

SCHEDULE 4

Regulations 2(1) and 7(3)

Registration of varieties

Interpretation

1. In this schedule—

“CPVO” means the Community Plant Variety Office, being an agency of the European Union⁽¹⁾;

“CPVO protocols” means protocols produced by the CPVO for distinctness, uniformity and stability tests in relation to the relevant species that are available at the beginning of the growing trial⁽²⁾;

“distinctness” (and “distinct”) in relation to a variety, is to be construed in accordance with paragraph 9;

“the register” means the register of varieties maintained by the Scottish Ministers under paragraph 2;

“stability” (and “stable”) in relation to a variety, is to be construed in accordance with paragraph 11;

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

- (a) any CPVO protocols published in relation to the relevant species; or
- (b) where no such CPVO protocols have been published as mentioned in sub-paragraph (a), any UPOV guidelines published in relation to the relevant species; or
- (c) where no such protocols as mentioned in sub-paragraph (a) or guidelines as mentioned in sub-paragraph (b) have been published, a protocol or guidelines established by or on behalf of the Scottish Ministers in relation to the same matters;

“uniformity” (and “uniform”) in relation to a variety, is to be construed in accordance with paragraph 10;

“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⁽³⁾; and

“UPOV 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 and which are applicable at the beginning of the growing trial⁽⁴⁾.

Register of varieties

2.—(1) The Scottish Ministers must maintain a register of varieties.

(2) The register must include—

- (a) the denomination of the variety and any synonyms;
- (b) the species to which the variety belongs;
- (c) the date of registration of the variety or, where applicable, the date of renewal of the registration; and
- (d) the date of the expiry of the validity of the registration.

(1) The CPVO is located at 3 boulevard Maréchal Foch, FR – 49000 ANGERS, France.

(2) A list of applicable protocols is available on <http://cpvo.europa.eu/en/applications-and-examinations/technical-examinations/technical-protocols>.

(3) UPOV is located at 34, chemin des Colombettes, CH-1211 Genève 20, Switzerland.

(4) A list of applicable test guidelines is available at http://www.upov.int/resource/en/dus_guidance.html.

(3) The register must state whether a variety has an official description or an officially recognised description.

(4) In relation to each variety registered, the Scottish Ministers must also keep a file containing a description of the variety and a summary of the facts relevant to its registration.

Registration

3.—(1) The Scottish Ministers must register a variety with an official description if they are satisfied that—

- (a) the variety is distinct, uniform and stable;
- (b) a sample of the variety is available; and
- (c) in relation to genetically modified varieties, the genetically modified organism of which the variety consists is authorised for cultivation pursuant to [Directive 2001/18/EC](#) or Regulation (EC) No 1829/2003.

(2) Before being satisfied in accordance with sub-paragraph (1)(a) that a variety is distinct, uniform and stable, the Scottish Ministers must take into account the results of growing trials in accordance with paragraph 5, carried out in respect of the variety by or on behalf of—

- (a) the Scottish Ministers; or
- (b) a responsible authority in any other member State.

(3) The Scottish Ministers may register a variety that has been marketed within the European Union prior to 30th September 2012 with an officially recognised description.

Application for registration with an official description

4.—(1) An application for registration of a variety with an official description must be made in writing to the Scottish Ministers in such form as the Scottish Ministers 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 Scottish Ministers may require;
- (b) information on whether the variety is officially registered in another member State, or is the subject of an application for such a registration;
- (c) a proposed denomination;
- (d) in the case of a genetically modified variety, evidence that the genetically modified organism contained in that variety has been authorised for cultivation pursuant to [Directive 2001/18/EC](#) or Regulation (EC) No 1829/2003; and
- (e) such other information as the Scottish Ministers may require.

(3) Where applicable, an application may be accompanied by details of an official description established by a responsible authority in another member State.

(4) Where applicable, an application may also be accompanied by a statement of any other relevant information.

(5) Where a growing trial is required, a sample of the material of the variety must be submitted on request.

Growing trials

5.—(1) Growing trials must—

- (a) establish whether a variety is distinct, uniform and stable;
- (b) in relation to trial design, growing conditions and characteristics of the variety to be covered, be conducted in accordance with—
 - (i) CPVO protocols;
 - (ii) if no CVPO protocols have been published for the relevant species, any UPOV guidelines; or
 - (iii) if no CPVO protocols or UPOV guidelines have been published, any applicable protocols produced by, or on behalf of, the Scottish Ministers.

(2) Growing trials are not required if the Scottish Ministers are satisfied that an official description submitted in accordance with paragraph 4(3), or information submitted along with the official description, demonstrates that the variety is distinct, uniform and stable.

Duration and renewal of acceptance

6.—(1) The registration of a variety with an official description or, as the case may be, the renewal of such a registration, is valid—

- (a) for the period up to the end of the 30th calendar year from the date of registration or renewal; or
- (b) in the case of genetically modified varieties, for the shorter of either—
 - (i) the period up to the end of the 30th calendar year from the date of registration or renewal; or
 - (ii) the period during which the genetically modified organism of which the variety consists is authorised for cultivation pursuant to [Directive 2001/18/EC](#) or Regulation [\(EC\) No 1829/2003](#).

(2) The Scottish Ministers may—

- (a) renew registration in accordance with sub-paragraph (3) or (4); or
- (b) revoke registration in accordance with paragraph 7.

(3) The Scottish Ministers may, following an application made in writing to them, renew the registration of a variety with an official description for a period described in sub-paragraph (1), provided that—

- (a) the requirements of distinctness, uniformity and stability are still satisfied in respect of the variety; and
- (b) there is still material of that variety available on the market.

(4) The Scottish Ministers may renew the registration in the absence of a written application where they are satisfied that renewal serves to preserve genetic diversity and sustainable production and the conditions mentioned in sub-paragraph (3) are met.

Removal from register

7.—(1) Subject to sub-paragraph (2), the Scottish Ministers must revoke the registration of a variety if—

- (a) it is no longer distinct, uniform and 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 Scottish Ministers in connection with the application for registration;

Status: This is the original version (as it was originally made).

(d) in the case of any genetically modified variety, the genetically modified organism contained in that variety ceases to be authorised pursuant to [Directive 2001/18/EC](#) or Regulation [\(EC\) No 1829/2003](#).

(2) But heads (a) to (c) of sub-paragraph (1) do not apply if the Scottish Ministers are satisfied that the variety should remain on the register in the interests of preserving the genetic diversity of varieties.

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

8.—(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 Scottish Ministers must be satisfied that the food or feed has been authorised pursuant to Regulation [\(EC\) No 1829/2003](#).

Distinctness

9. 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

10. 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 the expression of those characteristics which are included in the examination for distinctness, as well as any other characteristics used for the variety description.

Stability

11. A variety is stable if the expression of 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 such cycle.