatoes, a vessel, vehicle, container, equipment, machinery or other thing as may be specified by the authorised officer.

(7) If a member of an 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.

(8) If, in the course of exercising any powers under these Regulations, an authorised officer finds or comes into possession of anything that the officer

believes to be evidence of an offence or suspected offence, it may be seized and retained for use in evidence in criminal proceedings.

(9) Nothing in these Regulations operates to prejudice a power conferred by another enactment to search, or to seize or detain property, which may be exercised by a member of an Garda Síochána or an officer of Customs and Excise.

*Search warrant*

15. (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) an offence is being or has been committed under Regulations made under the European Communities Act 1972 to which these Regulations apply,
- (b) a contravention of an act of the institutions of the European Union is being or has been committed,
- (c) evidence of an offence or contravention or intended contravention to which subparagraph (a) or (b) relates may be, is or has been on a premises,
- (d) there is or was a thing to which these Regulations relates or equipment or other thing made, used or adapted for use (including manufacture and transport) in connection with seed potatoes, or
- (e) a document or other record related to a thing to which subparagraph (a), (b), (c) or (d) 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 such 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, vehicle, vessel or aircraft named in the warrant.

(3) If a premises is entered under 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.

*Obstruction*

16. A person who—

- (a) obstructs or impedes an authorised officer in the exercise of his or her powers under Regulations 14 or 15,
- (b) fails, without reasonable cause, to comply with a requirement or direction of an authorised officer under Regulation 14, or

- (c) in purporting to give information to an authorised officer for the performance of the officer's functions under Regulation 14—
  - (i) makes a statement that he or she knows to be false in a material particular or recklessly makes a statement which is false in a material particular, or
  - (ii) fails to disclose a material particular,

commits an offence.

#### *Forgery*

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

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

#### *Compliance notice*

18. (1) If an authorised officer has reasonable grounds to suspect that—

- (a) seed potatoes do not conform to these Regulations,
- (b) an offence is or has been committed under these Regulations,
- (c) an act of the institutions of the European Union is not being or has not been complied with or there are reasons to believe that an act of the institutions of the European Union will not be complied with,
- (d) it is necessary for the protection of human health or the environment including the prevention, control or eradication of a disease, or
- (e) it is necessary, ancillary or supplementary for an act of the institutions of the European Union to have full effect,

he or she may serve or cause to be served on the owner or person who appears to be in charge, possession or control of potatoes or a premises a notice, (“compliance notice”) stating that opinion and directing that—

- (i) seed potatoes, or any potatoes derived from such seed potatoes, be dealt with in a manner specified in the compliance notice,
- (ii) such alterations be made to a premises or operations at a premises as the officer specifies in the compliance notice,
- (iii) seed potatoes, or any potatoes derived from such seed potatoes, be disposed of in such manner as the officer specifies in the compliance notice,



- (iv) a specified operation or activity cease on a premises,
- (v) a specified operation or activity takes place only in a manner specified in the compliance notice,
- (vi) a specified type or level of sampling and analysis be undertaken for a period specified in the compliance notice, or
- (vii) a specified operation or activity may only be carried out under and in accordance with such terms and conditions as are specified in the compliance notice.

(2) A person shall comply with a compliance notice or a requirement of a compliance notice unless and until the compliance notice is annulled under Regulation 19.

(3) A requirement contained in a compliance notice shall specify a time limit within which the compliance notice is to be complied with.

(4) A requirement specified in a compliance notice (in this paragraph referred to as “the earlier compliance notice”) may be amended or withdrawn by a further compliance notice in writing and the earlier compliance notice has effect subject to such amendment or withdrawal.

(5) A compliance notice, whether amended under paragraph (4) or not, may require the owner or person in charge of potatoes to choose between one or more of the requirements specified in the compliance notice and that person shall comply with the alternative requirement that he or she chooses.

*Appeal against compliance notice*

19. (1) A person affected by a compliance notice may, within 7 days of service of the compliance notice, apply to the Judge of the District Court having jurisdiction in the District Court District where the potatoes are located or to the Judge of the District Court having jurisdiction in the District Court District where the person ordinarily resides on the grounds that the compliance notice or any term of the compliance notice is not reasonable, having regard to the objectives of the Directive, or these Regulations (in this Regulation referred to as “an appeal”).

(2) An appeal may be heard at any sitting of the District Court within the appropriate District Court Area.

(3) A person making an appeal shall serve notice of the appeal, which shall contain a statement of the grounds upon which it is alleged that the compliance notice or any term of the compliance notice is unreasonable having regard to the objectives of the Directive, or these Regulations, on the Minister at least 48 hours prior to the hearing of the appeal and a copy of the notice of appeal shall be lodged with the appropriate District Court Clerk.

(4) On the hearing of an appeal, a Judge of the District Court may confirm, with or without modification, or annul a compliance notice.

(5) A person, including a person on whom a compliance notice is served, shall not—

- (a) pending the determination of an appeal, deal with potatoes to which a compliance notice relates other than under and in accordance with the compliance notice, or
- (b) after the appeal, deal with potatoes to which a compliance notice relates other than under and in accordance with the compliance notice or compliance notice as modified.

*Emergency measures*

20. (1) If—

- (a) a person, by act or omission, fails to comply, whether within the time specified or otherwise, with a compliance notice (including a compliance notice modified in accordance with Regulation 19(4)), or
- (b) an authorised officer has reasonable cause to suspect that—
  - (i) a compliance notice (including a compliance notice modified in accordance with Regulation 19(4)) is not or will not be complied with, or
  - (ii) pending the determination of an appeal, a premises or potatoes to which the compliance notice relates is not or will not be dealt with in accordance with Regulation 19(5),

an authorised officer may seize and detain potatoes in a manner that he or she thinks fit and sell or dispose of the potatoes in a manner that the authorised officer considers appropriate.

(2) Subject to paragraph (4), the proceeds of the sale or disposal of potatoes under paragraph (1) shall be paid to the owner of the potatoes as soon as may be after such sale or disposal and after a person has satisfied the Minister that he or she is the owner or otherwise entitled to the proceeds of the sale or disposal of the potatoes.

(3) The costs of seizure, sale or disposal of potatoes under this Regulation is recoverable by the Minister—

- (a) as a simple contract debt in a court of competent jurisdiction, or
- (b) by deducting the costs from any sum due by the Minister to a person on whom a compliance notice has been served.

(4) The costs of any action required by a compliance notice shall be borne by the owner of a premises or potatoes to which the compliance notice relates.

*Service*

21. (1) A compliance notice or a direction or requirement of an authorised officer (if in written form) 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, if 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, only if the recipient's reception facility generates a message confirming successful receipt of the communication or the sender's facility generates a message confirming successful receipt of the communication,
- (e) if the address at which the person ordinarily resides cannot be ascertained by reasonable enquiry and the compliance 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 compliance 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 compliance 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 compliance notice.

(2) If a compliance notice is to be served on or given to a person who is the owner or occupier of a premises and the name of the person cannot be ascertained by reasonable enquiry, it may be addressed to the person by using the words "the owner" or "the occupier".

(3) A person shall not, at any time within 6 months after a compliance notice is affixed under paragraph (1)(e), remove, damage or deface the compliance notice without lawful authority.

(4) For the purposes of this Regulation, a company within the meaning of the Companies Act 2014 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.

*Offences*

22. (1) A person who contravenes Regulation 4, 5(2), 7(1), 7(5), 7(6), 8, 9(1), 9(2), 11, 16, 17, 18, 19(5) or 21(3) commits an offence and is liable on summary conviction, to a class A fine.

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

(3) If an offence under these Regulations is committed by a body corporate and is proven to have been so committed with the consent, connivance or approval of, or to have been attributable to the wilful neglect on the part of any person, being a director, manager, secretary or other officer of the body corporate or a person who was purported to act in any such capacity, that person, as well as the body corporate, commits an offence and is liable to be proceeded against and punished as if he or she was guilty of the offence.

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

*Evidence on certificate etc*

23. (1) In proceedings for an offence under these Regulations, a certificate purported to be signed by a person employed at a laboratory, if a sample taken under these Regulations is analysed, stating the capacity in which the person is employed and stating—

- (a) that the person received a sample,
- (b) that, for the period specified in the certificate, the person had the sample in his or her possession,
- (c) that the person gave the sample to another person named in the certificate, or
- (d) the person carried out a procedure for the purpose of detecting in the sample, a substance or contamination or that the sample contained a substance as is, or was contaminated in a manner specified in the certificate,

is (without proof of the signature of the person or that he or she is employed at the laboratory), unless the contrary is proved, evidence of the matters stated in the certificate.

(2) A certificate purporting to be signed by an officer of the Minister and to certify that on a specific day or days or during the whole of a specified period—

- (a) a person was or was not the holder of an approval granted under Regulation 7, or
- (b) that a particular approval, referred to in this paragraph, was subject to a particular condition or conditions,

is, without proof of the signature of the person purporting to sign the certificate or that he or she is an officer of the Minister, evidence, unless the contrary is shown, of the matters stated in the certificate.

(3) In proceedings for an offence under these Regulations the court may, if it considers that the interests of justice so require, direct that oral evidence of any matter stated in a certificate under paragraphs (1) or (2) be given, and the court may for the purpose of receiving oral evidence adjourn the matter.

(4) In proceedings, evidence of an act of the institutions of the European Union may be given by production of a copy of the act certified by an officer of the Minister to be a copy of the act, and it is not necessary to prove the signature of the officer or that he or she is an officer of the Minister.

(5) Paragraph (4) is in addition to and not in substitution for the European Communities (Judicial Notice and Documentary Evidence) Regulations 1972 (S.I. No. 341 of 1972).

*Fixed penalty notice*

24. (1) If an officer of the Minister, authorised by the Minister in that behalf, has reasonable grounds for suspecting that a person is committing or has committed an offence under these Regulations, he or she may serve a notice in writing on that person stating that—

- (a) the person is alleged to have committed the offence,
- (b) the person may during the period of 28 days from the date of the notice make to the Minister a payment of €250 accompanied by the notice, and
- (c) a prosecution in respect of the alleged offence will not be instituted during the period specified in the notice and, if the payment specified in the notice is made during that period, no prosecution in respect of the alleged offence will be instituted.

(2) If notice is given under paragraph (1)—

- (a) a person to whom the notice applies may make the payment as specified in the notice,
- (b) the Minister may receive the payment, issue a receipt for it and retain the money so paid, and any payment so received shall not be recoverable in any circumstances by the person who made it, and
- (c) a prosecution in respect of the alleged offence shall not be instituted in the period specified in the notice, and if the payment so specified is made during that period, no prosecution in respect of the alleged offence shall be instituted.

(3) In a prosecution for an offence under these Regulations, the onus of proving that a payment pursuant to a notice under this Regulation has been made lies on the defendant.

*Revocation and saver*

25. (1) The European Communities (Seed Potatoes) Regulations 2011 (S.I. No. 532 of 2011) are revoked.

(2) Any reference to the European Communities (Seed Potatoes) Regulations 2011 shall be construed as a reference to these Regulations.



GIVEN under my Official Seal,  
31 December 2015.

SIMON COVENEY,  
Minister for Agriculture, Food and the Marine.

## EXPLANATORY NOTE

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

These Regulations amend the provisions of Annexes I and II of the Seed Potato Marketing Directive (2002/56/EC). Commission Implementing Directive 2013/63/EU sets down minimum conditions to be satisfied by seed potatoes and lots of seed potatoes, Commission Implementing Directive 2014/20/EU determines Union Grades of basic and certified seed potatoes and the conditions and designations applicable to such grades and Commission Implementing Directive 2014/21/EU determines minimum conditions and Union Grades for pre-basic seed potatoes.

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