

SCHEDULES

SCHEDULE 1

Section 1.

PROTECTION OF APPLICANT FOR RIGHTS WHILE APPLICATION IS PENDING

- 1 (1) An applicant for the grant of plant breeders' rights shall in his application state whether he is also applying for a direction by the Controller under this Schedule (in this Schedule referred to as " a protective direction ") as respects the plant variety to which the application relates.
- (2) An applicant applying for a protective direction shall include in the application an undertaking to the effect that, subject to the exceptions in the next following sub-paragraph, in the period between the making of the application and the time when the question whether the application is to be allowed or refused is finally determined (or, if the undertaking is discharged under this Schedule at an earlier time, until that earlier time) no plants of the plant variety, and no material forming part of, or derived from, plants of that variety, will be offered or exposed for sale or sold in the United Kingdom by the applicant or with his consent.
- (3) An undertaking under this paragraph shall not prevent the applicant from making any offer for sale or sale which in the period before the application would be permitted by sub-paragraphs (3), (4) or (5) of paragraph 2 of Part II of Schedule 2 to this Act, or the exposure for sale of material where an offer for sale of that material would be so permitted.
- (4) If the Controller is satisfied that the applicant has duly given the undertaking, and that he has furnished to the Controller all such information, facilities and material as the Controller may require for the purposes of the application for the grant of plant breeders' rights, the Controller may, if he thinks fit, give a protective direction.
- (5) The Controller shall not give a protective direction if there is any evidence before him which tends to show that the applicant, or the person whose successor in title the applicant claims to be, is not the person who bred or discovered the plant variety to which the application relates.
- (6) An appeal shall lie to the Tribunal against a decision to give or refuse a protective direction.
- 2 (1) While a protective direction is in force, anything which, if the plant breeders' rights to which the application in question relates had been granted, would have constituted an infringement of those rights, or would under section 5(6) of this Act have been actionable in proceedings by the holder of those rights, may be the subject of proceedings under this paragraph.
- (2) Proceedings may be brought under this paragraph by the applicant in whose favour the protective direction is made against any person for an injunction or interdict requiring that person, while the protective direction is in force, not to do any of the things which may be the subject of proceedings under this paragraph, and the court may if it thinks fit grant an injunction or interdict accordingly on such terms as appear to the court to be just.

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

- (3) An undertaking not to institute or prosecute proceedings under this paragraph, whether or not any consideration is given for the undertaking, shall be void, and if the Controller is satisfied that an applicant in whose favour a protective direction is made has given such an undertaking, whether or not the undertaking be enforceable at law, he shall withdraw the protective direction.
 - (4) A protective direction shall cease to be in force when the question whether the application for the grant of plant breeders rights is to be allowed or refused is finally determined, or at such earlier time as is provided under the following provisions of this Schedule.
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 - (1) The Controller may at any time, if in all the circumstances it appears to him to be just, withdraw a protective direction, and shall withdraw a protective direction if he is satisfied that there has been a breach of the undertaking given under paragraph 1 of this Schedule by the applicant.
 - (2) An appeal shall lie to the Tribunal against a decision to withdraw a protective direction.
 - (3) The undertaking given by the applicant under paragraph 1 of this Schedule shall cease to be binding when the protective direction is withdrawn.
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 - (1) If at any time the Controller is satisfied that there has been a breach of the undertaking given under paragraph 1 of this Schedule, he may refuse the application for the grant of plant breeders' rights or, as the case may be, may terminate the period for which plant breeders' rights are exercisable.
 - (2) If there is a breach of an undertaking under paragraph 1 of this Schedule given by an applicant, the applicant shall be guilty of an offence and shall be liable on summary conviction—
 - (a) in the case of a first offence under this sub-paragraph, to a fine not exceeding fifty pounds, and
 - (b) in the case of a second or subsequent offence under this sub-paragraph, to a fine not exceeding one hundred pounds.