

STATUTORY INSTRUMENTS

2019 No. 204

The Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2019

PART 3

Existing EU rights

Existing EU rights

3.—(1) For the purposes of these Regulations, an “existing EU right” is a Community plant variety right which, immediately before [^{F1}IP completion day], is contained in the register maintained under Article 87(2) of the Council Regulation.

(2) On and after [^{F1}IP completion day], an existing EU right is to be [^{F2}treated as if—

- (a) it were a plant breeders’ right granted in accordance with the 1997 Act;
- (b) the variety were registered in accordance with regulations under section 18(1)(c) of the 1997 Act; and
- (c) in relation to that right, the date of publication of the application and date of priority were the date of application and date of priority of the corresponding Community plant variety right].

(3) Accordingly, on and after [^{F1}IP completion day], the provisions of the 1997 Act (except sections 1(1), 3 to 5, 11 and 18(3) of, and Schedule 2 to, that Act), any regulations or orders made under that Act and any guidance given under that Act apply in relation to those existing EU rights.

F1 Words in reg. 3 substituted (31.12.2020 immediately before IP completion day) by [The Plant Breeders Rights \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/769\)](#), regs. 1(2)(b), **2(2)**

F2 Words in reg. 3(2) substituted (31.12.2020 immediately before IP completion day) by [The Plant Breeders Rights \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/769\)](#), regs. 1(2)(b), **2(3)**

Commencement Information

11 Reg. 3 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)

Duration of existing EU rights

[^{F3}**4.—(1)** Subject to paragraph (3), an existing EU right has effect for a period—

- (a) beginning with IP completion day, and
- (b) ending at the end of the last day of the remaining period.

(2) In paragraph (1)(b), the “remaining period” is the period beginning with IP completion day and ending with—

- (a) in the case of an existing EU right which is the subject of an administrative or judicial procedure for cancellation under Article 21 of the Council Regulation that has not been finally decided immediately before IP completion day, and in respect of which, on or after IP completion day, a final decision is made to cancel the right in the EU, the day on which that right is cancelled in the EU;
 - (b) in the case of any other existing EU rights (other than those to which paragraph (3) applies), the day on which the term of that right would otherwise have expired under Article 19(1) of the Council Regulation (unless terminated under section 22 of the 1997 Act).
- (3) An existing EU right is to be treated as if it is declared null and void in the United Kingdom under section 21 of the 1997 Act where the conditions in paragraph (4) apply.
- (4) The conditions are that an existing EU right—
- (a) is the subject of an administrative or judicial procedure for nullity under Article 20 of the Council Regulation that has not been finally determined immediately before IP completion day; and
 - (b) on or after IP completion day, is declared null and void in the EU.
- (5) Where paragraph 3 applies, the declaration that is to be treated as made in the United Kingdom is to be treated as having effect from the date of the declaration in the EU.]

F3 Reg. 4 substituted (31.12.2020 immediately before IP completion day) by [The Plant Breeders Rights \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/769\)](#), regs. 1(2)(b), **2(4)**

Commencement Information

I2 Reg. 4 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)

Relationship between existing rights under the 1997 Act and existing EU right

- 5.—(1) This regulation applies where—
- (a) immediately before [^{F4}IP completion day] a person had a plant breeders' right granted in accordance with the 1997 Act but was unable to enforce that right because of the operation of paragraph 2 of Article 92 of the Council Regulation (a “suspended UK right”); and
 - (b) on and after [^{F4}IP completion day], that person has an existing EU right in relation to the same plant variety.
- (2) While the existing EU right remains in force, the person remains unable to enforce the suspended UK right.
- (3) If the existing EU right is cancelled in the United Kingdom in accordance with section 22(1) (d) of the 1997 Act (cancellation on application to surrender rights), the person becomes able to enforce the UK suspended right.
- (4) Paragraph (3) does not apply if the suspended UK right has itself been cancelled in accordance with section 22(1)(d) of the 1997 Act.

F4 Words in reg. 5(1) substituted (31.12.2020 immediately before IP completion day) by [The Plant Breeders Rights \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/769\)](#), regs. 1(2)(b), **2(2)**

Commencement Information

I3 Reg. 5 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)

Information to be provided by the holder of an existing EU right

6.—^{F5}(1) At the request of the Controller, a person holding an existing EU right under ^{F6}regulation 3(2) must provide the Controller within such period as may be specified in the request with the following information—

- ^{F7}(a)
- (b) an address for service in the United Kingdom or the name and address of an agent within the United Kingdom with authority to act for the person in matters which are the subject of the 1997 Act, the Plant Breeders' Rights Regulations 1998 ^{M1} or regulation 18 of the Plant Breeders' Rights Regulations 1978 ^{M2}; and
- (c) such other information as the Controller reasonably requests.

^{F8}(2) Paragraph (1)(b) does not apply before the day three years after the day following that on which IP completion day falls.]

F5	Reg. 6 renumbered as reg. 6(1) (31.12.2020 immediately before IP completion day) by virtue of The Plant Breeders Rights (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/769) , regs. 1(2)(b), 2(5)(a)
F6	Words in reg. 6 substituted (31.12.2020 immediately before IP completion day) by The Animal Health, Invasive Alien Species, Plant Breeders' Rights and Seeds (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/1220) , regs. 1(2)(b), 8(2) ; 2020 c. 1, Sch. 5 para. 1(1)
F7	Reg. 6(1)(a) omitted (31.12.2020 immediately before IP completion day) by virtue of The Plant Breeders Rights (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/769) , regs. 1(2)(b), 2(5)(b)
F8	Reg. 6(2) inserted (31.12.2020 immediately before IP completion day) by The Plant Breeders Rights (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/769) , regs. 1(2)(b), 2(5)(e)
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I4	Reg. 6 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, Sch. 5 para. 1(1)), see reg. 1(1)
Marginal Citations	
M1	S.I. 1998/1027 , amended by S.I. 2001/3510 , 2002/247, 2008/2683.
M2	S.I. 1978/294 , amended by S.I. 1998/1027 .

Information to be provided by non-UK resident holder of right granted in accordance with the 1997 Act

7.—(1) This regulation applies if the holder of a right granted in accordance with the 1997 Act is neither resident nor established in the United Kingdom on ^{F9}IP completion day].

(2) At the request of the Controller, the person must supply the Controller within such period as may be specified in the request with—

- (a) an address for service in the United Kingdom; or
- (b) the name and address of an agent within the United Kingdom with authority to act for the person in matters which are the subject of the 1997 Act, the Plant Breeders' Rights Regulations 1998 or regulation 18 of the Plant Breeders' Rights Regulations 1978.

F9	Words in reg. 7(1) substituted (31.12.2020 immediately before IP completion day) by The Plant Breeders Rights (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/769) , regs. 1(2)(b), 2(2)
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Commencement Information

- I5** Reg. 7 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)

Modification of the 1997 Act

8. In the application of the 1997 Act to existing EU rights, section 22(1)(c) of the 1997 Act (cancellation) has effect as if after “above” there were inserted “or under regulation 6 or 7 of the Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2019”.

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- I6** Reg. 8 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)

[^{F10}Exhaustion of rights

8A.—(1) An existing EU right shall not extend to any act concerning the material of a variety if, before IP completion day, that material was sold or otherwise marketed in the United Kingdom or in the EU, by or with the consent of the holder of the rights, or is derived from material which has been so sold or otherwise marketed.

(2) In this regulation, “material” has the meaning given by section 10(4) of the 1997 Act for the purposes of section 10.]

- F10** Reg. 8A inserted (31.12.2020 immediately before IP completion day) by [The Plant Breeders Rights \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/769\)](#), [regs. 1\(2\)\(b\), 2\(6\)](#)

Commencement Information

- I7** Reg. 8A in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)

Changes to legislation:

There are currently no known outstanding effects for the The Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2019, PART 3.