

**2016 No. 758**

**PLANT BREEDERS' RIGHTS**

**The Plant Varieties and Seeds (Isle of Man) Order 2016**

*Made* - - - - *13th July 2016*

*Coming into force* - - *1st August 2016*

At the Court at Buckingham Palace, the 13th day of July 2016

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 40 of the Plant Varieties and Seeds Act 1964(a) and sections 53(2) and (3) of the Plant Varieties Act 1997(b), by and with the advice of Her Privy Council, orders as follows—

**Citation and commencement**

1. This Order may be cited as the Plant Varieties and Seeds (Isle of Man) Order 2016 and shall come into force on 1st August 2016.

**Extension of the Plant Varieties and Seeds Act 1964 to the Isle of Man**

2.—(1) The provisions of the Plant Varieties and Seeds Act 1964 specified in paragraph (2) extend to the Isle of Man subject to the exceptions, adaptations and modifications specified in Schedule 1 to this Order.

(2) The provisions referred to in paragraph (1) are—

- (a) in Part 2, sections 16 to 19 and 24 to 30(c);
- (b) in Part 3, section 33 and Schedule 7; and
- (c) in Part 4, sections 34 to 36, 38 and 41(1)(d).

**Extension of the Plant Varieties Act 1997 to the Isle of Man**

3. The Plant Varieties Act 1997(e) extends to the Isle of Man subject to the modifications specified in Schedule 2 to this Order.

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(a) 1964 c. 14.

(b) 1997 c. 66.

(c) Sections 18 and 30, which are extended to the Isle of Man without modification, were amended by paragraph 5 of Schedule 4 to the European Communities Act 1972 (c. 68).

(d) Section 34, which is extended to the Isle of Man by this Order without modification, was amended by Part 3 of Schedule 3 to the European Communities Act 1972 and section 51(1) of the Plant Varieties Act 1997.

(e) Section 33 was repealed by S.I. 2000/311. Section 38, which is extended to the Isle of Man by this Order without modification, was amended by S.I. 2011/1043.

## Revocations

4. The following are revoked—
- (a) the Plant Varieties and Seeds (Isle of Man) Order 1969(a);
  - (b) the Plant Varieties and Seeds (Isle of Man) Order 1987(b).

*Ceri King*  
Deputy Clerk of the Privy Council

## SCHEDULE 1

Article 2

### Exceptions, adaptations and modifications in the extension of Parts 2 to 4 of the Plant Varieties and Seeds Act 1964 to the Isle of Man

#### PART 1

##### Exceptions, adaptations and modifications to Part 2

- 1.—(1) Section 16 (seeds regulations)(c) is modified as follows.
- (2) Throughout the section—
- (a) for “the Minister” substitute “the Department”;
  - (b) for “him” substitute “it”.
- (3) In subsection (1) omit “by statutory instrument”.
- (4) In subsection (7)(b) for “level 5 on the standard scale” substitute “£5,000”.
- (5) Omit subsections (3)(i), (5)(b), (6) and (8).
2. Omit section 17(6) (Scottish contracts for the sale of seeds).
- 3.—(1) Section 24 (official testing stations and certificates of test) is modified as follows.
- (2) For subsection (1) substitute—
- “(1) Testing of seeds must take place at a testing station maintained in the United Kingdom by—
- (a) the Secretary of State;
  - (b) the Scottish Ministers; or
  - (c) the Department of Agriculture and Rural Development in Northern Ireland.”.
- (3) Omit subsections (2) and (3).
- (4) For subsection (4) substitute—
- “(4) The fees payable for the services given at an official seed testing station shall be those authorised under this subsection as it has effect in the part of the United Kingdom in which the official seed testing station is situated.”.
- (5) In subsection (6)—
- (a) omit “or complaint”;
  - (b) omit the words following “be called as a witness”.

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(a) S.I. 1969/1829, as amended by S.I. 1987/2210 and 2001/3500.

(b) S.I. 1987/2210.

(c) Section 16 was amended by paragraph 5 of Schedule 4 to the European Communities Act 1972, sections 38, 39 and 46 of the Criminal Justice Act 1982 (c. 48), section 2 of the Agriculture Act 1986 (c. 49) and S.I. 1977/1112.

(6) In subsection (7)—

- (a) omit “or complaint”;
- (b) for “at least three clear days” substitute “at least 14 days”;
- (c) omit “or, in Scotland, the case proceeds to trial”.

**4.**—(1) Section 25 (powers of entry)(a) is modified as follows.

- (2) In subsections (3), (4) and (6) after “the Minister” insert “or the Department”.
- (3) In subsections (7) and (9) for “level 3 on the standard scale” substitute “£1,000”.

**5.** In section 26(6) (the summons and evidence regarding samples in criminal proceedings)(b) omit —

- (a) “or complaint” (in both places);
- (b) “and, in Scotland, the case shall not proceed to trial.”.

**6.** In section 27(1) (the offence of tampering with samples)(c) for “level 5 on the standard scale” substitute “£5,000”.

**7.**—(1) Section 28 (institution of criminal proceedings)(d) is modified as follows.

(2) In subsection(1) for the words preceding “where a part of a sample” substitute—  
“Notwithstanding anything in section 75(1) of the Summary Jurisdiction Act 1989 (an Act of Tynwald) (limitation of time)(e),”.

(3) In subsection (2) for “the said section 127(1) or 23” substitute “the said section 75(1)”.

(4) In subsection (2A) for the words preceding “proceedings for contravening” substitute “Notwithstanding anything in the said section 75(1),”.

**8.**—(1) Section 29 (application of Part 2 to seed potatoes)(f) is modified as follows.

(2) In subsection (2)—

- (a) omit the words preceding “seeds regulations”;
- (b) after “on a Minister” insert “or the Department”;
- (c) for “at any such station” substitute “at any station maintained by the appropriate authority”.

(3) Omit subsection (3).

(4) For subsection (4) substitute—

“(4) In this section “the appropriate authority” means the Forestry Commissioners.”.

**9.** In section 30(1) (definitions in Part 2), in the definition of “authorised officer”, after “the Minister” (in both places that expression occurs) insert “or the Department”.

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(a) Section 25 amended by Part 3 of Schedule 3, and paragraph 5 of Schedule 4, to the European Communities Act 1972 and sections 38, 39 and 46 of, and Schedule 3 to, the Criminal Justice Act 1982.

(b) Section 26(10) was repealed by the relevant entry in Group 2 of Part 2 of Schedule 1 to the Statute Law (Repeals) Act 2004 (c. 14).

(c) Section 27(1) was amended by sections 38, 39 and 46 of, and Schedule 3 to, the Criminal Justice Act 1982. It is prospectively amended by paragraph 18 of Schedule 26 to the Criminal Justice Act 2003 (c. 44) from a date to be appointed.

(d) Section 28(1) was amended by paragraph 44 of Schedule 7 to the Magistrates’ Courts Act 1980 (c. 43). Section 28(2A) was inserted by section 47 of the Plant Varieties Act 1997.

(e) AT 15 of 1989.

(f) Section 29 was amended by paragraph 5(4) of Schedule 4 to the European Communities Act 1972 and S.I. 2000/746 and 2013/755.

## PART 2

### Exceptions, adaptations and modifications to Part 3

**10.**—(1) Section 33 (measures to prevent injurious cross-pollination affecting crops of seeds)(a) is modified as follows.

(2) In subsection (2)—

- (a) for “The Minister” substitute “The Department”;
- (b) for “any part of Great Britain” substitute “the Isle of Man”;
- (c) for “if he is satisfied” substitute “if it is satisfied”.

(3) In subsection (3)—

- (a) in paragraph (a) for “the Minister” substitute “the Department”;
- (b) for paragraph (b) substitute—  
“ (b) may be varied or revoked by a subsequent order.”.

(4) In subsections (5) and (8) for “the Minister” (in each place that expression occurs) substitute “the Department”.

(5) In subsection (6)—

- (a) for “the Minister” (in each place that expression occurs) substitute “the Department”;
- (b) for “as appears to him” substitute “as appears to it”.

(6) In subsection (7) for “level 3 on the standard scale” (in each place that expression occurs) substitute “£1,000”.

(7) In subsection (10) for “level 1 on the standard scale” substitute “£200”.

**11.** In Schedule 7 (cross-pollination injuring protected crops) for “the Minister” (in each place that expression occurs) substitute “the Department”.

## PART 3

### Exceptions, adaptations and modifications to Part 4

**12.** Omit section 35(2) (which extends jurisdiction in criminal proceedings under the Plant Varieties and Seeds Act 1964 in Great Britain).

**13.**—(1) Section 36 (supplemental provision as to regulations) is modified as follows.

(2) Renumber the existing text as subsection (1) of the section.

(3) In subsection (1)(b) for “the Minister or Ministers” substitute “the Department or the Ministers”.

(4) After subsection (1) insert—

“(2) Regulations made by the Department must be approved by Tynwald before coming into operation.”.

**14.** In section 38(1) (definitions)(b) immediately before the definition of “the Minister” insert—

““the Department” means the Department of Environment, Food and Agriculture of the Isle of Man;”.

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(a) Section 33 was amended by sections 35, 38, 39 and 46 of the Criminal Justice Act 1982.

(b) Section 38(1) was amended by paragraph 5 of Schedule 4 to the European Communities Act 1972, section 51(2) of, and Schedule 4 to, the Plant Varieties Act 1997 and S.I. 1978/272.

## Modifications in the extension of the Plant Varieties Act 1997 to the Isle of Man

**1.** In section 6(6)(a) (the making of regulations about protected varieties) for “the Ministers” substitute “the Department”.

**2.** In section 9 (farm saved seed)—

- (a) omit subsections (5)(a) and (6);
- (b) for “the Ministers” (in each place that expression occurs) substitute “the Department”.

**3.** In section 10(1)(a) (circumstances to which plant breeders’ rights do not extend) after “the United Kingdom” insert “or the Isle of Man”.

**4.** In section 11(2) (regulations extending period of plant breeders’ rights) for “the Ministers” substitute “the Department”.

**5.** In section 14(5) (regulations about presumptions in proceedings relating to harvested material) for “the Ministers” substitute “the Department”.

**6.** In section 15(6) (regulations about presumptions in proceedings relating to products made from harvested material) for “the Ministers” substitute “the Department”.

**7.** In section 17 (compulsory licences) at the end add—

“(10) If the Controller grants, varies or revokes a licence under this section, he shall notify the Department.”.

**8.**—(1) Section 19 (duty to use registered name) is modified as follows.

(2) In subsection (4) for “level 3 on the standard scale” substitute “£1,000”.

(3) At the end add—

“(6) In subsection (3) the reference to the Trade Marks Act 1994(b) includes a reference to that Act as extended to the Isle of Man(c).”.

**9.** In section 31(1) (offence of giving false information) for “level 3 on the standard scale” substitute “£1,000”.

**10.** In section 32(1) (offence of making false representation as to plant breeders’ rights) for “level 3 on the standard scale” substitute “£1,000”.

**11.** Omit section 36(2) (offences committed by Scottish partnerships).

**12.** Omit section 37 (jurisdiction in relation to offences in the United Kingdom).

**13.**—(1) Section 41 (varieties of recent creation) is modified as follows.

(2) In subsection (1)—

- (a) for “comes into force” substitute “applies to the Isle of Man”;
- (b) in paragraphs (a) and (b) for “the coming into force of this Part of this Act” substitute “the application of this Part of this Act to the Isle of Man”.

(3) In subsection (2) for “comes into force” substitute “applies to the Isle of Man”.

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(a) Section 9(5) was repealed in relation to England and Northern Ireland by S.I. 2005/2726 and in relation to Wales by S.I. 2006/1621. It remains in force in Scotland but its effect has been modified in relation to that jurisdiction by S.S.I. 2005/460.

(b) 1994 c. 26.

(c) The Trade Marks Act 1994 was extended to the Isle of Man with modifications formerly prescribed by S.I. 1996/729 (which was replaced by S.I. 2013/2601). By virtue of section 108(2), and subject to any Order in Council providing for the extension of that Act to the Isle of Man, references in that Act to the United Kingdom are to be construed as including the Isle of Man.

(4) In subsection (4) after “the United Kingdom” insert “or the Isle of Man”.

**14.**—(1) Section 43 (jurisdiction under arbitration agreements) is modified as follows.

(2) Omit subsection (3).

(3) For subsection (4) substitute—

“(4) In the application of this section to the Isle of Man, “arbitration agreement” has the same meaning as in Part 1 of the Arbitration Act 1976 (an Act of Tynwald)(a).”.

**15.**—(1) Section 48 (regulations and orders) is modified as follows.

(2) In subsection (1) after “the Ministers” (in both places that expression occurs) insert “or the Department”.

(3) For subsection (2) substitute—

“(2) Any regulations or order under this Act made by the Department must be approved by Tynwald before coming into operation.”.

(4) Omit subsections (3), (4) and (6).

**16.** In section 49(1) (definitions) after the definition of “the Controller” insert—

““the Department” means the Department of Environment, Food and Agriculture of the Isle of Man;”.

**17.**—(1) Section 50 (receipts) is modified as follows.

(2) Renumber the existing text as subsection (1) of the section.

(3) At the end add—

“(2) Any fees received by virtue of this Act by the Department form part of the General Revenue of the Isle of Man.”.

**18.** Omit section 51 (consequential amendments).

**19.** For section 52 (repeals) substitute—

**“Repeal**

**52.** The Seeds Act 1921(b) and the Seeds (Amendment) Act 1939(c) (both Acts of Tynwald) are repealed.”.

**20.** Omit section 53 (extent).

**21.** In section 54 omit subsections (2) to (4) (the commencement of the Act in the United Kingdom).

**22.** In paragraph 4 of Schedule 1 (proof of documents in proceedings under the Act) omit “, or in Scotland sufficient evidence,”.

**23.**—(1) Schedule 2 (conditions for the grant of plant breeders’ rights)(d) is modified as follows.

(2) In paragraph 4(2) and (3) (circumstances in which a variety is deemed new) after “the United Kingdom” insert “or the Isle of Man”.

(3) In paragraph 6(2)(c) (orders designating countries or territories for the purposes of parallel applications for rights) for “the Ministers” substitute “the Department”.

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(a) AT 24 of 1976.

(b) AT 2 of 1921.

(c) AT 9 of 1939.

(d) Schedule 2 was amended by S.I. 2011/1043.

**24.**—(1) Schedule 3 (the Plant Varieties and Seeds Tribunal)(a) applies to proceedings from the Isle of Man, as it applies to proceedings in England, and is modified as follows.

(2) Omit paragraphs 3 and 4 (appointment of a chairman of the Tribunal in Scotland and in Northern Ireland).

(3) In paragraph 5 (term of appointment of a chairman of the Tribunal)—

(a) omit sub-paragraph (1A);

(b) in sub-paragraph (5) omit “or 3”;

(c) for “paragraph 2, 3 or 4” (in each place that expression occurs) substitute “paragraph 2”.

(4) In paragraph 6 (deputy chairman) for “paragraph 2, 3 or 4” (in each place that expression occurs) substitute “paragraph 2”.

(5) In paragraph 9 (sittings of the Tribunal) for the words following “brought before them” substitute “from the Isle of Man, sit anywhere in England”.

(6) In paragraph 11 (costs)—

(a) in sub-paragraph (1) omit the words “or Northern Ireland”;

(b) omit sub-paragraph (3).

(7) Omit paragraph 12 (expenses in Scotland).

(8) In paragraph 16 (interpretation) omit paragraphs (b) and (c) of the definitions of “appointing authority” and “relevant chairman”.

**25.** Omit Schedule 4 (repeals).

#### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order extends provisions of the Plant Varieties and Seeds Act 1964 (c. 14) and the Plant Varieties Act 1997 (c. 66) to the Isle of Man with exceptions, adaptations and modifications. The Order supersedes the Plant Varieties and Seeds (Isle of Man) Order 1969 (S.I. 1969/1829) and the Plant Varieties and Seeds (Isle of Man) Order 1987 (S.I. 1987/2210), both of which are revoked.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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(a) Schedule 3 was amended by paragraph 269 of Part 1 of Schedule 4, and paragraph 5 of Part 3 of Schedule 11, to the Constitutional Reform Act 2005 (c. 4), paragraph 27 of Schedule 4 to the Northern Ireland Act 2009 (c. 3), paragraph 11 of the Schedule to the Department of Justice Act (Northern Ireland) 2010 (c. 3 N.I.), and paragraph 120 of Part 3 of Schedule 9 to the Crime and Courts Act 2013 (c. 22).

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