

## SCHEDULES

### SCHEDULE 1

Section 2.

#### THE PLANT VARIETY RIGHTS OFFICE

##### *Staff*

- 1 The Ministers may appoint a deputy controller and such other officers and servants to act in the Plant Variety Rights Office as the Ministers may determine.

##### *Remuneration*

- 2 There shall be paid to the Controller and any other officers or servants appointed under paragraph 1 above such remuneration and allowances as the Ministers may with the consent of the Minister for the Civil Service determine.

##### *Authority of officers*

- 3 Any act or thing directed to be done by or to the Controller may be done by or to any officer authorised by the Ministers.

##### *Proof of documents*

- 4 Prima facie evidence, or in Scotland sufficient evidence, of any document issued by the Controller may be given in all legal proceedings by the production of a copy or extract certified to be a true copy or extract by an officer appointed under paragraph 1 above and authorised to give a certificate under this paragraph.
- 5 Any document purporting to be certified in accordance with paragraph 4 above shall, unless the contrary is proved, be deemed to have been duly certified without proof of the official character or handwriting of the person appearing to have certified the document.

## SCHEDULE 2

Section 4.

### CONDITIONS FOR THE GRANT OF PLANT BREEDERS' RIGHTS

#### PART I

##### CRITERIA FOR GRANT OF RIGHTS

###### *Distinctness*

- 1       The variety shall be deemed to be distinct if it is clearly distinguishable by one or more characteristics which are capable of a precise description from any other variety whose existence is a matter of common knowledge at the time of the application.

###### *Uniformity*

- 2       The variety shall be deemed to be uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in those characteristics which are included in the examination for distinctness.

###### *Stability*

- 3       The variety shall be deemed to be stable if those characteristics which are included in the examination for distinctness, as well as any others used for the variety description, remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

###### *Novelty*

- 4       (1) The variety shall be deemed to be new if sub-paragraphs (2) and (3) below apply.
- (2) This sub-paragraph applies if no sale or other disposal of propagating or harvested material of the variety for the purposes of exploiting the variety has, with the consent of the applicant, taken place in the United Kingdom earlier than one year before the date of the application.
- (3) This sub-paragraph applies if no sale or other disposal of propagating or harvested material of the variety for the purposes of exploiting the variety has, with the consent of the applicant, taken place elsewhere than in the United Kingdom earlier than 4 years, or, in the case of trees or vines, 6 years, before the date of the application.
- (4) For the purposes of sub-paragraphs (2) and (3) above, there shall be disregarded any sale or other disposal to which sub-paragraph (5), (6), (8) or (9) below applies.
- (5) This sub-paragraph applies to any sale or other disposal of a stock of material of the variety to a person who at the time of the sale or other disposal is, or who subsequently becomes, the person entitled to the grant of plant breeders' rights in respect of the variety.
- (6) This sub-paragraph applies to—
- (a) any sale or other disposal of propagating material of the variety to a person as part of qualifying arrangements, and

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- (b) any sale or other disposal to the applicant, by a person who uses propagating material of the variety under any such arrangements, of the material produced directly or indirectly from the use.
- (7) For the purposes of sub-paragraph (6) above, qualifying arrangements are arrangements under which—
  - (a) a person uses propagating material of the variety under the applicant's control for the purpose of increasing the applicant's stock, or of carrying out tests or trials, and
  - (b) the whole of the material produced, directly or indirectly, from the material becomes or remains the property of the applicant.
- (8) This sub-paragraph applies to any sale or other disposal of material of the variety, other than propagating material, produced in the course of—
  - (a) the breeding of the variety,
  - (b) increasing the applicant's stock of material of the variety, or
  - (c) carrying out tests or trials of the variety,which does not involve identifying the variety from which the material is produced.
- (9) This sub-paragraph applies to any disposal of material of the variety, otherwise than by way of sale, at an exhibition or for the purposes of display at an exhibition.
- (10) For the purposes of sub-paragraphs (2) and (3) above, any sale or other disposal of propagating or harvested material of a variety for the purposes of exploiting the variety shall, if the variety is related to another variety, be treated as being also a sale or other disposal of propagating or harvested material of the other variety for the purposes of exploiting that variety.
- (11) For the purposes of sub-paragraph (10) above, a variety is related to another if its nature is such that repeated production of the variety is not possible without repeated use of the other variety.

## PART II

### PRIORITIES BETWEEN APPLICANTS FOR RIGHTS

- 5 (1) If a variety is bred, or discovered and developed, by two or more persons independently, the first of those persons, and any successors in title of theirs, to apply for the grant of plant breeders' rights in respect of it shall be the person entitled to the grant.
- (2) As between persons making applications for the grant of plant breeders' rights in respect of the same variety on the same date, the one who was first in a position to make an application for the grant of plant breeders' rights in respect of that variety, or who would have been first in that position if this Part of this Act had always been in force, shall be the person entitled to the grant.
- 6 (1) If the following conditions are met, an application for the grant of plant breeders' rights shall be treated for the purposes of paragraphs 1, 4 and 5 above as made, not on the date on which it is in fact made, but on the earlier date mentioned in sub-paragraph (7) below.

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- (2) The first condition is that, in the 12 months immediately preceding the application under this Part of this Act, the applicant has duly made a parallel application under the law of—
- (a) the European Community,
  - (b) any other intergovernmental organisation, or any State, which is, and was at the time of the application, a member of the Union as defined by Article 1(xi) of the Convention, or
  - (c) any country or territory which is, and was at the time of the application, designated for the purposes of this provision by order made by the Ministers.
- (3) The second condition is that the applicant has not duly made such a parallel application earlier than 12 months before the application under this Part of this Act.
- (4) The third condition is that the application under this Part of this Act includes a claim to priority under this paragraph by reference to the parallel application.
- (5) The fourth condition is that the application by reference to which priority is claimed has not been withdrawn or refused when the application under this Part of this Act is made.
- (6) The fifth condition is that, within 3 months from the date of the application under this Part of this Act, the applicant submits to the Controller a copy of the documents constituting the parallel application, certified as a true copy by the authority to whom it is made.
- (7) The earlier date referred to in sub-paragraph (1) above is the date of the parallel application mentioned in sub-paragraph (2) above.
- (8) If more than one parallel application has been duly made as mentioned in sub-paragraph (2) above, the references in sub-paragraphs (4) to (7) above to the parallel application shall be construed as references to the earlier, or earliest, of the applications.
- (9) In this paragraph—
- (a) “the Convention” means the International Convention for the Protection of New Varieties of Plants done on 2nd December 1961 and revised at Geneva on 10th November 1972, 23rd October 1978 and 19th March 1991, and
  - (b) references to a parallel application, in relation to an application for the grant of plant breeders' rights, are to an application for the grant of plant variety rights in respect of the variety to which the application under this Part of this Act relates.
- 7 (1) Any priority which an application for the grant of plant breeders' rights enjoys by virtue of paragraph 6 above shall be forfeited if the applicant does not, before the end of the relevant period, satisfy all the requirements which are to be satisfied by an applicant before plant breeders' rights can be granted to him.
- (2) For the purposes of sub-paragraph (1) above, the relevant period is the period of 2 years beginning with the day after the last day on which the applicant could have claimed priority under paragraph 6 above for his application.
- (3) Where—
- (a) an application for the grant of plant breeders' rights enjoys priority by virtue of paragraph 6 above, and

(b) the application by reference to which it enjoys priority is withdrawn or refused before the applicant has satisfied all the requirements which are to be satisfied by an applicant before plant breeders' rights can be granted to him, sub-paragraph (1) above shall have effect with the substitution for “the relevant period” of “such period as the Controller may specify”.

### SCHEDULE 3

Section 42.

#### THE PLANT VARIETIES AND SEEDS TRIBUNAL

##### *Constitution of the Tribunal*

- 1 In any case, the jurisdiction of the Tribunal shall be exercised by—
- (a) the relevant chairman,
  - (b) a member of the panel constituted under paragraph 7(1)(a) below, and
  - (c) a member of the panel constituted under paragraph 7(1)(b) below;
- and references to the Tribunal in this Act or the Plant Varieties and Seeds Act 1964 shall be construed accordingly.

##### *Chairman*

- 2 (1) The Lord Chancellor shall appoint a person to be chairman of the Tribunal for the purpose of proceedings brought before them in England and Wales.
- (2) A person may only be appointed under this paragraph if he has a seven year general qualification, within the meaning of section 71 of the Courts and Legal Services Act 1990.
- 3 (1) The Lord President of the Court of Session shall appoint a person to be chairman of the Tribunal for the purpose of proceedings brought before them in Scotland.
- (2) A person may only be appointed under this paragraph if he is an advocate or solicitor in Scotland of at least 7 years' standing.
- 4 (1) The Lord Chief Justice of Northern Ireland shall appoint a person to be chairman of the Tribunal for the purpose of proceedings brought before them in Northern Ireland.
- (2) A person may only be appointed under this paragraph if he is a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least 7 years' standing.
- 5 (1) Subject to sub-paragraph (2) below, a person's appointment under paragraph 2, 3 or 4 above shall be for such term as the appointing authority may determine before the person's appointment.
- (2) No appointment of a person under paragraph 2, 3 or 4 above shall be such as to extend beyond the day on which he attains the age of 70.
- (3) A person who ceases to hold office under paragraph 2, 3 or 4 above shall be eligible for re-appointment.
- (4) A person may resign his appointment under paragraph 2, 3 or 4 above by notice in writing to the appointing authority.

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- (5) The appointing authority may revoke a person's appointment under paragraph 2, 3 or 4 above if satisfied that the person is unfit to continue in office or incapable of discharging his duties.
- (6) Sub-paragraph (2) above is subject to section 26(4) to (6) of the Judicial Pensions and Retirement Act 1993 (power to authorise continuance in office up to the age of 75).
- 6 (1) In the case of the temporary absence or inability to act of a person appointed under paragraph 2, 3 or 4 above, the appointing authority may appoint another person to act as deputy for that person.
- (2) A person may only be appointed to act as deputy for a person appointed under paragraph 2, 3 or 4 above if he has the qualification required for appointment under that paragraph.
- (3) A person appointed under sub-paragraph (1) above shall, when acting as deputy for a person appointed under paragraph 2, 3 or 4 above, have all the functions of that person.

*The two panels*

- 7 (1) The Ministers shall draw up and from time to time revise—
  - (a) a panel of persons who have wide general knowledge in the field of agriculture, of horticulture or of forestry, and
  - (b) a panel of persons who have specialised knowledge of particular species or groups of plants or of the seeds industry.
- (2) The power to revise the panels drawn up under this paragraph shall include power to terminate a person's membership of either of them, and shall accordingly to that extent be subject to section 7 of the Tribunals and Inquiries Act 1992 (which makes it necessary to obtain the concurrence of the Lord Chancellor and of certain judicial officers in Scotland and Northern Ireland to dismissals in certain cases).

*Selection from the panels*

- 8 (1) The members of the panels who are to deal with any case shall be selected as follows—
  - (a) the Ministers may select a member or members to deal with that particular case or class or group of cases, or
  - (b) the Ministers may select for a class or group of cases members from amongst whom members to deal with any particular case shall be selected, and the selection from amongst those members of a member or members to deal with the particular case shall then be made either by the Ministers, or, if they so direct, by the relevant chairman.
- (2) The member from the panel constituted under paragraph 7(1)(b) above shall be selected for his knowledge of the subject matter of a particular case or class or group of cases.

*Sittings of the Tribunal*

- 9 The Tribunal may, for the purpose of hearing proceedings brought before them in any part of the United Kingdom, sit anywhere in the United Kingdom.

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### *Decisions of the Tribunal*

- 10 (1) Any decision of the Tribunal in exercise of their jurisdiction shall be taken, in the event of a difference between members dealing with the case, by the votes of the majority.
- (2) If, after the commencement of the hearing of any proceedings before the Tribunal, one of the three members of the Tribunal becomes incapable of continuing to hear the proceedings on account of sickness or for any other reason, the proceedings may, with the consent of all parties to the proceedings, be continued before the remaining two members of the Tribunal and heard and determined accordingly.
- (3) If, in the case of proceedings continued under sub-paragraph (2) above, the two members differ in opinion, the case shall, on the application of any party to the proceedings, be re-argued and determined by the Tribunal as ordinarily constituted.
- (4) A decision of the Tribunal shall not be questioned on the ground that a member was not validly appointed or selected.

### *Costs*

- 11 (1) In any proceedings brought before the Tribunal in England and Wales or Northern Ireland under their statutory jurisdiction, the Tribunal may order any party to the proceedings to pay to any other party to the proceedings—
- (a) a specified sum in respect of the costs incurred in the proceedings by the second-mentioned party, or
  - (b) the taxed amount of those costs.
- (2) In the case of an order under sub-paragraph (1) above relating to proceedings brought in England and Wales, any costs required by the order to be taxed may be taxed in the county court according to such of the scales prescribed by the county court rules for proceedings in the county court as may be directed by the order or, if the order gives no direction, by the county court.
- (3) In the case of any order under sub-paragraph (1) above relating to proceedings brought in Northern Ireland, any costs required by the order to be taxed may be taxed by the taxing master of the Supreme Court of Judicature of Northern Ireland according to such of the scales provided for equity suits or proceedings in the county courts under the County Courts (Northern Ireland) Order 1980 as may be directed by the order or, if the order gives no direction, by the taxing master.
- 12 In any proceedings brought before the Tribunal in Scotland under their statutory jurisdiction, the Tribunal may order any party to the proceedings to pay to any other party to the proceedings any expenses incurred in the proceedings by the second-mentioned party and may tax or settle the amount of any expenses to be paid under any such order or direct in what manner they are to be taxed.

### *Rules*

- 13 (1) The Lord Chancellor may make rules as to the procedure in connection with proceedings brought before the Tribunal in exercise of their statutory jurisdiction and as to the fees chargeable in respect of those proceedings, and the rules may in particular make provision—
- (a) as to the circumstances in which the Tribunal need not sit, or are not to sit, in public,

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- (b) as to the form of any decision of the Tribunal,
  - (c) as to the time within which any proceedings are to be instituted,
  - (d) as to the evidence which may be required or admitted in any proceedings,
  - (e) as to the examination of the parties, and of witnesses, on oath or affirmation in any proceedings,
  - (f) as to the procedure for securing the attendance of witnesses and the production of documents in any proceedings.
- (2) Rules under sub-paragraph (1) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

*Remuneration of Tribunal members*

- 14 The Ministers may pay to members of the Tribunal such remuneration and allowances as the Ministers may determine.

*Officers and servants*

- 15 (1) The Ministers may appoint such officers and servants of the Tribunal as the Ministers may determine.
- (2) There shall be paid to the officers and servants appointed under this paragraph such remuneration and allowances as the Ministers may determine.

*Interpretation*

- 16 In this Schedule—
- “appointing authority” means—
- (a) in relation to an appointment under paragraph 2 above, the Lord Chancellor,
  - (b) in relation to an appointment under paragraph 3 above, the Lord President of the Court of Session, and
  - (c) in relation to an appointment under paragraph 4 above, the Lord Chief Justice of Northern Ireland; and
- “relevant chairman” means—
- (a) in relation to proceedings brought before the Tribunal in England and Wales, the person appointed under paragraph 2 above,
  - (b) in relation to proceedings brought before the Tribunal in Scotland, the person appointed under paragraph 3 above, and
  - (c) in relation to proceedings brought before the Tribunal in Northern Ireland, the person appointed under paragraph 4 above.



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SCHEDULE 4

Section 52.

REPEALS

<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
1964 c. 14.	The Plant Varieties and Seeds Act 1964.	Part I.  In section 37, in subsection (1), paragraphs (a) to (c), and, in subsection (2), the words “or the Controller or the Tribunal”.  In section 38(1), the definitions of the expressions “the Controller”, “plant variety” and “variety”.  In section 39, in subsection (2), paragraph (a) and the word “and” immediately following it, and subsection (3)(b).  Schedules 1 to 4.
1968 c. 34.	The Agriculture (Miscellaneous Provisions) Act 1968.	Section 43. Schedule 7.
1972 c. 68.	The European Communities Act 1972.	In Schedule 4, paragraph 5(5).
1976 c. 34.	The Restrictive Trade Practices Act 1976.	In Schedule 5, the third paragraph.
1976 c. 53.	The Resale Prices Act 1976.	In section 10(4)(b), the words from “or” to the end.
1983 c. 17.	The Plant Varieties Act 1983.	The whole Act.
1990 c. 41.	The Courts and Legal Services Act 1990.	In Schedule 10, paragraph 21.
1992 c. 53.	The Tribunals and Inquiries Act 1992.	In Schedule 3, paragraph 2.
1993 c. 8.	The Judicial Pensions and Retirement Act 1993.	In Schedule 6, paragraph 54.
1994 c. 26.	The Trade Marks Act 1994.	In Schedule 4, in the table in paragraph 1(2), the entry relating to the Plant Varieties and Seeds Act 1964.
1996 c. 23.	The Arbitration Act 1996.	In Schedule 3, paragraph 18.