

Commission Regulation (EC) No 874/2009 of 17 September 2009 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards proceedings before the Community Plant Variety Office (recast)

TITLE II U.K.

**SPECIFIC PROCEEDINGS BEFORE THE OFFICE**

CHAPTER I U.K.

*Application for a Community plant variety right*

Section 1 U.K.

*Actions of the applicant*

Article 16 U.K.

**Filing of the application**

1 An application for a Community plant variety right shall be filed at the Office, at the national agencies designated or the sub-offices established pursuant to Article 30(4) of the basic Regulation.

Where the application is filed at the Office it may be filed in paper format or by electronic means. Where it is filed at the national agencies or sub-offices it shall be filed in paper format in duplicate.

2 The information sent to the Office in accordance with Article 49(1)(b) of the basic Regulation shall contain:

- particulars for identifying the applicant and, where appropriate, his procedural representative,
- the national agency or sub-office at which the application for a Community plant variety right was filed, and
- the provisional designation of the variety concerned.

3 The Office shall make available the following forms free of charge:

- a an application form and a technical questionnaire, for the purposes of filing an application for a Community plant variety right;
- b a form for forwarding the information referred to in paragraph 2, indicating the consequences of any failure of the forwarding.

4 The applicant shall fill in and sign the forms provided for in paragraph 3. Where the application is submitted by electronic means it shall comply with the second subparagraph of Article 57(3) as regards the signature.

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*Status: Point in time view as at 31/01/2020.*

*Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EC) No 874/2009, TITLE II. (See end of Document for details)*

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## Article 17 **U.K.**

### Receipt of the application

[<sup>F1</sup> Where a national agency or sub-office exercising the specific administrative functions referred to in Article 30(4) of the basic Regulation receives an application, it shall, by electronic means, send to the Office a confirmation of receipt and forward the application in accordance with Article 49(2) of the basic Regulation. The confirmation of receipt shall include the file number of the national agency or sub-office, the nature and the number of forwarded documents and the date of receipt at the national agency or sub-office. The national agency or sub-office shall transmit to the applicant a copy of the confirmation of receipt sent to the Office, by electronic or other means.

2 Where the Office receives an application from the applicant directly or via a national agency or sub-office, it shall, without prejudice to other provisions, mark the documents making up the application with a file number and the date of receipt at the Office and issue a confirmation of receipt to the applicant. That confirmation shall include the file number of the Office, the nature and the number of documents received, the date of receipt at the Office and the date of application within the meaning of Article 51 of the basic Regulation. A copy of the confirmation of receipt shall be transmitted to the national agency or sub-office via which the Office has received the application.]

3 If the Office receives an application via a sub-office or national agency more than one month after its filing by the applicant, the 'date of application' within the meaning of Article 51 of the basic Regulation may not be earlier than the date of receipt at the Office, unless the Office establishes on the basis of sufficient documentary evidence that the applicant has forwarded an information to it in accordance with Article 49(1)(b) of the basic Regulation and Article 16(2) of this Regulation.

#### Textual Amendments

- F1** Substituted by [Commission Implementing Regulation \(EU\) 2016/1448 of 1 September 2016 amending Regulation \(EC\) No 874/2009 establishing implementing rules for the application of Council Regulation \(EC\) No 2100/94 as regards proceedings before the Community Plant Variety Office.](#)

## Article 18 **U.K.**

### Conditions laid down in Article 50(1) of the basic Regulation

1 If the Office finds that the application does not comply with the conditions laid down in Article 50(1) of the basic Regulation, it shall notify to the applicant the deficiencies it has found, stating that only such date as sufficient information remedying those deficiencies is received shall be treated as the date of application for the purposes of Article 51 of that Regulation.

2 An application complies with the condition laid down in Article 50(1)(i) of the basic Regulation only if date and country of any first disposal within the meaning of Article 10(1) of that Regulation are indicated, or if, in the absence of such disposal a declaration is made that no such disposal has occurred.

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*Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EC) No 874/2009, TITLE II. (See end of Document for details)*

[<sup>F13</sup> An application complies with the condition laid down in Article 50(1)(j) of the basic Regulation only if the date and the country given in any earlier application for the variety are, to the best of the applicant's knowledge, indicated in respect of:

- a an application for a property right in respect of the variety, in a Member State or a member of the International Union for the Protection of New Varieties of Plants ('UPOV'); and
- b an application for official acceptance of the variety for certification and marketing where official acceptance includes an official description of the variety.]

#### Textual Amendments

- F1** Substituted by [Commission Implementing Regulation \(EU\) 2016/1448 of 1 September 2016 amending Regulation \(EC\) No 874/2009 establishing implementing rules for the application of Council Regulation \(EC\) No 2100/94 as regards proceedings before the Community Plant Variety Office.](#)

### Article 19 **U.K.**

#### Conditions referred to in Article 50(2) of the basic Regulation

1 If the Office finds that the application does not comply with the provisions of paragraphs 2, 3 and 4 of this Article or with Article 16 of this Regulation, it shall apply Article 17(2) hereof, but shall require the applicant to remedy the deficiencies it has found within such time limit as it may specify. Where those deficiencies are not remedied in good time the Office shall without delay refuse the application, pursuant to Article 61(1)(a) of the basic Regulation.

[<sup>F12</sup> The applicant shall provide the following information in the application form or in the technical questionnaire referred to in Article 16(3)(a), where relevant:

- a the identity and the contact details of the applicant, his designation as a party to proceedings referred to in Article 2 and, where appropriate, the name and address of the procedural representative;
- b where the applicant is not the breeder, the name and address of the breeder and his entitlement to apply for the Community plant variety right;
- c the scientific name of the genus, species or subspecies to which the variety belongs, and the common name;
- d the variety denomination or, in the absence thereof, the provisional designation;
- e the location in which the variety was bred or discovered and developed, and the maintenance and the propagation of the variety, including information on the characteristics, the cultivation of any other variety or varieties the material of which has to be used repeatedly for the production of the variety. For material to be used repeatedly for the production of the variety, the applicant may provide the information concerning such material, if he requests so, in the form provided by the Office pursuant to Article 86;
- f the characteristics of the variety, including the state of expression for certain characteristics based on the technical questionnaire referred to in Article 16(3)(a);
- g where appropriate, similar varieties and differences from those varieties, which, in the applicant's opinion, are relevant for the technical examination;
- h additional information that may help distinguishing the variety, including representative colour photos of the variety and other information on the plant material to be examined during the technical examination;

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- i where appropriate, characteristics that have been genetically modified, where the variety concerned represents a genetically modified organism within the meaning of Article 2(2) of Directive 2001/18/EC of the European Parliament and of the Council<sup>(1)</sup>;
  - j the date of any sale or first disposal to others, of varietal constituents or harvested material of the variety, to exploit the variety within the territory of the European Union or in one or more third countries, or to assess whether a variety is new as referred to in Article 10 of the basic Regulation, or a declaration that such sale or first disposal has not yet occurred;
  - k the designation of the authority applied to and the file number of the applications referred to in Article 18(3) of this Regulation;
  - l existing national or regional plant variety rights that have been granted to the variety;
  - m whether an application for the variety concerned has been submitted for listing or registration or a decision has been taken pursuant to Article 5 of Council Directive 68/193/EEC<sup>(2)</sup>, Article 10 of Council Directive 2002/53/EC<sup>(3)</sup>, Article 10 of Council Directive 2002/55/EC<sup>(4)</sup> and Article 5 of Commission Implementing Directive 2014/97/EU<sup>(5)</sup>.]
- 3 The Office may call for any necessary information and documentation, and, if necessary, sufficient drawings or photographs for the conduct of the technical examination within such time limit as it shall specify.
- 4 Where the variety concerned represents a genetically modified organism within the meaning of Article 2(2) of Directive 2001/18/EC, the Office may require the applicant to transmit a copy of the written attestation of the responsible authorities stating that a technical examination of the variety under Articles 55 and 56 of the basic Regulation does not pose risks to the environment according to the norms of that Directive.

#### Textual Amendments

- F1** Substituted by [Commission Implementing Regulation \(EU\) 2016/1448 of 1 September 2016 amending Regulation \(EC\) No 874/2009 establishing implementing rules for the application of Council Regulation \(EC\) No 2100/94 as regards proceedings before the Community Plant Variety Office.](#)

*Article 20* **U.K.**

#### Claiming priority

If the applicant claims a right of priority for an application within the meaning of Article 52(2) of the basic Regulation, which is not the earliest of those to be indicated pursuant to the first indent of Article 18(3) of this Regulation, the Office shall state that a priority date can only be given to such earlier application. Where the Office has issued a receipt including the date of filing of an application which is not the earliest of those to be indicated, the priority date notified shall be considered void.

*Article 21* **U.K.**

#### Entitlement to a Community plant variety right during proceedings

1 When the commencement of an action against the applicant in respect of a claim referred to in Article 98(4) of the basic Regulation has been entered in the Register of Applications for Community plant variety rights, the Office may stay the application

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proceedings. The Office may set a date on which it intends to continue the proceedings pending before it.

2 When a final decision in, or any other termination of, the action referred to in paragraph 1 has been entered in the Register of Applications for Community plant variety rights, the Office shall resume proceedings. It may resume them at an earlier date, but not prior to the date already set pursuant to paragraph 1.

3 Where entitlement to a Community plant variety right is validly transferred to another person for the purposes of the Office, that person may pursue the application of the first applicant as if it were his own, provided that he gives notice to this effect to the Office within one month of the entry of final judgment in the Register of Applications for Community plant variety rights. Fees due pursuant to Article 83 of the basic Regulation and already paid by the first applicant shall be deemed to have been paid by the subsequent applicant.

## Section 2 **U.K.**

### **Conduct of the technical examination**

#### Article 22 **U.K.**

#### **Decision on test guidelines**

1 Upon proposal of the President of the Office, the Administrative Council shall take a decision as to test guidelines. The date of the decision and the species concerned by it shall be published in the Official Gazette referred to in Article 87.

2 In the absence of a decision of the Administrative Council as to test guidelines, the President of the Office may take a provisional decision thereon. The provisional decision shall lapse on the date of the decision of the Administrative Council. Where the provisional decision of the President of the Office deviates from the decision of the Administrative Council, a technical examination started prior to the decision of the Administrative Council shall not be affected. The Administrative Council may decide otherwise, if circumstances so dictate.

[<sup>F23</sup> In the absence of a decision of the Administrative Council, or a provisional decision of the President of the Office as referred to in paragraph 2, as to test guidelines established by the Office, the guidelines per genera and species of the UPOV shall apply. In the absence of such guidelines, national guidelines developed by a competent authority in charge of the technical examination of a plant variety may be used, provided that the President of the Office agrees to such use. The competent authority shall submit those guidelines to the Office, and the Office shall publish them on its website.]

#### **Textual Amendments**

- F2** Inserted by [Commission Implementing Regulation \(EU\) 2016/1448 of 1 September 2016 amending Regulation \(EC\) No 874/2009 establishing implementing rules for the application of Council Regulation \(EC\) No 2100/94 as regards proceedings before the Community Plant Variety Office.](#)

*Status: Point in time view as at 31/01/2020.*

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Article 23 **U.K.**

**Powers vested in the President of the Office**

1 Where the Administrative Council takes a decision on test guidelines, it shall include a power whereby the President of the Office may insert additional characteristics and their expressions in respect of a variety.

F32 .....

**Textual Amendments**

**F3** Deleted by [Commission Implementing Regulation \(EU\) 2016/1448 of 1 September 2016 amending Regulation \(EC\) No 874/2009 establishing implementing rules for the application of Council Regulation \(EC\) No 2100/94 as regards proceedings before the Community Plant Variety Office.](#)

Article 24 **U.K.**

**Notification by the Office of the Examination Office**

[<sup>F1</sup>In accordance with Article 55(3) of the basic Regulation, the Office shall transmit to the Examination Office the following documents relating to the variety in electronic format:]

- (a) the application form, the technical questionnaire and each additional document submitted by the applicant containing information needed for the conduct of the technical examination;
- (b) the forms filled out by the applicant pursuant to Article 86 of this Regulation;
- (c) documents relating to an objection based on the contention that the conditions laid down in Articles 7, 8 and 9 of the basic Regulation have not been met.

**Textual Amendments**

**F1** Substituted by [Commission Implementing Regulation \(EU\) 2016/1448 of 1 September 2016 amending Regulation \(EC\) No 874/2009 establishing implementing rules for the application of Council Regulation \(EC\) No 2100/94 as regards proceedings before the Community Plant Variety Office.](#)

Article 25 **U.K.**

**Cooperation between the Office and the Examination Office**

The staff of the Examination Office responsible for the technical examination and the rapporteur designated in accordance with Article 8(1) shall cooperate in all phases of a technical examination. Cooperation shall cover at least the following aspects:

- (a) the monitoring of the conduct of the technical examination, including the inspection of the locations of the test plots and the methods used for the tests by the rapporteur;

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- (b) without prejudice to other investigations by the Office, information from the Examination Office about details of any previous disposal of the variety; and
- (c) the submission by the Examination Office to the Office of interim reports on each growing period.

#### Article 26 U.K.

### Form of the examination reports

1 The examination report referred to in Article 57 of the basic Regulation shall be signed by the responsible member of the staff of the Examination Office and shall expressly acknowledge the exclusive rights of disposal of the Office under Article 57(4) of that Regulation.

2 The provisions of paragraph 1 shall apply *mutatis mutandis* to any interim reports to be submitted to the Office. The Examination Office shall issue a copy of each interim report direct to the applicant.

#### Article 27 U.K.

### Other examination reports

1 An examination report on the results of any technical examination which has been carried out or is in the process of being carried out for official purposes in a Member State by one of the offices responsible for the species concerned pursuant to Article 55(1) of the basic Regulation may be considered by the Office to constitute a sufficient basis for decision, provided that:

- a the material submitted for the technical examination has complied, in quantity and quality, with any standards that may have been laid down pursuant to Article 55(4) of the basic Regulation;
- [<sup>F1</sup>b the technical examination has been carried out in a manner consistent with the designation by the Administrative Council pursuant to Article 55(1) of the basic Regulation and with the requirements referred to in Article 13(1a) of this Regulation and has been conducted in accordance with the test guidelines issued and any general instructions given, pursuant to Article 56(2) of the basic Regulation and Articles 22 and 23 of this Regulation;]
- c the Office has had the opportunity to monitor the conduct of the technical examination concerned; and
- d where the final report is not immediately available, the interim reports on each growing period are submitted to the Office prior to the examination report.

2 Where the Office does not consider the examination report referred to in paragraph 1 to constitute a sufficient basis for a decision, it may follow the procedure laid down in Article 55 of the basic Regulation, after consulting the applicant and the Examination Office concerned.

3 The Office and each competent national plant variety office in a Member State shall give administrative assistance to the other by making available, upon request, any examination reports on a variety, for the purpose of assessing distinctiveness, uniformity and stability of that variety. A specific amount shall be charged by the Office or the competent national plant variety office for the submission of such a report, such amount being agreed by the offices concerned.

[<sup>F1</sup>4 An examination report on the results of a technical examination that has been carried out or is in the process of being carried out for official purposes in a third country or in

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the territory of a regional organisation that is a member of the UPOV or that is a party to the Agreement on Trade-Related Aspects of Intellectual Property Rights ('TRIPS'), may be considered by the Office to constitute a sufficient basis for decision, provided that the technical examination complies with the conditions laid down in a written agreement between the Office and the competent authority of such third country or regional organisation. Such conditions shall at least include:

- a conditions relating to the material, as referred to in point (a) of paragraph 1;
- b the condition that the technical examination has been conducted in accordance with the test guidelines issued, or general instructions given, pursuant to Article 56(2) of the basic Regulation and Article 22 of this Regulation;
- c the condition that the Office has had the opportunity to assess the suitability of facilities for carrying out a technical examination for the species concerned in that third country or in the territory of that regional organisation;
- d conditions relating to the availability of reports, as laid down in point (d) of paragraph 1;
- e the condition that the third country has adequate experience in testing the genera or species concerned; and
- f the condition that the written agreement is concluded with the consent of the Administrative Council.]

[<sup>F25</sup> The Office may request a competent authority of a third country or of a regional organisation that is a member of the UPOV or is a party to TRIPS to perform the technical examination, provided that a written agreement has been signed between the Office and that competent authority and provided that one of the following conditions applies:

- a there is no possibility to realise the technical examination for the specific species in an Examination Office in the European Union, and an examination report on the results of a technical examination, referred to in paragraph 4, is not available or is not expected to become available;
- b an examination report on the results of a technical examination referred to in paragraph 4 is expected to be made available but the conditions established under paragraph 4 to conduct the technical examination are not fulfilled.

6 The written agreement referred to in paragraph 5 shall be concluded with the consent of the Administrative Council, based on the following conditions:

- a conditions relating to the material, as referred to in point (a) of paragraph 1;
- b the condition that the technical examination will be conducted in accordance with the test guidelines issued, or general instructions given, pursuant to Article 56(2) of the basic Regulation and Article 22 of this Regulation;
- c the condition that the Office has had the opportunity to assess the suitability of facilities for carrying out a technical examination for the species concerned in that third country or in the territory of that regional organisation and to monitor the technical examination concerned;
- d conditions relating to the availability of reports, as laid down in point (d) of paragraph 1;
- e the condition that the third country has adequate experience in testing the genera or species concerned.]

#### Textual Amendments

- F1** Substituted by [Commission Implementing Regulation \(EU\) 2016/1448 of 1 September 2016 amending Regulation \(EC\) No 874/2009 establishing implementing rules for the application of Council Regulation \(EC\) No 2100/94 as regards proceedings before the Community Plant Variety Office.](#)



*Status: Point in time view as at 31/01/2020.*

*Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EC) No 874/2009, TITLE II. (See end of Document for details)*

**F2** Inserted by Commission Implementing Regulation (EU) 2016/1448 of 1 September 2016 amending Regulation (EC) No 874/2009 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards proceedings before the Community Plant Variety Office.

### Section 3 **U.K.**

#### *Variety denomination*

### Article 28 **U.K.**

#### **Proposal for a variety denomination**

The proposal for a variety denomination shall be signed and shall be filed at the Office, [F3 or, if the proposal accompanies the application for a Community plant variety right filed at the national agency designated or the sub-office established pursuant to Article 30(4) of the basic Regulation, in duplicate].

The Office shall make available, free of charge, a form for the purposes of proposing a variety denomination.

Where the proposal for a variety denomination is submitted by electronic means it shall comply with the second subparagraph of Article 57(3) of this Regulation as regards the signature.

#### **Textual Amendments**

**F3** Deleted by Commission Implementing Regulation (EU) 2016/1448 of 1 September 2016 amending Regulation (EC) No 874/2009 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards proceedings before the Community Plant Variety Office.

### Article 29 **U.K.**

#### **Examination of a proposal**

1 Where the proposal does not accompany the application for a Community plant variety right or where a proposed variety denomination cannot be approved by the Office, the Office shall without delay communicate this to the applicant, shall require him to submit a proposal or a new proposal and shall indicate the consequences of failure to do so.

2 Where the Office establishes at the time of receipt of the results of the technical examination pursuant to Article 57(1) of the basic Regulation that the applicant has not submitted any proposal for a variety denomination, it shall without delay refuse the application for a Community plant variety right in accordance with Article 61(1)(c) of that Regulation.

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*Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EC) No 874/2009, TITLE II. (See end of Document for details)*

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*Article 30* **U.K.**

**Guidelines for variety denomination**

The Administrative Council shall adopt guidelines establishing uniform and definitive criteria for determining impediments to the generic designation of a variety denomination referred to in Article 63(3) and (4) of the basic Regulation.

*CHAPTER II* **U.K.**

**Objection**

*Article 31* **U.K.**

**Filing of objections**

- 1 Objections under Article 59 of the basic Regulation shall contain:
  - a the name of the applicant and the file number of the application to which the objection is lodged;
  - b the designation of the objector as a party to proceedings as set out in Article 2 of this Regulation;
  - c if the objector has appointed a procedural representative, his name and address;
  - d a statement on the contention referred to in Article 59(3) of the basic Regulation on which the objection is based, and on particulars, items of evidence and arguments presented in support of the objection.
- 2 If several objections in respect of the same application for a Community plant variety right are filed, the Office may deal with those objections in one set of proceedings.

*Article 32* **U.K.**

**Rejection of objections**

- 1 If the Office finds that the objection does not comply with Article 59(1) and (3) of the basic Regulation or Article 31(1)(d) of this Regulation or that it does not provide sufficient identification of the application against which objection is lodged, it shall reject the objection as inadmissible unless such deficiencies have been remedied within such time limit as it may specify.
- 2 If the Office notes that the objection does not comply with other provisions of the basic Regulation or of this Regulation, it shall reject the objection as inadmissible unless such deficiencies have been remedied prior to the expiry of the objection periods.

*Status: Point in time view as at 31/01/2020.*

*Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EC) No 874/2009, TITLE II. (See end of Document for details)*

## CHAPTER III U.K.

### **Maintenance of Community plant variety rights**

#### Article 33 U.K.

#### **Obligations of the holder under Article 64(3) of the basic Regulation**

- 1 The holder shall permit inspection of material of the variety concerned and of the location where the identity of the variety is preserved, in order to furnish the information necessary for assessing the continuance of the variety in its unaltered state, pursuant to Article 64(3) of the basic Regulation.
- 2 The holder shall be required to keep written records in order to facilitate verification of appropriate measures referred to in Article 64(3) of the basic Regulation.

#### Article 34 U.K.

#### **Technical verification of the protected variety**

Without prejudice to Article 87(4) of the basic Regulation, a technical verification of the protected variety shall be conducted in accordance with the test guidelines duly applied when the Community plant variety right was granted in respect of that variety. Articles 22 and 24 to 27 of this Regulation shall apply *mutatis mutandis* to the Office, the Examination Office and to the holder.

#### Article 35 U.K.

#### **Other material to be used for a technical verification**

When the holder has submitted material of the variety in accordance with Article 64(3) of the basic Regulation, the Examination Office may, with the consent of the Office, verify the submitted material by inspecting other material which has been taken from holdings where material is produced by the holder, or with his consent, or taken from material being marketed by him, or with his consent, or taken by official bodies in a Member State by virtue of their powers.

#### Article 36 U.K.

#### **Amendments of the variety denominations**

- 1 Where the variety denomination has to be amended in accordance with Article 66 of the basic Regulation, the Office shall communicate the grounds thereof to the holder, shall set up a time limit within which the holder must submit a suitable proposal for an amended variety denomination, and shall state that, should he fail to do so, the Community plant variety right may be cancelled pursuant to Article 21 of that Regulation.
- 2 Where the proposal for an amended variety denomination cannot be approved by the Office, the Office shall without delay inform the holder, shall again set a time limit within which the holder must submit a suitable proposal, and shall state that, should he fail to comply, the Community plant variety right may be cancelled pursuant to Article 21 of the basic Regulation.

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*Status:* Point in time view as at 31/01/2020.

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3 Articles 31 and 32 of this Regulation shall apply *mutatis mutandis* to an objection lodged pursuant to Article 66(3) of the basic Regulation.

4 Where the proposal for an amendment of a variety denomination is submitted by electronic means it shall comply with the second subparagraph of Article 57(3) as regards the signature.

## CHAPTER IV U.K.

### *Community licences to be granted by the Office*

#### Section 1 U.K.

#### *Compulsory licences pursuant to Article 29 of the basic Regulation*

#### Article 37 U.K.

#### **Applications for a compulsory licence**

1 The application for a compulsory licence pursuant to Article 29(1), (2) and (5) of the basic Regulation shall contain:

- a the designation of the applicant and the opposing holder of the variety concerned as parties to proceedings;
- b the variety denomination and the plant species of the variety or varieties concerned;
- c a proposal for the type of acts to be covered by the compulsory licence;
- d a statement setting out the public interest concerned, including details of facts, items of evidence and arguments presented in support of the public interest claimed;
- e in the case of an application referred to in Article 29(2) of the basic Regulation, a proposal for the category of persons to which the compulsory licence shall be granted, including, as the case may be, the specific requirements related to that category of persons;
- f a proposal for an equitable remuneration and the basis for calculating the remuneration.

2 The application for a compulsory licence referred to in Article 29(5a) of the basic Regulation shall contain:

- a the designation of the applicant holding a patent right and the opposing holder of the variety concerned as parties to proceedings;
- b the variety denomination and the plant species of the variety or varieties concerned;
- [<sup>F1</sup>c an electronic copy of the patent certificate(s) showing the number and claims of the patent for a biotechnological invention and the granting authority or authorities of the patent;]
- d a proposal for the type of acts to be covered by the compulsory licence;
- e a proposal for an equitable remuneration and the basis for calculating the remuneration;
- f a statement setting out why the biotechnological invention constitutes significant technical progress of considerable economic interest compared with the protected variety, including details of facts, items of evidence and arguments in support of the claim;
- g a proposal for the territorial scope of the licence, which may not exceed the territorial scope of the patent referred to in point (c).

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*Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EC) No 874/2009, TITLE II. (See end of Document for details)*

3 The application for a cross-licence referred to in the second subparagraph of Article 29(5a) of the basic Regulation shall contain:

- a the designation of the applicant holding a patent right and the opposing holder of the variety concerned as parties to proceedings;
- b the variety denomination and the plant species of the variety or varieties concerned;
- [<sup>F1</sup>c an electronic copy of the patent certificate(s) showing the number and claims of the patent for a biotechnological invention and the granting authority or authorities of the patent;]
- d an official document showing that a compulsory licence for a patented biotechnological invention has been granted to the holder of the plant variety right;
- e a proposal for the type of acts to be covered by the cross-licence;
- f a proposal for an equitable remuneration and the basis for calculating the remuneration;
- g a proposal for the territorial scope of the cross-licence, which may not exceed the territorial scope of the patent referred to in point (c).

4 The application for a compulsory licence shall be accompanied by documents evidencing that the applicant has applied unsuccessfully to obtain a contractual licence from the holder of the plant variety right. Should the Commission or a Member State be the applicant for a compulsory licence pursuant to Article 29(2) of the basic Regulation, the Office may waive this condition in the case of *force majeure*.

5 A request for a contractual licence shall be considered unsuccessful within the meaning of paragraph 4 if:

- a the opposing holder has not given a final reply to the person seeking such right within a reasonable period; or
- b the opposing holder has refused to grant a contractual licence to the person seeking it; or
- c the opposing holder has offered a licence to the person seeking it, on obviously unreasonable fundamental terms including those relating to the royalty to be paid, or on terms which, seen as a whole, are obviously unreasonable.

#### Textual Amendments

- F1** Substituted by [Commission Implementing Regulation \(EU\) 2016/1448 of 1 September 2016 amending Regulation \(EC\) No 874/2009 establishing implementing rules for the application of Council Regulation \(EC\) No 2100/94 as regards proceedings before the Community Plant Variety Office.](#)

Article 38 **U.K.**

### Examination of the application for a compulsory licence

1 Oral proceedings and the taking of evidence shall in principle be held together in one hearing.

2 Requests for further hearings shall be inadmissible except for those requests based on circumstances which have undergone change during or after the hearing.

3 Before taking a decision, the Office shall invite the parties concerned to come to an amicable settlement on a contractual licence. If appropriate, the Office shall make a proposal for such an amicable settlement.

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*Status: Point in time view as at 31/01/2020.*

*Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EC) No 874/2009, TITLE II. (See end of Document for details)*

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### Article 39 **U.K.**

#### **Tenure of a Community plant variety right during the proceedings**

1 If the commencement of an action in respect of a claim referred to in Article 98(1) of the basic Regulation against the holder has been entered in the Register of Community Plant Variety Rights, the Office may suspend the proceedings on the grant of a compulsory licence. It shall not resume them prior to the entry in the same Register of the final judgment upon, or any other termination of, such action.

2 If a transfer of the Community plant variety right is binding on the Office, the new holder shall enter the proceedings as a party thereto, upon request of the applicant, if that applicant has unsuccessfully requested the new holder to grant him a licence within two months of receipt of communication from the Office that the name of the new holder has been entered in the Register of Community Plant Variety Rights. A request from the applicant shall be accompanied by sufficient documentary evidence of his vain attempt and, if appropriate, of the conduct of the new holder.

3 In the case of an application referred to in Article 29(2) of the basic Regulation, the new holder shall enter the proceedings as a party thereto. Paragraph 1 of this Article shall not apply.

### Article 40 **U.K.**

#### **Contents of the decision on the application**

The written decision shall be signed by the President of the Office. The decision shall contain:

- (a) a statement that the decision is delivered by the Office;
- (b) the date when the decision was taken;
- (c) the names of the members of the committee having taken part in the proceedings;
- (d) the names of the parties to the proceedings and of their procedural representatives;
- (e) the reference to the opinion of the Administrative Council;
- (f) a statement of the issues to be decided;
- (g) a summary of the facts;
- (h) the grounds on which the decision is based;
- (i) the order of the Office; if need be, the order shall include the stipulated acts covered by the compulsory licence, the specific conditions pertaining thereto and the category of persons, including where appropriate the specific requirements relating to that category.

*Status: Point in time view as at 31/01/2020.*

*Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EC) No 874/2009, TITLE II. (See end of Document for details)*

## Article 41 **U.K.**

### **Grant of a compulsory licence**

- 1 The decision to grant a compulsory licence pursuant to Article 29(1), (2) and (5) of the basic Regulation shall contain a statement setting out the public interest involved.
- 2 The following grounds may in particular constitute a public interest:
  - a the protection of life or health of humans, animals or plants;
  - b the need to supply the market with material offering specific features;
  - c the need to maintain the incentive for continued breeding of improved varieties.
- 3 The decision to grant a compulsory licence pursuant to Article 29(5a) of the basic Regulation shall contain a statement setting out the reasons why the invention constitutes significant technical progress of considerable economic interest. The following grounds may in particular constitute reasons why the invention constitutes significant technical progress of considerable economic interest compared to the protected plant variety:
  - a improvement of cultural techniques;
  - b improvement of the environment;
  - c improvement of techniques to facilitate the use of genetic biodiversity;
  - d improvement of quality;
  - e improvement of yield;
  - f improvement of resistance;
  - g improvement of adaptation to specific climatological and/or environmental conditions.
- 4 The compulsory licence shall be non-exclusive.
- 5 The compulsory licence may not be transferred otherwise than together with that part of an enterprise which makes use of the compulsory licence, or, in the circumstances set out in Article 29(5) of the basic Regulation, together with the assignment of the rights of an essentially derived variety.

## Article 42 **U.K.**

### **Conditions pertaining to the person to whom a compulsory licence is granted**

- 1 Without prejudice to the other conditions referred to in Article 29(3) of the basic Regulation, the person to whom the compulsory licence is granted shall have the appropriate financial and technical capacity to make use of the compulsory licence.
- 2 Compliance with the conditions pertaining to the compulsory licence and laid down in the decision thereon shall be considered a 'circumstance' within the meaning of Article 29(4) of the basic Regulation.
- 3 The Office shall provide that the person to whom a compulsory licence is granted may not bring a legal action for infringement of a Community plant variety right unless the holder has refused or neglected to do so within two months after being so requested.

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*Status: Point in time view as at 31/01/2020.*

*Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EC) No 874/2009, TITLE II. (See end of Document for details)*

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*Article 43* **U.K.**

**Category of persons satisfying specific requirements pursuant to Article 29(2) of the basic Regulation**

1 Any person intending to make use of a compulsory licence who comes under the category of persons satisfying specific requirements referred to in Article 29(2) of the basic Regulation shall declare his intention to the Office and to the holder by registered letter with advice of delivery. The declaration shall include:

- a the name and address of that person as laid down for parties to proceedings pursuant to Article 2 of this Regulation;
- b a statement on the facts meeting the specific requirements;
- c a statement setting out the acts to be effected; and
- d an assurance that that person has the appropriate financial resources as well as information about his technical capacity, to make use of the compulsory licence.

2 Upon request, the Office shall enter a person in the Register of Community Plant Variety Rights if such person has fulfilled the conditions relating to the declaration referred to in paragraph 1. Such person shall not be entitled to make use of the compulsory licence prior to the entry. The entry shall be communicated to that person and the holder.

3 Article 42(3) shall apply *mutatis mutandis* to a person entered in the Register of Community Plant Variety Rights pursuant to paragraph 2 of this Article. Any judgment, or other termination, of the legal action in respect of the act of infringement shall apply to the other persons entered or to be entered.

4 The entry referred to in paragraph 2 may be deleted on the sole ground that the specific requirements laid down in the decision on the grant of a compulsory licence or the financial and technical capacities established pursuant to paragraph 2 have undergone change more than one year after the grant of the compulsory licence and within any time limit stipulated in that grant. The deletion of the entry shall be communicated to the person entered and the holder.

*Section 2* **U.K.**

***Exploitation rights pursuant to Article 100(2) of the basic Regulation***

*Article 44* **U.K.**

**Exploitation rights pursuant to Article 100(2) of the basic Regulation**

1 A request for a contractual non-exclusive exploitation right from a new holder, as referred to in Article 100(2) of the basic Regulation, shall be made, in the case of the former holder within two months, or in the case of a person having enjoyed an exploitation right within four months, of receipt of notification from the Office that the name of the new holder has been entered in the Register of Community Plant Variety Rights.

2 An application for an exploitation right to be granted pursuant to Article 100(2) of the basic Regulation shall be accompanied by documents supporting the unsuccessful request referred to in paragraph 1 of this Article. The provisions of Article 37(1)(a), (b), (c) and (5),



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**Changes to legislation:** There are currently no known outstanding effects for the  
Commission Regulation (EC) No 874/2009, TITLE II. (See end of Document for details)

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Article 38, Article 39(3), Article 40 except letter (f), Article 41(3) and (4) and Article 42 of this Regulation shall apply *mutatis mutandis*.

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**Status:** Point in time view as at 31/01/2020.

**Changes to legislation:** There are currently no known outstanding effects for the  
Commission Regulation (EC) No 874/2009, TITLE II. (See end of Document for details)

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- (1) [<sup>F1</sup>Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC (OJ L 106, 17.4.2001, p. 1).]
- (2) [<sup>F1</sup>Council Directive 68/193/EEC of 9 April 1968 on the marketing of material for the vegetative propagation of the vine (OJ L 93, 17.4.1968, p. 15).]
- (3) [<sup>F1</sup>Council Directive 2002/53/EC of 13 June 2002 on the common catalogue of varieties of agricultural plant species (OJ L 193, 20.7.2002, p. 1).]
- (4) [<sup>F1</sup>Council Directive 2002/55/EC of 13 June 2002 on the marketing of vegetable seed (OJ L 193, 20.7.2002, p. 33).]
- (5) [<sup>F1</sup>Commission Implementing Directive 2014/97/EU of 15 October 2014 implementing Council Directive 2008/90/EC as regards the registration of suppliers and of varieties and the common list of varieties (OJ L 298, 16.10.2014, p. 16).]

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#### **Textual Amendments**

- F1** Substituted by Commission Implementing Regulation (EU) 2016/1448 of 1 September 2016 amending Regulation (EC) No 874/2009 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards proceedings before the Community Plant Variety Office.

**Status:**

Point in time view as at 31/01/2020.

**Changes to legislation:**

There are currently no known outstanding effects for the Commission Regulation (EC) No 874/2009, TITLE II.