

## SCHEDULES

### SCHEDULE 2

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*Status: This is the original version (as it was originally enacted).*

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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.