



Plant Varieties and Seeds Act 1964

1964 CHAPTER 14

PART II

SEEDS AND SEED POTATOES

The Index

20 Index of names of plant varieties

- (1) The Ministers may in accordance with this section prepare an index of names of plant varieties for use in connection with the sale of seeds of those varieties (in this Part of this Act referred to as " the Index ").
- (2) The Index shall be compiled in sections, and each section shall define the class of plant varieties to which it relates in such terms as to make it possible to determine whether any plant variety belongs to the class or not, irrespective of whether that variety is for the time being in the Index.
- (3) Different sections of the Index may be prepared, and may come into force, at different times.
- (4) Notice of the coming into force of a section of the Index, and of all additions, corrections and erasures in a section of the Index after it has come into force, shall be published by the Ministers in the gazette to be issued under Part IV of this Act, and in such other manner as appears to the Ministers to be appropriate for ensuring that persons particularly concerned with the Index, or with the class of plant varieties to which the section of the Index relates, have their attention drawn to it.
- (5) After a section of the Index has come into force any person who in selling seed of a plant variety for which a name is given in that section of the Index, or in offering or exposing for sale any such seed, uses some name not given in the Index for that plant variety, being a name which serves or is intended by him to serve to distinguish the seed from seed of other plant varieties within the class to which the section relates, shall be guilty of an offence under this section.

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- (6) The Ministers may for the purposes of this section establish, or arrange for the establishment of, a reference collection of plant material.
- (7) Schedule 5 to this Act shall have effect as to the procedure for compiling the Index and the other matters there mentioned.
- (8) In this and the three next following sections, and in Schedule 5 to this Act—
 " class " means a class of plant varieties to which a section of the Index relates ;
 " name " includes any designation,
and for the purposes of those provisions a plant variety shall not be regarded as distinct from another plant variety unless it is clearly distinguishable by one or more important morphological, physiological or other characteristics.

21 Restrictions on sales of seeds of unindexed plant varieties

- (1) Subject to this section, after a section of the Index has come into force it shall be an offence under this section for any person in selling seed of a plant variety which is within the class to which the section of the Index relates, but which is not in the Index, or in offering or exposing for sale any such seed, to use a name which serves or is intended by him to serve to distinguish the seed from seed of other plant varieties within that class.
- (2) Subsection (1) of this section shall not apply—
 (a) to a person who reasonably believes that the seed is to be used for scientific purposes or for the purposes of research, or
 (b) to a person who reasonably believes that the seed will be used outside Great Britain.
- (3) Where any person makes, or proposes to make, arrangements under which some other person uses seed under the control of the first-mentioned person for the purpose of increasing the first-mentioned person's stock, or of carrying out tests or trials, and under which the whole of the material produced, directly or indirectly, from the seed, and any unused seed, becomes or remains the property of the first-mentioned person, subsection (1) of this section shall not apply—
 (a) to a sale, or offer for sale, of the seed by the first mentioned person to the other person as part of the arrangements, or
 (b) to a sale by that other person to the first-mentioned person of seed produced, directly or indirectly, from that seed.
- (4) Except as provided by paragraph 3(3) of Schedule 5 to this Act, the Ministers shall not refuse an application for the inclusion of a plant variety in the appropriate section of the Index after it has come into force on any ground other than that in their opinion the plant variety is not distinct from a plant variety which is for the time being in the Index.
- (5) If at any time it appears to the Ministers that they will not be able to give a decision on such an application within two years from the time when the applicant has complied with the conditions prescribed under Schedule 5 to this Act for making the application, they shall make an entry in the Index giving to the plant variety such provisional name as appears to them appropriate; and when the decision has been given they shall make such corrections as may be required to give effect to the decision.

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- (6) The applicant may appeal to the Tribunal against the refusal by the Ministers of such an application, and the Tribunal may at any time before the final determination of the appeal require the Ministers to make an entry in the Index giving a provisional name for the plant variety to which the application relates pending the determination of the appeal.

22 Performance trials and reports for new varieties within a section of the Index

- (1) If the Ministers by order bring this section into force for any class of plant varieties in the Index, this section shall apply to any new plant variety within the class.

An order under this subsection may be revoked by a subsequent order, but without prejudice to liability for any offence before the revocation takes effect; and any order under this subsection shall be made by statutory instrument after consultation with representatives of such interests as appear to the Ministers to be concerned and any such statutory instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.

- (2) For the purposes of this section a plant variety shall be a new variety if it was not in the Index when the order under the foregoing subsection came into force unless it has been exempted under the next following subsection.
- (3) The Ministers may on an application from any person, and on being satisfied that seed of a plant variety, although unindexed, was in commercial use in Great Britain before the order under subsection (1) of this section took effect, exempt that plant variety from the provisions of this section.

An appeal shall lie to the Tribunal against the refusal of an application under this subsection.

- (4) Subject to this section, it shall be an offence under this section—
- (a) to sell seed of a new plant variety to which this section applies, or
 - (b) to offer or expose for sale any such seed, or
 - (c) to advertise for use any such seed,

until seed of that plant variety has been submitted for the purpose of performance trials of that plant variety in accordance with this section, and until a report on the result of the performance trials has been published in the manner prescribed by regulations under this section; and paragraphs (b) and (c) of this subsection shall apply whether or not the offer for sale or advertisement relates only to sales after the performance trials and report.

- (5) Paragraphs (a) and (b) of the last foregoing subsection shall not apply to a sale or offer for sale of seed which is not in Great Britain when the sale or offer for sale is made; but, subject to this section, where a person has acquired seed of a new plant variety to which this section applies, being seed which was not in Great Britain when he acquired it, it shall be an offence under this section for him in the course of business—
- (a) to use any of that seed in Great Britain as reproductive material at any time when under the last foregoing subsection it is unlawful to sell seed of that plant variety there; or
 - (b) at any such time so to dispose of any of that seed (otherwise than by way of sale) while it is in Great Britain as to make it available for use there as reproductive material.

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- (6) Subsection (4) of this section shall not apply to any sale or offer for sale of the kind described in subsection (3) of the last foregoing section, and subsection (5) of this section shall not apply to the use of seed for the purpose of carrying out tests or trials.
- (7) If it appears to the Ministers that a new plant variety to which this section applies has undergone performance trials and that an adequate report of the result of those performance trials is generally available, or that there is any other sufficient reason for dispensing with the requirements of subsections (4) and (5) of this section, they may direct that those subsections shall cease to apply to seed of that plant variety, but without prejudice to liability for any offence previously committed.
- (8) For all new plant varieties to which this section applies there shall be a time limit by which (so far as practicable) the report on the result of the performance trials is to be published in accordance with this section; and if the report on the result of the performance trials of a new plant variety to which this section applies is not published within the time limit, subsections (4) and (5) of this section shall cease to apply to seed of that plant variety, but without prejudice to liability for any offence committed before the time limit ran out. Except so far as regulations under this section otherwise provide for a class or part of a class, the time limit shall be two years from the date on which the performance trials begin.
- (9) The Ministers shall in making entries in a section of the Index after an order under subsection (1) of this section has taken effect—
- (a) employ a method which will distinguish those entries from the earlier entries and indicate which of the later entries relate to plant varieties exempted under subsection (3) of this section, and
 - (b) make additional entries showing when subsections (4) and (5) of this section have ceased to apply to seeds of a new plant variety.
- (10) The Ministers may by statutory instrument make regulations for the purposes of this section and, in particular, may by those regulations provide—
- (a) for the manner of making applications under subsection (3) of this section, and applications for submitting plant varieties for performance trials,
 - (b) for the information to be afforded by an applicant and the materials to be submitted at the time of application or subsequently,
 - (c) for the manner in which the reports are to be published and brought to the attention of those concerned,
 - (d) for the compiling of a register of applications for the submission of seeds for performance trials, of the reports of the results of those trials, and of the dates of publications of the reports, and for including entries which will show the date when the time limit under subsection (8) of this section will fall,
 - (e) for requiring the Ministers to publish notice of any direction under subsection (7) of this section, and of any case where a report is not published within the time limit under subsection (8) of this section,
- and regulations under this subsection made with the approval of the Treasury may authorise the charging of fees to applicants for the submission of seeds for performance
- A statutory instrument under this subsection shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (11) References in this section to advertising are references to advertising in any medium, including sound and television broadcasting ; but for the purposes of this section the

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communication of information in any publication for scientific purposes or purposes of research shall not be regarded as advertising.

23 Punishment for offences in connection with the Index

- (1) A person guilty of an offence under any of the three last foregoing sections shall be liable on summary conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding three months, or to both.
- (2) 'Notwithstanding anything in section 104 of the Magistrates' Courts Act 1952 or section 23 of the Summary Jurisdiction (Scotland) Act 1954 (time limit for proceedings), proceedings for an offence under any of the three last foregoing sections may be brought at any time not more than two years from the time when the offence was committed.
- (3) It shall be a defence to proceedings for an offence under any of the three last foregoing sections to prove;—
 - (a) that the accused took all reasonable precautions against committing an offence of the kind alleged and had not at the time of the alleged offence any reason to suspect that an offence was being committed by him, and
 - (b) where the accused obtained the seeds to which the alleged offence relates from some other person, that on demand by or on behalf of the prosecutor the accused gave all the information in his power with respect to the name and address of that other person, and with respect to any statutory statement or other document in his possession or power relating to the seeds, and the contract of sale.
- (4) If any information submitted to the Ministers by or on behalf of—
 - (a) a person making an application or representations as respects any matter connected with the compilation or alteration of the Index, or
 - (b) an applicant under subsection (3) of the last foregoing section,is false in a material particular and the person giving the information knows that it is false or gives the information recklessly, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding three months, or to both.