
STATUTORY INSTRUMENTS

2020 No. 769

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

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

2.—(1) The Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2019⁽¹⁾ 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—

- (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.