

SCHEDULES

SCHEDULE 2

Section 4.

CONDITIONS FOR THE GRANT OF PLANT BREEDERS' RIGHTS

PART I

CRITERIA FOR GRANT OF RIGHTS

Distinctness

- 1 The variety shall be deemed to be distinct if it is clearly distinguishable by one or more characteristics which are capable of a precise description from any other variety whose existence is a matter of common knowledge at the time of the application.

Uniformity

- 2 The variety shall be deemed to be 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.

Stability

- 3 The variety shall be deemed to be 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 a particular cycle of propagation, at the end of each such cycle.

Novelty

- 4 (1) The variety shall be deemed to be new if sub-paragraphs (2) and (3) below apply.
- (2) This sub-paragraph applies if no sale or other disposal of propagating or harvested material of the variety for the purposes of exploiting the variety has, with the consent of the applicant, taken place in the United Kingdom earlier than one year before the date of the application.
- (3) This sub-paragraph applies if no sale or other disposal of propagating or harvested material of the variety for the purposes of exploiting the variety has, with the consent of the applicant, taken place elsewhere than in the United Kingdom earlier than 4 years, or, in the case of trees or vines, 6 years, before the date of the application.
- (4) For the purposes of sub-paragraphs (2) and (3) above, there shall be disregarded any sale or other disposal to which sub-paragraph (5), (6), (8) or (9) below applies.

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- (5) This sub-paragraph applies to any sale or other disposal of a stock of material of the variety to a person who at the time of the sale or other disposal is, or who subsequently becomes, the person entitled to the grant of plant breeders' rights in respect of the variety.
- (6) This sub-paragraph applies to—
- (a) any sale or other disposal of propagating material of the variety to a person as part of qualifying arrangements, and
 - (b) any sale or other disposal to the applicant, by a person who uses propagating material of the variety under any such arrangements, of the material produced directly or indirectly from the use.
- (7) For the purposes of sub-paragraph (6) above, qualifying arrangements are arrangements under which—
- (a) a person uses propagating material of the variety under the applicant's control for the purpose of increasing the applicant's stock, or of carrying out tests or trials, and
 - (b) the whole of the material produced, directly or indirectly, from the material becomes or remains the property of the applicant.
- (8) This sub-paragraph applies to any sale or other disposal of material of the variety, other than propagating material, produced in the course of—
- (a) the breeding of the variety,
 - (b) increasing the applicant's stock of material of the variety, or
 - (c) carrying out tests or trials of the variety,
- which does not involve identifying the variety from which the material is produced.
- (9) This sub-paragraph applies to any disposal of material of the variety, otherwise than by way of sale, at an exhibition or for the purposes of display at an exhibition.
- (10) For the purposes of sub-paragraphs (2) and (3) above, any sale or other disposal of propagating or harvested material of a variety for the purposes of exploiting the variety shall, if the variety is related to another variety, be treated as being also a sale or other disposal of propagating or harvested material of the other variety for the purposes of exploiting that variety.
- (11) For the purposes of sub-paragraph (10) above, a variety is related to another if its nature is such that repeated production of the variety is not possible without repeated use of the other variety.

PART II

PRIORITIES BETWEEN APPLICANTS FOR RIGHTS

- 5 (1) If a variety is bred, or discovered and developed, by two or more persons independently, the first of those persons, and any successors in title of theirs, to apply for the grant of plant breeders' rights in respect of it shall be the person entitled to the grant.
- (2) As between persons making applications for the grant of plant breeders' rights in respect of the same variety on the same date, the one who was first in a position to make an application for the grant of plant breeders' rights in respect of that variety,

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or who would have been first in that position if this Part of this Act had always been in force, shall be the person entitled to the grant.

- 6 (1) If the following conditions are met, an application for the grant of plant breeders' rights shall be treated for the purposes of paragraphs 1, 4 and 5 above as made, not on the date on which it is in fact made, but on the earlier date mentioned in sub-paragraph (7) below.
- (2) The first condition is that, in the 12 months immediately preceding the application under this Part of this Act, the applicant has duly made a parallel application under the law of—
- (a) the European Community,
 - (b) any other intergovernmental organisation, or any State, which is, and was at the time of the application, a member of the Union as defined by Article 1(xi) of the Convention, or
 - (c) any country or territory which is, and was at the time of the application, designated for the purposes of this provision by order made by the Ministers.
- (3) The second condition is that the applicant has not duly made such a parallel application earlier than 12 months before the application under this Part of this Act.
- (4) The third condition is that the application under this Part of this Act includes a claim to priority under this paragraph by reference to the parallel application.
- (5) The fourth condition is that the application by reference to which priority is claimed has not been withdrawn or refused when the application under this Part of this Act is made.
- (6) The fifth condition is that, within 3 months from the date of the application under this Part of this Act, the applicant submits to the Controller a copy of the documents constituting the parallel application, certified as a true copy by the authority to whom it is made.
- (7) The earlier date referred to in sub-paragraph (1) above is the date of the parallel application mentioned in sub-paragraph (2) above.
- (8) If more than one parallel application has been duly made as mentioned in sub-paragraph (2) above, the references in sub-paragraphs (4) to (7) above to the parallel application shall be construed as references to the earlier, or earliest, of the applications.
- (9) In this paragraph—
- (a) “the Convention” means the International Convention for the Protection of New Varieties of Plants done on 2nd December 1961 and revised at Geneva on 10th November 1972, 23rd October 1978 and 19th March 1991, and
 - (b) references to a parallel application, in relation to an application for the grant of plant breeders' rights, are to an application for the grant of plant variety rights in respect of the variety to which the application under this Part of this Act relates.
- 7 (1) Any priority which an application for the grant of plant breeders' rights enjoys by virtue of paragraph 6 above shall be forfeited if the applicant does not, before the end of the relevant period, satisfy all the requirements which are to be satisfied by an applicant before plant breeders' rights can be granted to him.

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- (2) For the purposes of sub-paragraph (1) above, the relevant period is the period of 2 years beginning with the day after the last day on which the applicant could have claimed priority under paragraph 6 above for his application.
- (3) Where—
- (a) an application for the grant of plant breeders' rights enjoys priority by virtue of paragraph 6 above, and
 - (b) the application by reference to which it enjoys priority is withdrawn or refused before the applicant has satisfied all the requirements which are to be satisfied by an applicant before plant breeders' rights can be granted to him,
- sub-paragraph (1) above shall have effect with the substitution for “the relevant period” of “such period as the Controller may specify”.