

Protocol – Derogations for Temporary Marketing of Seed of a Lower Germination Standard

Principles

- The purpose of the protocol is to ensure that a derogation for the temporary marketing of seed of a lower germination standard than that required by the relevant Seed Marketing Regulations may only be given where there is a GB-wide shortage of the seed concerned and the supply shortage cannot be satisfied from within the UK.
- The GB Authorities must agree a derogation through Committee (PVSC).
- This Protocol applies to GB only and will require input from GB PVSC and NLSC representatives. DAERA is subject to EU Rules for granting derogations for the temporary marketing of seed of a lower germination in the event of difficulties in seed supply.
- Both NI's PVSC and NLSC representatives will be copied in throughout the process and may comment or provide advice.
- This Protocol provides a framework to implement the requirements of Retained EU Commission Regulation 217/2006 (as amended by SI 2019/162 which was amended before IP completion day by SI 2020/1388).

Protocol

Part I - Requesting a Derogation

- 1.1. An industry representative organisation (e.g., Agricultural Industries Confederation (AIC)) provides a request to all of the responsible authorities in GB (PVSC members), copying in the NI PVSC representative to consider a derogation request on behalf of GB seed company(s). The request from industry must include sufficient justification and supporting evidence, together with details of species, tonnage, duration of authorisation and relevant variety types (see Appendix 1).
- 1.2. The PVSC informs the NLSC to alert the certifying authorities¹. The PVSC has 15 working days to consider the request and respond². The PVSC is asked to respond with immediate urgent concerns within a shorter timeline such as refusing the request. If no serious concerns are raised, then Seed Certification Information Letters can be issued during the 15 working days (see Part II) to avoid unnecessary delay.
- 1.3. The PVSC assesses the justification and evidence accompanying the derogation request, seeking advice from the NLSC as necessary to inform the

¹ "The certifying authorities" means APHA for England and Wales and Scottish Government for Scotland.

² Requirements established in Commission Regulation 217/2006 retained in domestic law

decision, and considers if alternative supplies of suitable seed of varieties requested or similar may be sourced from elsewhere in the UK.

- 1.4. If there is not sufficient justification for a derogation, the PVSC Derogation Secretariat will inform the requesting industry representative organisation that the derogation request has been refused.
- 1.5. If there is sufficient justification:
 - 1.5.1. and if there are alternative supplies of seed elsewhere in the UK – the derogation request will be refused, or quantities reduced; or,
 - 1.5.2. there are no alternative supplies of seed elsewhere in the UK, the derogation request will be granted.
- 1.6. Once granted, the secretariat of the PVSC will issue a note to the certifying authorities confirming the PVSC's agreement to authorise a derogation.

Part II – Authorisation of the Derogation

- 2.1. APHA issues English and Welsh versions of a Seed Certification Information letter to English and Welsh stakeholders, and Scottish Government issues a Seed Certification Information letter to Scottish stakeholders providing details of the derogation and inviting bids to a nominated industry representative by a specified date and time. *Handled by the Agricultural Industries Confederation (AIC) on a GB basis (including non-AIC members).*

If a derogation is for a specified variety with some maintainership or control, only those seed companies with a known interest will be contacted (i.e., linseed varieties). A general Seed Certification letter will not be issued in such circumstances.
- 2.2. The allocation exercise is conducted by AIC. If total tonnage of bids exceeds total derogation amount approved, allocations are reduced on a pro rata basis. The completed allocation is sent to Defra for verification. Following the quota allocation, Defra notifies the PVSC and the NLSC of the allocation outcome.
- 2.3. The Derogation request for GB, as agreed by the PVSC, is authorised by the Secretary of State for England, Scottish Ministers for Scotland, Welsh Ministers for Wales or by the Secretary of State with the consent of Welsh Ministers.
- 2.4. Following the quota allocation, Defra (on behalf of Secretary of State) and WG (on behalf of Welsh Ministers) will issue English and Welsh versions (where appropriate) of an Authorisation Letter (Appendix 2) and SG (on behalf of Scottish Ministers) will issue a General Licence (Appendix 3) to permit the

temporary marketing of the seed of the approved tonnage³ in the relevant territories. Seed companies are informed of allocations via the Schedule to the Authorisation Letter and/or the schedule of the General Licence which will include registered names and addresses of companies and maximum tonnages. AIC issues copies of the authorisation and/or General Licence to all companies with an allocation under the derogation.

- 2.5. The certifying authorities are notified on the outcome of the allocation exercise providing them with a copy of the Authorisation Letter and /or General Licence so that they can inform their inspectorate and/or contracted parties.

Part III – Monitoring and Reallocation of Derogated Tonnage

- 3.1. The certifying authorities, as part of their enforcement programme, follow up marketing under the derogation to ensure compliance with the conditions of the Authorisation Letter/General Licence.

- 3.2. Reallocation of tonnage.

3.2.1. In the event that a company who is not authorised to market seed under the derogation requires an allocation, or a company requires a larger tonnage allowance, AIC may contact companies authorised under the derogation to ask if they will voluntarily reduce their tonnage allowance if it is unused.

3.2.2. If a company voluntarily agrees to reduce their tonnage allowance, AIC requests confirmation in writing from the company, to include:

- i) Company name and address
- ii) Original tonnage allocation
- iii) Tonnage marketed under the derogation to date
- iv) Tonnage agreed to be reallocated

If no seed companies voluntarily agree to reduce their derogated allowance, a new derogation request may be made.

3.2.3. AIC provides full details of the company to be added to the authorisation.

3.2.4. Defra (on behalf of the Secretary of State and Welsh Ministers) or Defra (on behalf of Secretary of State) and Welsh Government (on behalf of Welsh Ministers), and Scottish Government (on behalf of Scottish ministers) issue English and Welsh versions (where appropriate) of a Reallocation Notice, amending the Schedule to the

³ Under the relevant legislation i.e. The Seed Marketing (Wales) Regulations 2012, The Seed Marketing Regulations 2011, The Beet Seeds (Scotland) No 2 Regulations 2010, The Cereal Seed (Scotland) Regulations 2005, The Fodder Plant Seed (Scotland) Regulations 2005, The Oil and Fibre Plant Seed (Scotland) Regulations 2004, or The Vegetable Seed Regulations 1993.

Authorisation Letter/General Licence. AIC distributes the notice to all companies authorised to market under the derogation.

- 3.2.5. The certifying authorities are notified of the reallocation exercise and sent a copy of the revised Authorisation letter and General Licence so that they can inform their inspectorate and/or contracted parties.
- 3.3. When the time period for Authorisation/General Licence has passed, the certifying authorities will provide a report to the PVSC detailing the total tonnage authorised marketed under the derogation, and a report on auditing of marketing of seed under the derogation

Appendix 1 – Derogation Request Template from industry

Date
Requesting Organisation
Name of the responsible authority to whom the request is being made (Please list Defra, Welsh Government and Scottish Government here) When submitting the request please copy to DAERA.
Species
Category of seed
Variety Type(s)
Tonnage requested
Minimum Germination Capacity

Region of cultivation

Period of Application

Justification to support the request, including:

- Reason for the request (please provide as much detail as possible)
- Confirmation that in terms of the need for a derogation, the requesting organisation has consulted members in England, Scotland and Wales
- if alternative supplies of seed have been sought from elsewhere in the UK (i.e. including Northern Ireland)
- If consideration has been given to any available seed of similar variety types on the GB Variety List

(Please attach any supporting evidence)

Appendix 2 – Letter of Authorisation Pro-Forma

Dear applicant

Retained EU Commission Regulation 217/2006 - **TEMPORARY AUTHORISATION TO MARKET SEED OF {species} BELOW THE MINIMUM STATUTORY GERMINATION LEVEL**

Following a request from {a requesting industry representative organisation dated XXX} [the Secretary of State/Welsh Ministers/The Secretary of State and Welsh Ministers] authorise a temporary derogation to allow the marketing, in England and Wales, of seed of {X tonnes} in total of {species}, of variety types {insert variety types} that fail to meet the germination standard for such seed specified in {legislation reference} but which otherwise meets all marketing requirements.

This temporary authorisation is subject to the following conditions:

1. The authorisation is valid only from {start date} to {end date}.
2. Derogated seed must not be marketed until the official germination test has been completed by the Licensed Seed Testing Station.
3. The minimum percentage of germination shall be {#}%.
4. No seed of the categories pre-basic/basic may be placed on the market under this authorisation.
5. The official label for seed marketed under this authorisation must state the minimum germination level of the seed: “Derogated seed – min germ {#}%”.
6. The delivery note for seed marketed under this authorisation shall include reference to {legislation}. It shall also contain a statement that the seed is of a category satisfying less stringent requirements than those laid down in {legislation} and state the germination determined by the official seed testing report.
7. No seed may be placed on the market for the first time other than by the company named in the attached schedule.
8. No company marketing seed may exceed their allocation under this authorisation as set out in the attached schedule.
9. The maximum quantity of seed marketed under this authorisation shall not exceed {# tonnes}. Allocations or reallocations within this maximum may only be authorised by {Defra for England, or England and Wales with consent of Welsh Ministers or Welsh Government for Wales}.

I am copying this authorisation to {Contact at AIC or other industry representative organisation} and to {contact at certifying authority} for monitoring purposes.

Yours sincerely

{Name}

SCHEDULE 1

ALLOCATION OF MAXIMUM QUANTITY OF SEED OF {SPECIES} AUTHORISED FOR MARKETING UNDER THIS TEMPORARY AUTHORISATION

Company Authorised	Maximum Quantity (tonnes)
{Company name and address}	{quantity}

PLANT VARIETIES AND SEEDS ACT 1964
THE [species being marketed] REGULATIONS [year]

General Licence permitting the marketing of [Species common name (Latin name)]
not satisfying the germination standard

1. The Scottish Ministers issue this General Licence ("Licence") under regulation [legal basis] of the [species being marketed] Regulations [Year] ("the [year] regulations") for the purposes of overcoming a temporary difficulty in the supply of certified seed.

General Licence

2. The Scottish Ministers authorise the company / individuals listed in the schedule below are authorised to market [quantity] tonnes in total of [Species common name (Latin name)] of variety types [insert variety types] that fail to satisfy the germination standard for such seed specified in [legislation reference] but which otherwise meets all marketing requirements. [legislation reference]. In particular, seed marketing under this General Licence is exempted from the requirement to comply with the germination standard, specified in [legal reference], for the [Species]

This Licence takes effect from [Date] and expires at the end of [Date], unless revoked earlier by the Scottish Ministers.

Conditions of Licence

3. This Licence is subject to the following conditions

(a) no seed of the categories pre-basic or basic may be placed on the market under this Licence;

(b) no seed must not be marketed until the official germination test has been completed by the [Licensed Seed Testing Station / Official Seed Testing Station].

(c) no seed may be placed on the market for the first time under this Licence other than by the company listed in the Schedule;

(d) no person marketing seed under this Licence may exceed their allocation set out in the Schedule;

(e) the maximum quantity of seed that may be marketed under this Licence is set out in the Schedule. Allocations or reallocations within this maximum may only be authorised by agreement of the Scottish Ministers; and

(f) the official label for seed marketed under this General Licence must contain the following: -

(i) the germination rate ascertained in the report on official seed testing and there shall be affixed to the package containing the seed a label in accordance with [\[legislation reference\]](#), and

(ii) a statement that the seed is of a category satisfying less stringent requirements than those laid down in the [insert relevant legislative provision re germination rate].

(g) the information of the actual germination and the statement in (f)(ii) shall also be included in the delivery note.

A member of staff of the
Scottish Government

**ALLOCATION OF MAXIMUM QUANTITY OF SEED AUTHORISED FOR
MARKETING UNDER THIS LICENCE**

Person Authorised	Maximum Quantity (tonnes)