

## SCHEDULES

### SCHEDULE 3

Regulation 2(1) and 16(1)

#### Registration of varieties

##### Registration

1.—(1) Subject to paragraphs 6 and 7, the Department may register a variety with an official description if satisfied that the variety is distinct, uniform and stable (within the meaning of paragraphs 8 to 10).

(2) The Department must base acceptance that a variety is distinct, uniform and stable on the results of official measures, particularly growing trials, carried out in respect of the variety by or on behalf of—

- (a) the Department;
- (b) a responsible authority elsewhere in the United Kingdom; <sup>F1</sup>...
- (c) a responsible authority in [<sup>F2</sup>a member State; or]
- [<sup>F3</sup>(d) a competent authority outside the United Kingdom if the Department is satisfied that those growing trials are of equivalent standards to those carried out by, or on behalf of, the Department.]

(3) The Department may register a variety that has been marketed within the European Union prior to September 2012 with an officially recognised description.

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| <b>F1</b> | Word in Sch. 3 para. 1(2)(b) omitted (31.12.2020) by virtue of <a href="#">The Marketing of Seeds and Plant Propagating Material (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/211)</a> , regs. 1(1), <b>61(a)(i)</b> ; 2020 c. 1, Sch. 5 para. 1(1) |
| <b>F2</b> | Words in Sch. 3 para. 1(2)(c) substituted (31.12.2020) by <a href="#">The Marketing of Seeds and Plant Propagating Material (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/211)</a> , regs. 1(1), <b>61(a)(ii)</b> ; 2020 c. 1, Sch. 5 para. 1(1)     |
| <b>F3</b> | Sch. 3 para. 1(2)(d) inserted (31.12.2020) by <a href="#">The Marketing of Seeds and Plant Propagating Material (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/211)</a> , regs. 1(1), <b>61(a)(iii)</b> ; 2020 c. 1, Sch. 5 para. 1(1)                |

##### Application for registration with an official description

2.—(1) An application for registration of a variety with an official description must be made in writing to the Department in such form as the Department may require.

- (2) An application must be accompanied by—
- (a) the information required in a technical questionnaire at the time of the application or, where no technical questionnaire is available in relation to the relevant species, such information as the department may require;
  - (b) information on whether the variety is officially registered elsewhere in the UK<sup>F4</sup>..., or is the subject of an application for such a registration;
  - (c) a proposed denomination;

**Changes to legislation:** There are currently no known outstanding effects for the *The Marketing of Fruit Plant and Propagating Material Regulations (Northern Ireland) 2017, SCHEDULE 3.* (See end of Document for details)

- (d) such other information as the Department may require.
- (e) where applicable, an application may be accompanied by details of an official description established by a responsible authority elsewhere in the United Kingdom or in another <sup>F5</sup>country which is a member of UPOV].
- (f) where a growing trial is required, a sample of the material of the variety must be submitted on request.

<b>F4</b>	Words in Sch. 3 para. 2(2)(b) omitted (31.12.2020) by virtue of <a href="#">The Marketing of Seeds and Plant Propagating Material (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/211)</a> , regs. 1(1), <b>61(b)(i)</b> ; 2020 c. 1, Sch. 5 para. 1(1)
<b>F5</b>	Words in Sch. 3 para. 2(2)(e) substituted (31.12.2020) by <a href="#">The Marketing of Seeds and Plant Propagating Material (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/211)</a> , regs. 1(1), <b>61(b)(ii)</b> ; 2020 c. 1, Sch. 5 para. 1(1)

### Growing trials

3.—(1) Growing trials must—

- (a) establish whether a variety is distinct, uniform and stable (within the meaning of paragraphs 8 to 10);
- (b) be conducted, as regards trial design, growing conditions and characteristics of the variety to be covered, in accordance with—
  - <sup>F6</sup>(i) guidelines produced by UPOV relating to the conduct of tests for distinctiveness, uniformity and stability for the particular genus or species concerned;
  - (ii) where guidelines mentioned at (i) do not exist a protocol or guidelines established or recognised by the Department in relation to the same matters.]

(2) Growing trials are not required if the Department is satisfied an official description submitted in accordance with paragraph 2(3), or information submitted along with the official description, demonstrates the variety is distinct, uniform and stable (within the meaning of paragraphs 8 to 10).

<b>F6</b>	<a href="#">Sch. 3 para. 3(b)(i)</a> omitted and <a href="#">Sch. 3 para. 3(b)(i)(ii)</a> substituted for <a href="#">Sch. 3 para. 3(b)(ii)(iii)</a> (31.12.2020) by <a href="#">The Marketing of Seeds and Plant Propagating Material (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/211)</a> , regs. 1(1), <b>61(c)(i)(aa)(bb)</b> ; 2020 c. 1, Sch. 5 para. 1(1)
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### Duration and renewal of acceptance

4.—(1) Registration of a variety is valid—

- (a) in the case of a genetically modified variety, for the period for which the genetically modified organism of which the variety <sup>F7</sup>consists—
  - (i) is authorised for cultivation pursuant to Regulation [\(EC\) No 1829/2003](#) or the GMO regulations, or
  - (ii) has, before the day on which exit day falls, been authorised for cultivation pursuant to Directive [2001/18/EC](#); or]
- (b) in any other case until the end of the 30th calendar year from the date of registration.

(2) Subject to sub-paragraphs (3) and (4), the department may, on the basis of a written application, renew the registration of a variety for a further period of 30 years provided—

- (a) the requirements of distinctness, uniformity and stability are still satisfied in respect of the variety;

(b) there is still material of that variety available.

(3) In the case of a genetically modified variety, registration may only be renewed for the period for which the genetically modified organism concerned continues to be authorised for the cultivation pursuant to <sup>F8</sup>... or Regulation (EC) No 1829/2003.

(4) The Department may renew the registration in the absence of a written application where satisfied renewal serves to preserve genetic diversity and sustainable production.

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| <p><b>F7</b> Words in Sch. 3 para. 4(1)(a) substituted (31.12.2020) by <a href="#">The Marketing of Seeds and Plant Propagating Material (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/211)</a>, regs. 1(1), <b>61(d)(i)</b>; 2020 c. 1, Sch. 5 para. 1(1)</p> <p><b>F8</b> Words in Sch. 3 para. 4(3) omitted (31.12.2020) by virtue of <a href="#">The Marketing of Seeds and Plant Propagating Material (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/211)</a>, regs. 1(1), <b>61(d)(ii)</b>; 2020 c. 1, Sch. 5 para. 1(1)</p> |
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### Removal from register

5.—(1) The Department must revoke the registration of a variety if—

- (a) it is no longer distinct, uniform or stable;
- (b) there is no longer available any material of that variety that is sufficiently uniform or which corresponds to the description of the variety at the time of registration;
- (c) false or misleading information material to registration was provided to the Department in connection with the application for registration;
- (d) in the case of a genetically modified variety, the genetically modified organism of which the variety consists [<sup>F9</sup>—
  - (i) ceases to be authorised pursuant to Regulation (EC) No 1829/2003 or the GMO regulations; or
  - (ii) has, before the day on which exit day falls, been authorised for cultivation pursuant to Directive 2001/18/EC, and ceases to be authorised.]

(2) But sub-paragraphs (1)(a) to (c) do not apply if the Department is satisfied that the variety should remain on the register in the interests of preserving the genetic diversity of varieties.

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| <p><b>F9</b> Words in Sch. 3 para. 5(1)(d) substituted (31.12.2020) by <a href="#">The Marketing of Seeds and Plant Propagating Material (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/211)</a>, regs. 1(1), <b>61(e)</b>; 2020 c. 1, Sch. 5 para. 1(1)</p> |
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### Additional requirements for genetically modified varieties

6. Before registering a genetically modified variety, the Department must be satisfied that the genetically modified organism of which that variety consists has been authorised [<sup>F10</sup>pursuant to—

- (a) the GMO regulations;
- (b) Regulation (EC) No 1829/2003; or
- (c) Directive 2001/18/EC, where the authorisation was granted before the day on which exit day falls.]

**Changes to legislation:** There are currently no known outstanding effects for the *The Marketing of Fruit Plant and Propagating Material Regulations (Northern Ireland) 2017, SCHEDULE 3.* (See end of Document for details)

**F10** Words in Sch. 3 para. 6 substituted (31.12.2020) by [The Marketing of Seeds and Plant Propagating Material \(Amendment\) \(Northern Ireland\) \(EU Exit\) Regulations 2019 \(S.I. 2019/211\)](#), regs. 1(1), **61(f)**; 2020 c. 1, Sch. 5 para. 1(1)

### **Additional requirements for products to be used as genetically modified food or feed**

7.—(1) This paragraph applies to any variety from which products are derived for use as, or in—

- (a) food within the scope of Article 3 of Regulation [\(EC\) No 1829/2003](#); or
- (b) feed within the scope of Article 15 of that regulation.

(2) Before registering any such variety, the Department must be satisfied that the food or feed has been authorised pursuant to that Regulation.

### **Distinctness**

8. A variety is distinct if it is clearly distinguishable by one or more characteristics that result from a particular genotype or combination of genotypes, from any other variety whose existence is a matter of common knowledge at the time of the application for registration.

### **Uniformity**

9. A variety is uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in those characteristics which are included in the examination for distinctness, as well as any other characteristics used for the variety description.

### **Stability**

10. A variety is stable if those characteristics which are included in the examination for distinctness, as well as any others used for the variety description, remain unchanged after repeated propagation or, in the case of micropropagation, at the end of each cycle.

### **Interpretation**

11. In this Schedule—

**F11** ...

**F12** ...

“Directive [2001/18/EC](#)” means Directive [2001/18/EC](#) of the European Parliament and of the Council on the deliberate release into the environment of genetically modified organisms and repealing Council Directive [90/220/EEC](#) [<sup>F13</sup>as amended from time to time] ;

[<sup>F14</sup>“the GMO regulations” means—

- (a) in relation to Northern Ireland, the Genetically Modified Organisms (Deliberate Release) Regulations (Northern Ireland) 2003;
- (b) in relation to England, the Genetically Modified Organisms (Deliberate Release) Regulations 2002;
- (c) in relation to Scotland, the Genetically Modified Organisms (Deliberate Release) Regulations (Scotland) 2002;
- (d) in relation to Wales, the Genetically Modified Organisms (Deliberate Release) Regulations (Wales) 2002;]

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“Regulation (EC) No 1829/2003” means Regulation (EC) No 1829/2003 of the European Parliament and of the Council on genetically modified food and feed <sup>M1</sup>[<sup>F15</sup>as amended from time to time] ;

“technical questionnaire” means the technical questionnaire set out in—

- (a) [<sup>F16</sup>protocol or guidelines established or recognised by the Department in relation to distinctiveness, uniformity and stability tests for the particular genus or species concerned;]
- (b) <sup>F17</sup>... the relevant section for the relevant species contained within the ‘Guidelines for the conduct of tests for distinctness, uniformity and stability’ (UPOV test guidelines) of the International Union for the Protection of New Varieties of Plants (UPOV) and the Annex to the test guidelines concerned for the relevant species for which such guidelines have been published;

“UPOV” means the International Union for the Protection of New Varieties of Plants, being an intergovernmental organisation established by the International Convention for the Protection of New Varieties of Plants <sup>M2</sup>;

“UPOV test guidelines” mean test guidelines for the conduct of tests for distinctness, uniformity and stability that have been produced for the relevant species by the UPOV that are applicable at the beginning of the growing trial.

- F11** Words in Sch. 3 para. 11 omitted (31.12.2020) by virtue of [The Marketing of Seeds and Plant Propagating Material \(Amendment\) \(Northern Ireland\) \(EU Exit\) Regulations 2019 \(S.I. 2019/211\)](#), regs. 1(1), **61(g)(i)**; 2020 c. 1, Sch. 5 para. 1(1)
- F12** Words in Sch. 3 para. 11 omitted (31.12.2020) by virtue of [The Marketing of Seeds and Plant Propagating Material \(Amendment\) \(Northern Ireland\) \(EU Exit\) Regulations 2019 \(S.I. 2019/211\)](#), regs. 1(1), **61(g)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)
- F13** Words in Sch. 3 para. 11 inserted (28.3.2019) by [The Plant Health and Seeds \(Miscellaneous Amendments\) Regulations \(Northern Ireland\) 2019 \(S.R. 2019/41\)](#), regs. 1(1), **5(3)(a)**
- F14** Words in Sch. 3 para. 11 inserted (31.12.2020) by [The Marketing of Seeds and Plant Propagating Material \(Amendment\) \(Northern Ireland\) \(EU Exit\) Regulations 2019 \(S.I. 2019/211\)](#), regs. 1(1), **61(g)(iii)**; 2020 c. 1, Sch. 5 para. 1(1)
- F15** Words in Sch. 3 para. 11 inserted (28.3.2019) by [The Plant Health and Seeds \(Miscellaneous Amendments\) Regulations \(Northern Ireland\) 2019 \(S.R. 2019/41\)](#), regs. 1(1), **5(3)(b)**
- F16** Words in Sch. 3 para. 11 substituted (31.12.2020) by [The Marketing of Seeds and Plant Propagating Material \(Amendment\) \(Northern Ireland\) \(EU Exit\) Regulations 2019 \(S.I. 2019/211\)](#), regs. 1(1), **61(g)(iv)(aa)**; 2020 c. 1, Sch. 5 para. 1(1)
- F17** Words in Sch. 3 para. 11 omitted (31.12.2020) by virtue of [The Marketing of Seeds and Plant Propagating Material \(Amendment\) \(Northern Ireland\) \(EU Exit\) Regulations 2019 \(S.I. 2019/211\)](#), regs. 1(1), **61(g)(iv)(bb)**; 2020 c. 1, Sch. 5 para. 1(1)

#### Marginal Citations

**M1** OJ L 268, 18.10.2003, p.1; last amended by Regulation (EC) No 298/2008 of the European Parliament and of the Council (OJ L 97.9.4.2008, p.64).

**M2** UPOV is located at 34, chemin des Colombettes, CH-1211 Geneve 20, Switzerland.

**Changes to legislation:**

There are currently no known outstanding effects for the The Marketing of Fruit Plant and Propagating Material Regulations (Northern Ireland) 2017, SCHEDULE 3.