

**EXPLANATORY MEMORANDUM TO
THE PLANT BREEDERS' RIGHTS (NAMING AND FEES) REGULATIONS 2006**

2006 No. 648

1. This explanatory memorandum has been prepared by Defra and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Regulations align the naming rules used for UK plant breeders' rights (PBR) with the requirements of the EC based regime for determining the suitability of a name for National Listing purposes and with the rules used in the EC system of Community Plant Variety Rights (CPVR) and which, in practice, are already followed.

2.2 They also provide for fees to be charged for costs reasonably incurred in providing PBR related services so that the level of fees are set administratively rather than being specified by statutory instrument.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The attention of the Joint Committee on Statutory Instruments is drawn to regulation 4 of these Regulations which changes the way in which fees may be charged for costs incurred by the Controller of Plant Variety Rights (the Controller) in providing PBR related services. An explanation of the changes is set out in paragraphs 4.6 , 4.7 and 8.2 below.

3.2 The changes made by regulation 4 are introduced pursuant to section 29(1) of the Plant Varieties Act 1997¹ (the 1997 Act) which provides that "The Ministers may make regulations as respects the charging of fees by the Controller, including periodical fees payable by persons holding plant breeders' rights".

3.3 Regulation 4 strictly defines the type and level of fees that may be charged by the Controller, albeit that individual changes in fee levels will no longer be approved by Parliament. Regulations 4(1) and (2) set out the heads under which the Controller may make charges, thereby limiting fee charging to the costs incurred in carrying out specified PBR services, and regulation 4 only permits the Controller to charge for costs reasonably incurred in providing a service.

4. Legislative Background

Naming

4.1 For PBR, procedures for the selection of a name for a new plant variety are currently set out in Regulation 18 of the Plant Breeders' Rights Regulations

¹ 1997 c. 66

1978² (1978 Regulations). In practice, naming requirements follow the system used for UK National Listing and which are set out in regulation 6 of the Seeds (National Lists of Varieties) Regulations 2001³ (National List Regulations 2001). These, in turn, are based on EC rules for the naming of plant varieties which govern varieties added to the National Lists of member States. The relevant EC provisions for determining the suitability of a name for National Listing purposes are set out in Article 63 of Council Regulation (EC) No 2100/94 on Community plant variety rights⁴ and Commission Regulation (EC) No. 930/2000 which establishes implementing rules on the suitability of the denominations of varieties of agricultural species and vegetable species (the 2000 Commission Regulation)⁵.

- 4.3 Separate but parallel naming regulations also exist for CPVR, a voluntary system providing EC wide intellectual property protection for new plant varieties. The naming rules for the EC National Listing and CPVR systems are virtually identical.
- 4.3 Consequently, these Regulations revoke the 1978 Regulations and introduce new provisions to align PBR naming requirements with those used for UK National Listing (and hence CPVR).
- 4.4 They also take account of Commission Regulation (EC) No 1831/2004 (2004 Commission Regulation) which amends the 2000 Commission Regulation even though those changes have not yet been implemented in the UK National Listing regime. The main changes made by the 2004 Commission Regulation are to preclude the use of a variety denomination where its use would conflict with a registered name under Council Regulation (EEC) 2081/92 with respect to geographical indications and to clarify the construction of ‘fancy’ names.
- 4.5 The Regulations also update the procedural provisions Regulation 18 of the 1978 Regulations and make consequential amendments to the Plant Breeders’ Rights Regulations 1998⁶.

Setting fees administratively

- 4.6 The fees charged for proving services in relation to PBR are currently set by the Plant Breeders’ Rights (Fees) Regulations 1998⁷ pursuant to powers contained in section 29 of the 1997 Act . The 1998 Fees Regulations are reviewed annually, and amended, if required, to ensure recovery of the costs of providing these services. Any proposed changes are subject to consultation with the industry and amendments to fees are introduced via Statutory Instrument. The 1998 Fees Regulations were last amended in 2002⁸.
- 4.7 These Regulations revise this regime to follow the same approach taken, in regulation 10 of the National List Regulations 2001, which provides for reasonable fees to be charged for costs reasonably incurred. Regulation 10 enables National List fees to be set administratively, thus saving parliamentary

² S.I. 1978/294

³ S.I. 2001/3510

⁴ OJ L 227, 1.9.1994, p.1

⁵ OJ L 108, 5.5.2000, p.3

⁶ S.I. 1998/1027

⁷ S.I. 1998/1021

⁸ The Plant Breeders’ Rights (Fees) (Amendment) Regulations 2002 (S.I. 2002/1677)

time and the bureaucracy involved in making regular SIs. The scheme does not in any way obviate the requirement to consult stakeholders on any proposed changes nor does it permit anything more than the normal costs of providing a service to be charged.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

7.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

8.1 It is highly desirable that that the naming rules used for UK plant breeders' rights are harmonised fully with those used for CPVR and for National Listing particularly as the names used by plant breeders in obtaining PBR tend also (although, are not required) to be used by them for CPVR and National Listing purposes. These proposals achieve that effect and bring UK legislation into line with current practice and with all current EC naming requirements.

8.2 The setting of PBR fees administratively (following normal consultation requirements with affected parties), puts the setting of PBR fees on the same footing as fees for National Listing and reduces the bureaucracy involved in introducing new fees from time-to-time in order to ensure that the system operates to achieve full cost recovery.

8.3 A wide range of interests were consulted, including plant breeders and the seed industry generally, totalling 118 organisations and individuals. Defra did not receive any adverse comments about the proposals.

8. Impact

9.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9.2 There is no impact on the public sector.

9. Contact

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