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STATUTORY INSTRUMENTS

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**2020 No. 769**

**EXITING THE EUROPEAN UNION  
PLANT BREEDERS' RIGHTS**

**The Plant Breeders' Rights (Amendment)  
(EU Exit) Regulations 2020**

*Made - - - - 20th July 2020*

*Laid before Parliament 21st July 2020*

*Coming into force in accordance with regulation 1(2)*

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8B of the European Union (Withdrawal) Act 2018<sup>(1)</sup> and section 41(1) of the European Union (Withdrawal Agreement) Act 2020<sup>(2)</sup>.

**Citation and commencement**

**1.—**(1) These Regulations may be cited as the Plant Breeders' Rights (Amendment) (EU Exit) Regulations 2020.

(2) They come into force as follows—

- (a) as regards this regulation and regulation 3, 21 days after the day on which these Regulations are laid;
- (b) as regards regulation 2, immediately before IP completion day.

**Amendment of the Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2019**

**2.—**(1) The Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2019<sup>(3)</sup> are amended as follows.

(2) In regulations 1(2), 3, 5(1), 7(1), 9(1) and 18, and the heading to Part 4, for “exit day”, in each place where it occurs, substitute “IP completion day”.

(3) In regulation 3(2), for “treated as if” to the end substitute—  
“treated as if—

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<sup>(1)</sup> 2018 c. 16, section 8B was inserted by the European Union (Withdrawal Agreement) Act 2020 (c. 1), section 18.

<sup>(2)</sup> 2020 c. 1.

<sup>(3)</sup> S.I. 2019/204, amended by S.I. 2019/1220.

- (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".
- (4) For regulation 4 substitute—
- “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.”.
- (5) In regulation 6—
- (a) the existing provision becomes paragraph (1);
  - (b) omit sub-paragraph (a);
  - (c) after paragraph (1) insert—
    - “(2) Paragraph (1)(b) does not apply before the day three years after the day following that on which IP completion day falls.”.
- (6) After regulation 8 insert—

**“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.”.
- (7) In regulation 9, omit paragraphs (2)(b) and (c) and (3).
- (8) In regulation 10—
- (a) for paragraph (2) substitute—
- “(2) If an application under paragraph (1) is made within the period of 6 months beginning with IP completion day, regulations 11 and 12 apply.”;
- (b) in paragraph (4) for “to 14” substitute “and 12”.
- (9) In regulation 11—
- (a) omit paragraphs (2) and (3);
- (b) for paragraph (4) substitute—
- “(4) The earlier date is the date of priority claimed in the unresolved application or, where no date of priority is claimed, the date of the unresolved application for the purposes of Article 51 of the Council Regulation.”.
- (10) In regulation 12—
- (a) in paragraph (2)(a) and (b), for the words from “date” to the end substitute “relevant date”;
- (b) in paragraph (4), after the definition of “relevant territory” insert—
- ““the relevant date” means the date of priority claimed in the unresolved application or, where no date of priority is claimed, the date of the unresolved application for the purposes of Article 51 of the Council Regulation.”.
- (11) Omit regulations 13 and 14.

**Amendment of the Animal Health, Invasive Alien Species, Plant Breeders’ Rights and Seeds (Amendment etc) (EU Exit) Regulations 2019**

- 3.** In regulation 8 of the Animal Health, Invasive Alien Species, Plant Breeders’ Rights and Seeds (Amendment etc) (EU Exit) Regulations 2019(4), omit paragraphs (3) and (5).

*Gardiner of Kimble*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural  
Affairs

20th July 2020

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

*(This note is not part of these Regulations)*

These Regulations are made in exercise of the powers conferred by the European Union (Withdrawal) Act 2018 (c. 16) and the European Union (Withdrawal Agreement) Act 2020 (c. 1) to give effect to separation provisions regarding Community plant variety rights in Part 3 (Title IV on Intellectual Property) of the withdrawal agreement<sup>(5)</sup>, in particular Articles 54(1), (3), and (6), 55(2), 59(2) and 61.

These Regulations amend provisions in the Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/204) and the Animal Health, Invasive Alien Species, Plant Breeders' Rights and Seeds (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/1220) to make the treatment of existing Community plant variety rights which have effect in the UK on IP completion day and the treatment of applications for Community plant variety rights which are unresolved on that day consistent with the withdrawal agreement. They also amend references to exit day so as to refer instead to IP completion day.

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

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<sup>(5)</sup> See the meaning of "withdrawal agreement" given by section 39(1) of the European Union (Withdrawal Agreement) Act 2020 (c. 1).