

SCHEDULE

Modifications of the Patents Act 1977 in its application to the Isle of Man

36. Before Schedule 1 insert—

“SCHEDULE A1

Section 60(5)(g)

Derogation from patent protection in respect of biotechnological inventions

Interpretation

1. In this Schedule—

“the Council Regulation” means Council Regulation (EC) No. 2100/94 of 27th July 1994 on Community plant variety rights⁽¹⁾;

“farmer’s own holding” means any land which a farmer actually exploits for plant growing, whether as his property or otherwise managed under his own responsibility and on his own account;

“the gazette” means the gazette published under section 34 of the Plant Varieties and Seeds Act 1964⁽²⁾;

“protected material” means plant propagating material which incorporates material subject to a patent;

“relevant activity” means the use by a farmer of the product of his harvest for propagation or multiplication by him on his own holding, where the product of the harvest constitutes or contains protected material;

“relevant rights holder” means the proprietor of a patent to which protected material is subject;

“seed” includes seed potatoes;

“seed year” means the period from 1st July in one year to 30th June in the following year, both dates inclusive.

Specified species

2. Section 60(5)(g) applies only to varieties of the following plant species and groups:

Name	Common Name
<i>Fodder plants</i>	
Cicer arietinum L.	Chickpea milkvetch
Lupinus luteus L.	Yellow lupin
Medicago sativa L.	Lucerne
Pisum sativum L. (partim)	Field pea
Trifolium alexandrinum L.	Berseem/Egyptian clover
Trifolium resupinatum L.	Persian clover

(1) OJNo. L 227, 1.9.1994, p.1.

(2) 1964 c.14.

Status: This is the original version (as it was originally made).

Name	Common Name
Vicia faba	Field bean
Vicia sativa L	Common vetch
<i>Cereals</i>	
Avena sativa	Oats
Hordeum vulgare L.	Barley
Oryza sativa L.	Rice
Phalaris canariensis L.	Canary grass
Secale cereale L.	Rye
X Triticosecale Wittm.	Triticale
Triticum aestivum L. emend. Fiori et Paol.	Wheat
Triticum durum Desf.	Durum wheat
Triticum spelta L.	Spelt wheat
<i>Potatoes</i>	
Solanum tuberosum	Potatoes
<i>Oil and fibre plants</i>	
Brassica napus L. (partim)	Swede rape
Brassica rapa L. (partim)	Turnip rape
Linum usitatissimum	Linseed with the exclusion of flax

Liability to pay equitable remuneration

3.—(1) If a farmer’s use of protected material is authorised by section 60(5)(g), he shall, at the time of the use, become liable to pay the relevant rights holder equitable remuneration.

(2) That remuneration must be sensibly lower than the amount charged for the production of protected material of the same variety in the same area with the holder’s authority.

(3) Remuneration is to be taken to be sensibly lower if it would be taken to be sensibly lower within the meaning of Article 14(3) fourth indent of the Council Regulation.

Exemption for small farmers

4.—(1) Paragraph 3 does not apply to a farmer who is considered to be a small farmer for the purposes of Article 14(3) third indent of the Council Regulation.

(2) It is for a farmer who claims to be a small farmer to prove that he is such a farmer.

Information to be supplied by farmer

5.—(1) At the request of a relevant rights holder (“H”), a farmer must tell H—

- (a) his name and address;
- (b) whether he has performed a relevant activity; and

- (c) if he has performed such an activity, the address of the holding on which he performed it.
- (2) If the farmer has performed such an activity, he must tell H whether he is—
 - (a) liable to pay remuneration as a result of paragraph 3; or
 - (b) not liable because he is a small farmer.
- (3) If the farmer has told H that he is liable to pay remuneration as a result of paragraph 3, he must tell H—
 - (a) the amount of the protected material used;
 - (b) whether the protected material has been processed for planting; and
 - (c) if it has, the name and address of the person who processed it.
- (4) The farmer must comply with sub-paragraphs (2) and (3) when complying with sub-paragraph (1).
- (5) If the farmer has told H that he is liable to pay remuneration as a result of paragraph 3, he must (if H asks him to do so) tell H—
 - (a) whether he used any protected material with the authority of H within the same seed year; and
 - (b) if he did, the amount used and the name and address of the person who supplied it.

Information to be supplied by seed processor

- 6.—**(1) On the request of a relevant rights holder, a seed processor shall supply the following information—
- (a) the name and address of the seed processor;
 - (b) the address of the seed processor's principal place of business; and
 - (c) whether the seed processor has processed seed of a species specified in paragraph 2 above.
- (2) If the seed processor has processed seed of a species specified in paragraph 2 above he shall also supply the following information with the information referred to in sub-paragraph (1)—
- (a) the name and address of the person for whom the processing was carried out;
 - (b) the amount of seed resulting from the processing;
 - (c) the date processing commenced;
 - (d) the date processing was completed;
 - (e) the place where processing was carried out.

Information to be supplied by relevant rights holder

- 7.** On the request of a farmer or a seed processor a relevant rights holder shall supply the following information—
- (a) his name and address; and
 - (b) the amount of royalty charged for certified seed of the lowest certification category for seed containing that protected material.

Period in respect of which inquiry may be made

- 8.** A request may be made under paragraph 5, 6, and 7 in respect of the current seed year and the three preceding seed years.

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Restriction on movement for processing from the holding

9. No person shall remove or cause to be removed from a holding protected material in order to process it unless—

- (a) he has the permission of the relevant rights holder in respect of that protected material;
- (b) he has taken measures to ensure that the same protected material is returned from processing as is sent for processing and the processor has undertaken to him that the processor has taken measures to ensure that the same protected material is returned from processing as is sent for processing; or
- (c) he has the protected material processed by a seed processor on the list of processors referred to in the gazette as being permitted to process seed away from a holding.

Confidentiality

10.—(1) A person who obtains information pursuant to this Schedule shall owe an obligation of confidence in respect of the information to the person who supplied it.

(2) Sub-paragraph (1) shall not have effect to restrict disclosure of information—

- (a) for the purposes of, or in connection with, establishing the amount to be paid to the holder of rights pursuant to paragraph 3 and obtaining payment of that amount,
- (b) for the purposes of, or in connection with, establishing whether a patent has been infringed, or
- (c) for the purposes of, or in connection with, any proceedings for the infringement of a patent.

Formalities

11.—(1) A request for information under this Schedule, and any information given in response to such a request, must be in writing.

(2) Information requested under this Schedule must be given—

- (a) within 28 days; or
- (b) if the request specifies a longer period, within the specified period.

Remedies

12.—(1) If, in response to a request under this Schedule, a person—

- (a) knowingly fails to provide information which he is required by this Schedule to give, or
- (b) refuses to provide any such information,

the court may order him to provide it.

(2) Sub-paragraph (1) does not affect any of the court's other powers to make orders.

(3) A person who knowingly provides false information in response to a request under this Schedule is liable in damages to the person who made the request.

(4) In any action for damages under sub-paragraph (3) the court must have regard, in particular to—

- (a) how flagrant the defendant was in providing the false information, and
- (b) any benefit which accrued to him as a result of his providing false information,

and shall award such additional damages as the justice of the case may require.

SCHEDULE A2

Section 76A

Biotechnological Inventions

1. An invention shall not be considered unpatentable solely on the ground that it concerns—
 - (a) a product consisting of or containing biological material; or
 - (b) a process by which biological material is produced, processed or used.
2. Biological material which is isolated from its natural environment or produced by means of a technical process may be the subject of an invention even if it previously occurred in nature.
3. The following are not patentable inventions—
 - (a) the human body, at the various stages of its formation and development, and the simple discovery of one of its elements, including the sequence or partial sequence of a gene;
 - (b) processes for cloning human beings;
 - (c) processes for modifying the germ line genetic identity of human beings;
 - (d) uses of human embryos for industrial or commercial purposes;
 - (e) processes for modifying the genetic identity of animals which are likely to cause them suffering without any substantial medical benefit to man or animal, and also animals resulting from such processes;
 - (f) any variety of animal or plant or any essentially biological process for the production of animals or plants, not being a microbiological or other technical process or the product of such a process.
4. Inventions which concern plants or animals may be patentable if the technical feasibility of the invention is not confined to a particular plant or animal variety.
5. An element isolated from the human body or otherwise produced by means of a technical process, including the sequence or partial sequence of a gene, may constitute a patentable invention, even if the structure of that element is identical to that of a natural element.
6. The industrial application of a sequence or partial sequence of a gene must be disclosed in the patent application as filed.
7. The protection conferred by a patent on a biological material possessing specific characteristics as a result of the invention shall extend to any biological material derived from that biological material through propagation or multiplication in an identical or divergent form and possessing those same characteristics.
8. The protection conferred by a patent on a process that enables a biological material to be produced possessing specific characteristics as a result of the invention shall extend to biological material directly obtained through that process and to any other biological material derived from the directly obtained biological material through propagation or multiplication in an identical or divergent form and possessing those same characteristics.
9. The protection conferred by a patent on a product containing or consisting of genetic information shall extend to all material, save as provided for in paragraph 3(a) above, in which the product is incorporated and in which the genetic information is contained and performs its function.

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10. The protection referred to in paragraphs 7, 8 and 9 above shall not extend to biological material obtained from the propagation or multiplication of biological material placed on the market by the proprietor of the patent or with his consent, where the multiplication or propagation necessarily results from the application for which the biological material was marketed, provided that the material obtained is not subsequently used for other propagation or multiplication.

11. In this Schedule—

“essentially biological process” means a process for the production of animals and plants which consists entirely of natural phenomena such as crossing and selection;

“microbiological process” means any process involving or performed upon or resulting in microbiological material;

“plant variety” means a plant grouping within a single botanical taxon of the lowest known rank, which grouping can be—

- (a) defined by the expression of the characteristics that results from a given genotype or combination of genotypes; and
- (b) distinguished from any other plant grouping by the expression of at least one of the said characteristics; and
- (c) considered as a unit with regard to its suitability for being propagated unchanged.”.