

Draft Regulations laid before the National Assembly for Wales under section 316(6) of the Marine and Coastal Act 2009, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2014 No. (W.)

RIVER, WALES

**SALMON AND FRESHWATER
FISHERIES**

**The Keeping and Introduction of
Fish (Wales) Regulations 2014**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations control the keeping and introduction of fish in inland waters. They apply in relation to Wales. They provide that it is an offence to introduce any fish into inland waters, to keep certain types of fish (the fish that belong to the taxonomic order specified in Part 1 of the Schedule but are not of a species specified in Part 2 of the Schedule) in inland waters, or to keep any kind of fish in protected areas where those fish would otherwise be absent, other than in accordance with a permit granted under these Regulations by the Natural Resources Body for Wales (“the Body”) (regulations 4 and 5). The Body may attach conditions to permits to introduce fish or to keep fish and a list of purposes for which, or matters in relation to which, conditions may in particular be imposed is contained in regulation 6(4).

Regulation 3 excludes aquaculture production businesses from the scope of these Regulations, including the transportation of fish between premises of one or more aquaculture production businesses. However, it does not exclude aquaculture production businesses from the requirement to have a permit to keep (otherwise than on the premises) fish or to introduce fish into inland waters.

Regulation 7 specifies the circumstances in which the Body may revoke, suspend or vary a permit.

Regulation 8 enables the Body to serve a notice on any person who is the owner or occupier of inland waters requiring that person to remove and dispose of fish, if the fish have been introduced into the water or kept in contravention of the Regulations. Paragraph (3) sets out the circumstances in which the Body may remove and dispose of fish without serving notice under paragraph (1). Paragraph (5) makes it a criminal offence not to comply with a notice under paragraph (1) without reasonable excuse.

Regulation 9 makes provision for the time at which a notice under regulation 7 or 8 takes effect.

Regulation 10 makes provision in relation to appeals by an applicant for a permit, or the holder of a permit or an owner or occupier of inland waters, who is the recipient of a notice under regulation 7 or 8.

Regulation 11 confers powers of entry on an authorised officer of the Body for the purposes of enforcing the Regulations. Regulation 12 sets out additional powers of an authorised officer, including the power to stop and detain any vehicle, and the power to carry out any search. Regulation 13 provides for certain offences relating to obstruction of a person acting in the execution of the Regulations.

Regulation 14 states that a person who is guilty of an offence under the Regulations is liable, on summary conviction, to a fine not exceeding £50,000, or on conviction on indictment to a fine which is unlimited. However, if section 85(2) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is in force on the day on which these Regulations are made, a fine imposed on summary conviction in a court in Wales will not be limited to £50,000.

Regulation 15 makes provision for offences by bodies corporate. The effect of paragraph (1) is that, in certain circumstances, a director or other similar person of a body corporate may be personally liable for an offence as well as the body corporate. Regulation 16 makes provision for offences committed (or alleged to have been committed) by partnerships and unincorporated associations.

Regulation 17 provides that an existing licence in force under section 1 of the Import of Live Fish (England and Wales) Act 1980 is to be taken to be a permit under the Regulations.

Regulation 18 repeals section 30 of the Salmon and Freshwater Fisheries Act 1975 in relation to Wales.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these

Regulations. A copy can be obtained from Marine and Fisheries Division, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

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DRAFT WELSH STATUTORY
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2014 No. (W.)

RIVER, WALES

**SALMON AND FRESHWATER
FISHERIES**

**The Keeping and Introduction of
Fish (Wales) Regulations 2014**

Made

Coming into force

20 January 2015

A draft of this instrument has been approved by a resolution of the National Assembly for Wales in accordance with section 316(6) of the Marine and Coastal Access Act 2009(1).

The Welsh Ministers, in exercise of the powers conferred by sections 232(1), (5)(a), (d), (e), (h), (i) and (j) and (7) and 316(1) and (2) of the Marine and Coastal Access Act 2009(2), make the following Regulations.

PART 1

INTRODUCTION

Title, commencement and application

1.—(1) The title of these Regulations is the Keeping and Introduction of Fish (Wales) Regulations 2014.

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- (1) 2009 c.23. Section 316(10)(a) defines “draft affirmative procedure” (“*gweithdrefn gadarnhaol ddrafft*”) for the purposes of section 316(6).
- (2) Section 232 was amended by S.I. 2013/755 (W. 90). The term “appropriate national authority” (“*awdurdod cenedlaethol priodol*”) is defined in section 232(8).

(2) These Regulations come into force on 20 January 2015.

(3) Subject to paragraphs (4) and (5), these Regulations apply in relation to live fish in Wales.

(4) Regulation 17 applies in relation to live fish and live eggs of fish in Wales.

(5) Regulation 18 applies in relation to Wales.

Interpretation

2. In these Regulations—

“the Body” (“*y Corff*”) means the Natural Resources Body for Wales;

“fish” (“*pysgod*”) means fish or the spawn of fish and includes molluscs and crustaceans;

“inland waters” (“*dyfroedd mewndirol*”) means any water of a kind specified in section 221 of the Water Resources Act 1991⁽¹⁾ except that it does not include garden ponds less than 0.4 hectares in area, which are not fished, have no links to other waters and are located within the curtilage of a residential property;

“keeping” (“*cadw*”), in relation to fish, means having, owning or controlling fish in inland waters;

“permit” (“*trwydded*”) means a permit granted or to be granted under regulation 6(1);

“premises” (“*mangre*”), except in regulation 3, means—

- (a) any land, artificial island, marine installation or structure,
- (b) any vehicle, or
- (c) any vessel;

“vehicle” (“*cerbyd*”) includes a trailer;

“vessel” (“*llestr*”) includes any ship or boat or other vessel used in navigation, and any hovercraft, submersible craft or other floating craft, but does not include anything that permanently rests on, or is permanently attached to, the sea bed.

Exclusions

3. These Regulations do not apply in relation to activities which take place—

- (a) on the premises of an aquaculture production business authorised under regulation 6 of the Aquatic Animal Health (England and Wales) Regulations 2009⁽²⁾; or

(1) 1991 c.57.

(2) S.I. 2009/463.

- (b) during transportation between—
 - (i) the premises of any such business; or
 - (ii) the premises of one such business and the premises of another such business.

PART 2

OFFENCES RELATING TO THE INTRODUCTION AND KEEPING OF FISH

Introduction of fish

4. A person who, otherwise than under and in accordance with the terms of a permit granted under regulation 6 held by that person—

- (a) introduces fish into inland waters,
- (b) has in their possession fish for the purpose of introducing any of those fish into inland waters, or
- (c) causes or allows any other person to introduce fish into inland waters

commits an offence.

Keeping fish

5.—(1) A person who keeps in inland waters, otherwise than under and in accordance with a permit granted under regulation 6, any fish of a kind to which this regulation applies commits an offence.

(2) This regulation applies to any fish which belongs to a taxonomic order specified in Part 1 of the Schedule and is not of a species specified in Part 2 of the Schedule.

(3) In relation to a protected area, this regulation also applies to fish of any species which would otherwise be absent from that area.

(4) In paragraph (3) a “protected area” (*“ardal warchodedig”*) is—

- (i) a site of special scientific interest, as defined by section 52(1) of the Wildlife and Countryside Act 1981(1);
- (ii) a European site or European marine site as defined by regulation 8 of the Conservation of Habitats and Species Regulations 2010(2);

(1) 1981 c.69. Relevant amendments to section 52(1) were made by section 75(1) of, and paragraphs 5(1) and, (2) of Schedule 9 to, the Countryside and Rights of Way Act 2000 (c. 37).

(2) S.I. 2010/490. Regulation 8 was amended by S.I. 2012/1927.

- (iii) a wetland designated under paragraph 1 of article 2 of the Ramsar Convention, as defined by section 37A(4) and (5) of the Wildlife and Countryside Act 1981(1).

PART 3

PERMITS

Grant of permit

6.—(1) On receipt of an application for a permit authorising the carrying on of any of the activities mentioned in paragraph (2), the Body may grant such a permit.

(2) The activities to which paragraph (1) refers are—

- (a) the keeping of fish of a kind to which regulation 5 applies in inland waters;
- (b) the introduction of fish into inland waters.

(3) A permit may be granted subject to such conditions as the Body may see fit.

(4) In particular, conditions may be imposed—

- (a) to limit the number of fish introduced into, or kept in, any inland waters;
- (b) to minimise the risk of fish escaping from any inland waters;
- (c) to ensure that the keeping or movement of fish is not harmful to the environment or to any fishery in waters that are connected to each other (including waters connected by a floodplain);
- (d) in relation to the keeping and retention of records for any activity authorised by the permit;
- (e) in relation to the disposal of fish;
- (f) setting out the circumstances in which a permit holder must notify the Body; and
- (g) limiting the time for which the permit is valid, so that the keeping of specified fish in inland waters is only allowed as a temporary measure.

(5) In this regulation, “movement of fish” (“*symud pysgod*”) means removal of fish from, or introduction of fish into, inland waters.

(1) Section 37A was inserted by section 77 of the Countryside and Rights of Way Act 2000 (c.37).

PART 4

ENFORCEMENT AND ADMINISTRATION

Revocation etc. of a permit

7.—(1) The Body may, by notice served on the holder of a permit, suspend or revoke the permit—

- (a) if any condition is breached, or
- (b) if the environmental conditions of the inland waters to which the permit relates have changed since the date on which the permit was granted, such that the Body considers that a suspension or revocation of the permit is necessary.

(2) The Body may, by notice served on the holder of a permit, vary the permit if in the Body's opinion the permit requires revision.

(3) The Body may suspend, vary or revoke a permit at the request of the holder of that permit.

Notice to remove and dispose of fish

8.—(1) If fish are introduced into inland waters or kept in contravention of these Regulations, the Body may serve a notice on the holder of a permit or, if there is none, the owner or occupier of those waters requiring the holder of the permit or the owner or occupier (as the case may be)—

- (a) to remove and dispose of fish—
 - (i) in a manner specified in the notice, and
 - (ii) at the expense of the holder of the permit or the owner or occupier; and
- (b) to take steps to ensure that the position is, as far as possible, restored to what it would have been had the Regulations not been contravened.

(2) If a notice under paragraph (1) is not complied with, the Body may arrange for—

- (a) the removal and disposal of fish; and
- (b) the taking of steps to ensure that the position is, as far as possible, restored to what it would have been had these Regulations not been contravened.

(3) The Body may remove and dispose of fish without serving notice under paragraph (1)—

- (a) in an emergency; or
- (b) if the holder of the permit or the owner or occupier cannot be ascertained.

(4) Where the Body acts under paragraph (2) or (3)(a), it may do so at the expense of the holder of the permit or the owner or occupier of inland waters and

any amount that falls to be repaid may be recovered by the Body as a civil debt.

(5) Failure to comply with a notice under paragraph (1) without reasonable excuse is an offence.

Time in which a notice takes effect

9.—(1) Subject to paragraph (2) and (3), a notice served under regulation 7(1) or (2) or regulation 8(1) takes effect 28 days after the date on which it was served.

(2) Where the notice specifies a period, the notice takes effect on the expiry of that period.

(3) Where an appeal under regulation 10 is brought, the notice does not take effect until the appeal has been determined or withdrawn, unless the appointed person determining the appeal so directs.

Appeals

10.—(1) An applicant for the grant of a permit may appeal against—

- (a) a refusal to grant it, or
- (b) the imposition of any condition.

(2) The holder of a permit or an owner or occupier of inland waters served with a notice under regulation 7(1) or (2) or regulation 8(1) may appeal against that notice.

(3) The appellant must serve written notice of appeal on the Body within 28 days from the date on which notification of the decision being appealed against was given.

(4) On receipt of a notice of appeal, the Body must appoint an independent person to determine the appeal.

(5) The appeal is by way of written representations from the Body and the appellant, and is subject to any time limits determined by the independent person.

(6) The independent person decides whether to allow the appeal (and may direct the Body to grant a permit or to vary any condition).

Powers of entry

11.—(1) An officer of the Body may, on producing a duly authenticated authorisation if required, enter any premises (except any premises used wholly as a private dwelling house) at any reasonable hour—

- (a) where the officer has reason to suspect that an offence under these Regulations has been, or is about to be, committed; or
- (b) for the purposes of exercising the powers conferred by regulation 7(1)(b) or regulation

8(3), or for investigating whether any of those powers are exercisable.

(2) The officer may be accompanied by such other persons, and may use any such vehicles, vessels or equipment as the officer considers necessary.

(3) An officer may enter any premises (or any part of premises) which are a private dwelling house only if a justice of the peace has issued a warrant authorising the officer to do so.

(4) If a justice of the peace, on sworn information in writing, is satisfied that there are reasonable grounds for entry into any premises for the purposes described in paragraph (1), and either—

- (a) admission has been refused, or a refusal is expected, and (in either case) notice to apply for a warrant has been given to the occupier,
- (b) asking for admission for giving such notice would defeat the object of the entry,
- (c) the case is one of urgency, or
- (d) the premises are unoccupied or the occupier is temporarily absent,

the justice may by signed warrant authorise the officer to enter the premises, if need be by reasonable force.

(5) A warrant under this regulation is valid for one month.

(6) An officer who enters any unoccupied premises must leave them as effectively secured against unauthorised entry as they were before entry.

Powers of an authorised officer

12.—(1) An officer entering premises under regulation 11 may—

- (a) stop and detain any vehicle or vessel;
- (b) inspect the premises, and any net, trap, machinery, equipment or fish on the premises;
- (c) take samples (including samples of fish) from anything on the premises;
- (d) seize any fish, net, trap, machinery or other equipment on the premises so far as it is necessary for the purposes described in regulation 11(1);
- (e) carry out any search, investigation, examinations or tests;
- (f) seize and humanely kill samples of fish for evidential purposes;
- (g) have access to, and inspect, copy or seize any document or record (in whatever form it is held) that he considers may be relevant to the purposes described in regulation 11(1); and

- (h) have access to, inspect and check the operation of any computer and any associated apparatus or material that is or has been in use in connection with a record of a kind referred to in sub-paragraph (g).

(2) For the purpose of paragraph (1)(h), the officer may require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material—

- (a) to afford such assistance as may be reasonably required; and
- (b) where a record is kept by means of a computer, to produce the record in a form in which it may be taken away.

(3) If the record is not produced in the form required by paragraph (2)(b), the officer may seize the computer or electronic storage device.

(4) Where an officer has reason to suspect that a person has committed an offence under these Regulations, the officer may require the person to provide the person's name and address.

(5) Where an officer has entered any premises, and it is not reasonably practicable to determine at the time whether any document or electronic file, fish, net, trap, machinery or other equipment on those premises is relevant to the purposes described in regulation 11(1), the inspector may seize it to ascertain whether or not it is relevant.

(6) Any fish seized may be disposed of as the authorised officer sees fit.

Obstruction

13. Any person who—

- (a) intentionally obstructs an officer from exercising that officer's powers under this Part,
- (b) without reasonable cause, fails to give any officer exercising that officer's powers under this Part any assistance or information that that officer may reasonably require under these Regulations,
- (c) furnishes to any officer exercising that officer's powers under this Part any information knowing it to be false or misleading, or
- (d) fails to produce a record when required to do so to any officer exercising that officer's powers under this Part,

commits an offence.

Penalties

14.—(1) A person guilty of an offence under regulation 4 (introduction of fish), regulation 5 (keeping of fish),^r regulation 8(5) (failure to comply with a notice) or regulation 13 (obstruction) is liable—

- (a) on summary conviction, to a fine not exceeding £50,000, or
- (b) on conviction on indictment, to a fine.

(2) If section 85(2) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is in force on the day on which these Regulations are made, paragraph (1)(a) applies in relation to a conviction by a court in Wales with the omission of the words “not exceeding £50,000”.

Offences by bodies corporate

15.Where a body corporate is guilty of an offence under these Regulations, and that offence is proved to have been committed with the consent of, or connivance of, or to be attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar person of the body corporate, or
- (b) any person who was purporting to act in any such capacity,

that person, as well as the body corporate, is guilty of an offence.

Offences by partnerships and unincorporated associations

16.—(1) Proceedings for an offence under these Regulations alleged to have been committed by a partnership or an unincorporated association may be brought against the partnership or association by its name.

(2) For the purposes of such proceedings—

- (a) rules of court relating to the service of documents are to have effect as if the partnership or association were a body corporate;
- (b) section 33 of the Criminal Justice Act 1925⁽¹⁾ and Schedule 3 to the Magistrates’ Courts Act

(1) 1925 c.86. Subsections (1) and (2) of section 33 were repealed by section 132 of, and Schedule 6 to, the Magistrates’ Courts Act 1952 (c. 55); subsection (3) was amended by section 56(1) of, and paragraph 19 of Part 2 of Schedule 8 to, the Courts Act 1971 (c. 23); subsection (4) was amended by section 109(1) and (3) of, and paragraph 71 of Schedule 8 and Schedule 10 to, the Courts Act 2003 (c. 39); subsection (5) was repealed by section 132 of, and Schedule 6 to, the Magistrates’ Courts Act 1952.

1980(1) apply in relation to the partnership or association as they apply in relation to a body corporate.

(3) A fine imposed on a partnership or association on its conviction for an offence under these Regulations is to be paid out of the funds of the partnership or association.

(4) Where an offence under these Regulations committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, that partner (as well as the partnership) is guilty of the offence and is liable to be proceeded against and punished accordingly.

(5) Where an offence under these Regulations committed by an unincorporated association is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the association, that officer (as well as the association) is guilty of the offence and is liable to be proceeded against and punished accordingly.

(6) In paragraph (4), “partner” (“*partner*”) includes a person purporting to act as a partner.

(7) In paragraph (5), “officer” (“*swyddog*”) means an officer of the association or a member of its governing body, or a person purporting to act in such a capacity.

PART 5

MISCELLANEOUS

Transitional

17. A licence under section 1 of the Import of Live Fish (England and Wales) Act 1980(2) authorising a person to keep or release live fish, or the live eggs of fish, which is in force immediately before the coming into force of these Regulations, is to be taken to be a

(1) 1980 c.43. Paragraph 2(a) was repealed by sections 41 and 332 of, and paragraphs 51(1) and 13(a) of Schedule 3 and Part 4 of Schedule 37 to, the Criminal Justice Act 2003 (c. 44); paragraph 5 was repealed by sections 25(2) and 101(2) of, and Schedule 13 to, the Criminal Justice Act 1991 (c. 53); paragraph 6 was amended by section 41 of, and paragraph 51(1) and 13(b) of Schedule 3 to, the Criminal Justice Act 2003.

(2) 1980 c.27. Subsection (1) was amended by regulation 45 of, and paragraph 5 of Schedule 2 to, the Aquatic Animal Health (England and Wales) Regulations 2009 (S.I. 2009/463); subsection (2) was amended by section 105(1) of, and paragraph 62 of Schedule 11 to, the Natural Environment and Rural Communities Act 2006 (c. 16); section 132 of, and paragraph 8 of Schedule 9 to, the Environmental Protection Act 1990 (c. 43); and article 4(1) of, and paragraph 158 of Schedule 2 to, Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755) (W.90); subsection 3 was amended by section 37(2) of the Fisheries Act 1981 (c. 29).

permit under these Regulations authorising the keeping of fish or the introduction of fish into inland waters.

Repeal of section 30 of the Salmon and Freshwater Fisheries Act 1975

18. Section 30 of the Salmon and Freshwater Fisheries Act 1975(1) is repealed.

Carl Sargeant

Minister for Natural Resources, one of the Welsh Ministers

Date

(1) 1975 c.51. Section 30 was amended by article 4(1) of, and paragraph 127 and 142 of Schedule 2 to, Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755) (W.90); sections 105 and 120 of, and paragraph 17 of Schedule 15 and Schedule 24 to, the Environment Act 1995 (c. 25); and section 190 of, and Part 1 of Schedule 27 to, the Water Act 1989 (c. 15); section 34 of the Salmon Act 1986 (c. 62).

THE SCHEDULE

Regulation 5(2)

PART 1

Fish that may not be kept without a permit

<i>Taxonomic Order</i>	<i>Common name</i>
Acipenseriformes	Sturgeons, Paddlefish
Amiiformes	Bowfin
Anguilliformes	Eels
Atheriniformes	Silversides
Batrachoidiformes	Toadfish
Beloniformes	Needlefish, Flyingfish
Ceratodontiformes	Lungfish
Characiformes	Tetras, Characins, Headstanders
Clupeiformes	Herrings, Anchovies, Shads
Cypriniformes	Carps, Loaches, Minnows
Cyprinodontiformes	Killifish, Pupfish
Esociformes	Pike
Gasterosteiformes	Sticklebacks
Gonorynchiformes	Shellears
Gymnotiformes	Knifefish
Lepidosireniformes	South American and African Lungfish
Lepisosteiformes	Gar or Garpike
Myliobatiformes	Stingrays
Osmeriformes	Smelt, Noodlefish
Osteoglossiformes	Arapaima, Bonytongues
Perciformes	Perches, Butterflyfish, Cichlids, Tunas
Percopsiformes	Trout-Perch, Cavefish
Petromyzontiformes	Lampreys
Pleuronectiformes	Flounders and Sole
Polypteriformes	Bichirs
Salmoniformes	Salmon, Trout, Whitefish
Scorpaeniformes	Scorpionfish, Sculpins
Siluriformes	Catfish
Synbranchiformes	Spiny Eels
Syngnathiformes	Pipefish, Seahorses
Tetraodontiformes	Pufferfish

PART 2

Species of fish that may be kept without a permit

<i>Taxonomic Order</i>	<i>Species</i>	
	<i>Common name</i>	<i>Species name</i>
Anguilliformes	European eel	Anguilla anguilla
Clupeiformes	Allis shad	Alosa alosa
	Twaite shad	Alosa fallax
Cypriniformes	European barbel	Barbus barbus
	Bleak	Alburnus alburnus
	Common bream	Abramis brama
	Silver bream	Blicca bjoerkna
	Chub	Leuciscus cephalus
	Common carp ⁽¹⁾	Cyprinus carpio
	Crucian carp	Carassius carassius
	Dace	Leuciscus leuciscus
	Goldfish ⁽²⁾	Carassius auratus
	Gudgeon	Gobio gobio
	Ide ⁽³⁾	Leuciscus idus
	Spined loach	Cobitis taenia
	Stone loach	Barbatula barbatula
Esociformes	European minnow	Phoxinus phoxinus
	Roach	Rutilus rutilus
	Rudd	Scardinius erythro-phthalmus
	Tench	Tinca tinca
Gasterosteiformes	Northern Pike	Esox lucius
	Three-spined stickleback	Gasterosteus aculeatus
	Nine-spined stickleback	Pungitius pungitius
Osmeriformes	Smelt	Osmerus eperlanus
Perciformes	Eurasian perch	Perca fluviatilis
	Ruffe	Gymnocephalus cernuus
Petromyzonti-	Sea lamprey	Petromyzon

formes		marinus
	Brook lamprey	Lampetra planeri
	River lamprey	Lampetra fluviatilis
Salmoniformes	Brown trout or sea trout	Salmo trutta
	Rainbow trout, except the anadromous steelhead	Oncorhynchus mykiss
	Salmon	Salmo salar
	Grayling	Thymallus thymallus
	Arctic char	Salvelinus alpinus
	Vendace	Coregonus albula
	Powan, Schelly or Gwyniad	Coregonus lavaretus
Scorpaeniformes	Bullhead	Cottus gobio

⁽¹⁾Includes all varieties of the same species (e.g. Ghost Carp, Leather Carp, Koi Carp, Ogen Carp).

⁽²⁾Includes all varieties of the same species (e.g. Brown, Golden, Lion's Head, London Shubunkin).

⁽³⁾ Includes all ornamental varieties of the same species (e.g. Golden Orfe, Blue Orfe).