

## SCHEDULES

### SCHEDULE 2

#### PART II

##### RULES FOR GRANT OF RIGHTS

###### *Distinctness*

- 1 (1) The variety must be clearly distinguishable by one or more important morphological, physiological or other characteristics from any other variety whose existence is a matter of common knowledge at the time of the application.
- (2) For the purposes of the foregoing sub-paragraph common knowledge may be established by reference to plant varieties already in cultivation or exploited for commercial purposes, or those included in a recognised commercial or botanical reference collection, or those of which there are precise descriptions in any publication.

###### *Previous commercialisation*

- 2 (1) Subject to this Schedule, in the period before the scheme by virtue of which the application is made came into force, no plants of the variety, and no material forming part of, or derived from, plants of the variety may have been offered for sale or sold by any person in the United Kingdom or elsewhere.
- (2) Subject to this Schedule, in the period beginning with the date when the said scheme came into force and ending with the date of the application no plants of the variety, and no material forming part of, or derived from, plants of the variety, may have been offered for sale or sold by or with the consent of the applicant in the United Kingdom or elsewhere:

Provided that the restriction imposed by this sub-paragraph shall not apply to sales or offers made outside the United Kingdom during the period of four years ending with the date of the application.

- (3) Sub-paragraphs (1) and (2) of this paragraph shall not apply—
  - (a) to an offer for sale of a stock of material of any plant variety in connection with an offer for sale of the title to apply for the grant of plant breeders' rights in respect of that plant variety, or
  - (b) to any sale of material of any plant variety if at the time of the sale or subsequently the purchaser becomes the person entitled to make an application for the grant of plant breeders' rights in respect of that plant variety.
- (4) Where an applicant makes, or proposes to make, arrangements under which some other person uses reproductive material of the plant variety under the control of the

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*Status: This is the original version (as it was originally enacted).*

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applicant for the purpose of increasing the applicant's stock, or of carrying out tests or trials, and under which the whole of the material produced, directly or indirectly, from that reproductive material, and any unused reproductive material, becomes or remains the property of the applicant, the said sub-paragraphs (1) and (2) shall not apply—

- (a) to a sale or offer for sale of the reproductive material by the applicant to any such other person as part of such arrangements, or
- (b) to a sale by the other person to the applicant of the material produced, directly or indirectly, from that reproductive material.

(5) The said sub-paragraphs (1) and (2) shall not apply to an offer for sale or sale of material, not being reproductive material, which, having been produced in the course of—

- (a) the breeding of the plant variety, or
- (b) increasing the applicant's stock of material of the plant variety, or carrying out tests or trials of the plant variety,

has been found to be in excess of what was required for those purposes.

- 3 (1) Where an application in the form prescribed for the purposes of this Schedule by regulations under section 9 of this Act is made at a time not later than 11th May 1965, and the applicant does not ask for a protective direction, sub-paragraphs (1) and (2) of the last foregoing paragraph shall not apply to any offer for sale or sale in the period beginning with 12th November 1963 and ending with that time if the Controller is satisfied that the applicant took all steps reasonably open to him to ensure that any person to whom material of the plant variety has been offered or sold during the said period has been informed in writing that an application for a grant of plant breeders' rights may be made in respect of the variety.
- (2) Where an application is allowed by virtue of this paragraph, section 7(2) of this Act shall not apply to any compulsory licence granted as respects the plant variety to which the application relates.

#### *Uniformity*

- 4 The variety must be sufficiently uniform or homogeneous having regard to the particular features of its sexual reproduction or vegetative propagation.

#### *Stability*

- 5 The variety must be stable in its essential characteristics, that is to say, it must remain true to its description after repeated reproduction or propagation or, where the application prescribes a particular cycle of reproduction or multiplication, at the end of each cycle.