

1966 No. 1014

PLANT VARIETIES

SEEDS

The Plant Varieties (Performance Trials) Regulations 1966

<i>Made</i> - - -	11th August 1966
<i>Laid before Parliament</i>	19th August 1966
<i>Coming into Operation</i>	14th September 1966

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The Minister of Agriculture, Fisheries and Food, the Secretary of State for Scotland and the Secretary of State for the Home Department (being the

Secretary of State concerned with agriculture in Northern Ireland), acting jointly, in exercise of the powers vested in them by sections 10(5) and 22(10) of the Plant Varieties and Seeds Act 1964(a); as extended to Northern Ireland by the Plant Varieties and Seeds (Northern Ireland) Order 1964(b) and of all other powers enabling them in that behalf, with the approval of the Treasury, hereby make the following Regulations:—

Citation and Commencement

1. These Regulations may be cited as the Plant Varieties (Performance Trials) Regulations 1966 and shall come into operation on 14th September 1966.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires, —

“the Act” means the Plant Varieties and Seeds Act 1964;

“application” means, as the case may be, either an application for submitting a plant variety for performance trials or an application for exemption of a plant variety from the provisions of section 22 of the Act;

“the gazette” means the gazette published by the Ministers in accordance with section 34 of the Act;

“the Index” means the index of names of plant varieties prepared by the Ministers in accordance with section 20 of the Act;

“injurious weeds” means the weeds specified in Schedule 3 to these Regulations;

“the Ministers” means the Minister of Agriculture, Fisheries and Food, the Secretary of State for Scotland and the Secretary of State for the Home Department (being the Secretary of State concerned with agriculture in Northern Ireland);

“Official List” means any list of plant varieties maintained or published by or under the auspices of a Government other than that of the United Kingdom;

“performance trials” means performance trials conducted for the purposes of section 22 of the Act;

“the Tribunal” means the Plant Variety Rights Tribunal established by section 10 of the Act;

and other expressions have the same meaning as in the Act.

(2) The Interpretation Act 1889(c) shall apply for the interpretation of these Regulations as it applies for the interpretation of an Act of Parliament.

Application for Performance Trials

3.—(1) An application may be made by any person for submitting for performance trials a new plant variety within a class for which the Ministers have by order made under subsection (1) thereof brought section 22 of the Act (which makes provision for performance trials of new plant varieties of specified classes) into force.

(2) An application made in accordance with the last preceding paragraph shall be in writing and shall include the following particulars—

(a) the name and address of the applicant;

(a) 1964 c. 14.
(c) 1889 c. 63.

(b) S.I. 1964/1574 (1964 III, p. 3543).

- (b) the name and address of the breeder or discoverer of the plant variety to which the application relates (hereinafter in this paragraph referred to as "the plant variety") or a statement that the applicant was the breeder or discoverer thereof;
- (c) a statement whether the consent of the breeder or discoverer of the plant variety (if other than the applicant) has been given in respect of the application;
- (d) the section of the Index which relates to the class of plant varieties to which the plant variety belongs;
- (e) the name or other designation of the plant variety;
- (f) the country in which the plant variety was bred or discovered;
- (g) the date of any application made in the United Kingdom for a grant of plant breeders' rights in respect of the plant variety;
- (h) the date of any application for the addition of the name of the plant variety to a section of the Index;
- (i) in a case where the plant variety is included in an Official List, a statement of the name of the country in which such List is maintained or published, the title of the Official List and the calendar year in which the plant variety was first included therein;
- (j) a list of the documents, if any, submitted in support of the application.

(3) The application shall be accompanied by a document giving technical information in respect of the plant variety in accordance with the requirements of the section appropriate to the plant variety set out in Schedule 1 to these Regulations.

(4) An application for the submission of a plant variety for performance trials shall be made in any year not later than the date indicated in Column 2 of Schedule 4 to these Regulations opposite the reference in Column 1 of the said Schedule to the particular class of plant varieties to which the plant variety belongs and not earlier than six months before that date.

Application for Exemption from Performance Trials

4. An application for the exemption of a plant variety from the provisions of section 22 of the Act, on the ground that seed of the plant variety, although not included in the Index, was in commercial use in the United Kingdom before an order made by the Ministers under section 22(1) of the Act brought section 22 of the Act into force for the class of plant varieties to which the plant variety belongs, shall be in writing and shall include the following particulars—

- (a) the name and address of the applicant;
- (b) the name and address of the breeder or discoverer of the plant variety to which the application relates (hereinafter in this paragraph referred to as "the plant variety") or a statement that the applicant was the breeder or discoverer thereof;
- (c) a statement whether the consent of the breeder or discoverer of the plant variety (if other than the applicant) has been given in respect of the application;
- (d) the section of the Index which relates to the class of plant varieties to which the plant variety belongs;
- (e) the name or other designation of the plant variety;

- (f) the country in which the plant variety was bred or discovered;
- (g) the date of any application made in the United Kingdom for a grant of plant breeders' rights in respect of the plant variety;
- (h) in a case where the plant variety is included in an Official List, a statement of the name of the country in which such List is maintained or published, the title of the Official List and the calendar year in which the plant variety was first included therein;
- (i) the facts relied on by the applicant in support of the application;
- (j) a list of the documents, if any, submitted in support of the application.

Translations

5. Where any document submitted in support of an application is in a language other than the English language it shall, unless the Ministers otherwise direct, be accompanied by a complete and adequate translation thereof into the English language.

Lodging of Application

6. An application and any documents, records and illustrations submitted in support thereof or in connection therewith shall be delivered or sent by post in a properly addressed prepaid letter to the Minister of Agriculture, Fisheries and Food, Murray House, Vandon Street, London, S.W. 1.

Address for Service

7. Where a person making an application is not resident in the United Kingdom he shall, on or before making the application, give to the Ministers in writing an address within the United Kingdom which shall be the address at which any notices or other documents may be delivered to or served upon him and he shall be at liberty at any time to give to the Ministers in writing another address for the same purpose in substitution for that previously given.

Further Information and Plant Material

8.—(1) A person making an application shall—

- (a) give to the Ministers within 14 days of demand or within such longer period as the Ministers shall allow such further information, and produce and deliver to them such documents, records and illustrations relating to any of the matters referred to in the application, as the Ministers may from time to time require; and
- (b) where the application is one for the submission of a plant variety for performance trials, deliver to the Ministers reproductive and other material of the plant variety to which the application relates of the quantity, description and quality and packed and in the condition specified in the section appropriate to the plant variety set out in Schedule 2 to these Regulations and within the time or at the time also so specified,

being information, documents, records, illustrations and material relevant to the application and in the possession, control or power of the applicant.

(2) If a person shall fail to comply with any requirement imposed on him by or in pursuance of paragraph (1)(a) of this Regulation, the Ministers shall not be obliged to take any further steps in relation to the application until the

said requirement has been complied with and, except in a case where the application is one for the exemption of the plant variety from the provisions of section 22 of the Act, if after service by the Ministers on the applicant of a notice informing him of the consequences of a continuance of such failure the applicant has not complied with the said requirement, within a time, not being less than 14 days, specified in the said notice, the application shall be deemed to have been withdrawn and the plant variety shall be deemed to have been withdrawn from performance trials.

(3) If a person shall fail to deliver to the Ministers in accordance with the requirements of paragraph (1)(b) of this Regulation reproductive or other material for the carrying out or continuation of performance trials, the plant variety which was to be or has been submitted for the performance trials shall be deemed to have been withdrawn from such trials and the application shall be deemed to have been withdrawn.

Representations

9.—(1) Where an application has been made for the exemption of a plant variety from the provisions of section 22 of the Act and the Ministers are not satisfied that seed of the plant variety was in commercial use in the United Kingdom before the order referred to in Regulation 4 of these Regulations was made they shall, before reaching a decision to refuse the application, afford to the applicant an opportunity of making representations to them in writing and of being heard by a person appointed by them for the purpose, and the following paragraphs of this Regulation shall have effect.

(2) The Ministers shall give to the applicant a notice informing him of his right to make representations, of the manner in which and the time within which such representations may be made and of his right to be heard by a person appointed by them for the purpose and of the manner in which and the time within which he may apply for an opportunity to be heard.

(3) If within a period of 28 days from the giving of the notice referred to in the last preceding paragraph the applicant shall not have made any representations or given notice of his desire to be heard, the Ministers may forthwith refuse the application.

(4) If the applicant shall give notice of his desire to be heard, the Ministers shall appoint a time and place in the United Kingdom for the purpose, having regard in so doing to the convenience of the applicant, and shall give to the applicant at least 14 days' notice of the time and place so appointed.

(5) The Ministers shall give to the applicant notice of their decision, together with their reasons for it, and also a sufficient indication of the time within which and the manner in which an appeal may be brought before the Tribunal.

Appeal to the Tribunal

10. The hearing of an appeal by the Tribunal shall take place in such part of the United Kingdom as shall be determined by the Chairman for the Tribunal, appointed by the Lord Chancellor, who shall have regard to the convenience of the applicant and of his witnesses and to the other circumstances of the case, including the wishes of and expense to the applicant as well as the convenience of the members of the Tribunal.

Publication of Notices

11. The Ministers shall publish in the Gazette notice of the following matters:—

- (a) An application for submitting a plant variety for performance trials.
- (b) The date on which subsections (4) and (5) of section 22 of the Act will no longer apply to seed of a plant variety if a report on the result of the performance trials of that variety has not been previously published.
- (c) An application for the exemption of a plant variety from the provisions of section 22 of the Act.
- (d) A decision consequent on an application for the exemption of a plant variety from the provisions of section 22 of the Act.
- (e) A direction in accordance with section 22(7) of the Act that subsections (4) and (5) of section 22 of the Act shall cease to apply to seed of a plant variety.
- (f) The fact that, as regards the determination of the time limit by which a report on the result of performance trials of a plant variety shall (so far as practicable) be published, the performance trials of the plant variety are, for one of the reasons mentioned in Regulation 13(3) of these Regulations, to be deemed not to have begun.
- (g) The date on which an application for the submission of a plant variety for performance trials was or was deemed to have been withdrawn.
- (h) The date when the time limit for the publication of a report on the result of performance trials of a plant variety expired without such a report having been published.

Commencement of Performance Trials

12. Performance trials for a plant variety within a class of plant varieties referred to in Column 1 of Schedule 4 to these Regulations shall be deemed to commence in any year on the date indicated in Column 3 of the said Schedule opposite the reference to the particular class of plant varieties to which the plant variety belongs.

Reports of Performance Trials

13.—(1) The Ministers shall publish in the gazette the report on the result of the performance trials of a plant variety.

(2) The time limit from the date on which performance trials begin, by which (so far as practicable) the report on the result of the performance trials of a plant variety within a class of plant varieties referred to in Column 1 of Schedule 4 to these Regulations shall be published in accordance with section 22 of the Act, shall be as indicated in Column 4 of the said Schedule opposite the reference to the particular class of plant varieties to which the plant variety belongs.

(3) If at any time after performance trials of a plant variety have begun and before they have been completed the person who made the application for the submission of the plant variety to such trials shall inform the Ministers of his desire to withdraw such application or if during the period aforesaid the application is deemed to have been withdrawn in pursuance of Regulation 8(2), 8(3) or 15 of these Regulations, then, as regards the determination of the time limits referred to in the last preceding paragraph, the performance trials of the plant variety shall be deemed not to have begun.

Performance Trials Register

14.—(1) The Ministers shall compile and maintain a register (hereinafter referred to as "the Register") which shall include entries in respect of every plant variety which is or has been the subject of an application for submission for performance trials.

(2) The Register shall include in each case particulars as to—

- (a) the name and address of the person who made the application;
- (b) the class of plant varieties to which the plant variety which was the subject of the application belongs;
- (c) the name or other designation of the plant variety;
- (d) the date upon which the performance trials were deemed to have begun;
- (e) the date by which (so far as practicable) the report on the result of the performance trials was or is to be published;
- (f) the date on which an application for the submission of a plant variety for performance trials was or was deemed to have been withdrawn;
- (g) the date upon which the report on the result of the performance trials was published

as well as a copy of the report on the result of the performance trials.

(3) The Register shall be available for inspection by any member of the public at the Ministry of Agriculture, Fisheries and Food, Murray House, Vandon Street, London, S.W. 1.

(4) The Ministers shall, if so required, supply to any person a copy of the entries in the Register relating to a plant variety and a copy of the report on the result of the performance trials of a plant variety.

Fees

15.—(1) There shall be paid to the Ministers in respect of the matters set out in the first column of Schedule 5 to these Regulations the fees set out in the third column of the said Schedule opposite the respective references to those matters and such fees shall be paid at the times specified in the second column of the said Schedule.

(2) If any such fee in connection with an application shall not have been paid on the due date the Ministers shall not be obliged to take any further steps or to continue any performance trials in relation to the application and thereupon the plant variety shall be deemed to have been withdrawn from performance trials and the application shall be deemed to have been withdrawn.

In Witness whereof the official seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on 21st July 1966.

(L.S.)

Frederick Peart,
Minister of Agriculture,
Fisheries and Food.

Given under the seal of the Secretary of State for Scotland on 2nd August 1966.

(L.S.)

William Ross,
Secretary of State for Scotland.

Given under the hand of the Secretary of State for the Home Department on 5th August 1966.

Roy Jenkins,

Secretary of State for the
Home Department.

Approved on 11th August 1966.

George Lawson,

E. Alan Fitch,

Two of the Lords Commissioners
of Her Majesty's Treasury.

Regulation 3(3)

SCHEDULE 1

TECHNICAL INFORMATION

SECTION 1

WHEAT, BARLEY AND OATS

Particulars must be given of the matters enumerated below:—

1. Type: whether winter or spring.
2. Use to which produce of the plant variety is to be put.
3. Parentage or breeding history.
4. Details of subsequent stages in selection and multiplication.
- *5. Is the variety uniform and stable? Indicate the type and frequency of variants during reproduction or multiplication.
6. Existing variety (or varieties) which the new variety most closely resembles in performance.
7. Performance characteristics which distinguish the new variety from those listed at 6 above.
8. Special merit or merits claimed for the new variety.
9. Date, place and by whom carried out of any previous performance trials (whether independently conducted or carried out by the applicant or the breeder or discoverer) together with copies of the relevant reports.
10. Results of these trials (expressed relative to named control varieties, and relating to yield, earliness, standing power, straw length, disease resistance, grain quality or any other relevant characteristics).

* It will not be necessary to reply to this question if the variety has been submitted for plant breeders' rights and/or entry on the Index.

SECTION 2

POTATOES

Particulars must be given of the matters enumerated below:—

1. Maturity: whether first early, second early, early maincrop or late maincrop.
2. Use to which produce of the plant variety is to be put.
3. Origin and Parentage:
Is the new variety—
 - (i) a seedling: seed parent
pollen parent
 - (ii) a sport: parent variety
date of discovery.

4. Details of subsequent stages in multiplication.
 - *5. Is the variety uniform and stable? Indicate the type and frequency of variants during reproduction or multiplication.
 6. Existing variety (or varieties) which the new variety most resembles in performance.
 7. Performance characteristics which distinguish the new variety from those listed at 6 above.
 8. Special merit or merits claimed for the new variety.
 9. **Tuber characters**
 - (a) Size and shape.
 - (b) Colour of skin.
 - (c) Distribution of colour.
 - (d) Development of pigment on exposure to light.
 - (e) Surface texture of skin.
 - (f) Colour of flesh.
 - (g) Dormancy and keeping quality.
- * It will not be necessary to reply to this question if the variety has been submitted for plant breeders' rights and/or entry on the Index.
10. Date, place and by whom carried out of any previous performance trials (whether independently conducted or carried out by the applicant or the breeder or discoverer) together with copies of the relevant reports.
 11. Results of those trials (expressed relative to named control varieties and relating to yield, maturity, disease resistance and any other relevant characteristics).

Regulation 8(1)

SCHEDULE 2

REPRODUCTIVE MATERIAL TO BE DELIVERED TO THE MINISTERS

SECTION 1

WHEAT, BARLEY AND OATS

1. *Quantity and Description*

During the year beginning with the making of the application and again during the immediately succeeding year and, if so required by the Ministers, during any subsequent year until the issue of the report on the performance trials, 2 cwt. of seed of the variety shall be delivered. This seed shall be in all respects typical of the variety.

2. *Packing*

The seed shall be supplied in suitable containers of sufficient strength to withstand mechanical damage during transit.

3. *Quality*(1) *Purity and Germination*

The seed shall be such that—

- (a) in a sample of 8 ozs. there are no seeds of injurious weeds and not more than 1 per cent. by weight of other impurities; and
- (b) the percentage of germination is not less than 85 per cent.

(2) *Reports of Tests*

The seed shall be accompanied by either—

- (a) a report of a test of the seed made at an Official Seed Testing Station established under the Seeds Act 1920(a) or a Seed Testing Station licensed under that Act and made within three months immediately preceding the delivery of the seeds, or

(b) a written declaration by the applicant that he has no reason to believe that the seed is not of the standard required by these Regulations and that a test of the seed is being made at an Official Seed Testing Station established under the Seeds Act 1920 or a Seed Testing Station licensed under that Act, of which test a report will be sent or delivered to the Ministers as soon as it is received by the applicant.

(3) *Dressings and Treatments*

The seed shall not have been subjected to any fungicidal or insecticidal treatment. The seed stock shall not have been subjected to hot water or similar treatment for control of loose smut.

(4) *Moisture Content*

The seed shall not have a moisture content of more than 16 per cent.

4. *Time for Delivery of Plant Material*

The seed shall be delivered in any year not earlier than the relevant date mentioned in column 2 below and not later than the relevant date mentioned in column 3 below:—

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
Winter wheat	1st August	15th September
Winter barley	1st August	15th September
Winter oats	1st August	15th September
Spring wheat	1st November	15th January
Spring barley	1st November	15th January
Spring oats	1st November	15th January

SECTION 2

POTATOES

1. *Quantity and Description*

During the year beginning with the making of the application 1,650 seed tubers shall be supplied. During the immediately succeeding year and again if so required by the Ministers, during any subsequent year until the issue of the report on the performance trials 1,400 seed tubers shall be supplied.

The seed tubers shall be graded so as to be capable of being retained by meshes of a riddle each measuring $1\frac{1}{2}$ inches square and passed by meshes of a riddle each measuring 2 inches square. They shall be in sound condition and not be visibly unfit for planting through mechanical damage or attack by any insect, pest or disease or any other condition which would impair subsequent growth. They shall be reasonably free from soil.

2. *Packing*

The seed tubers shall be securely packed in new sacks or other new containers and with material which is adequate in quantity and quality to protect them from low temperatures which may cause chilling or frosting and from mechanical damage. Where they are consigned by rail they shall be sent by passenger train.

3. *Quality*

(1) *Purity and Health*

(a) The seed tubers shall be the produce of a seed crop which did not contain more than—

- (i) 0.05 per cent. of rogues, undesirable variations, wildings and bolters;
- (ii) 0.02 per cent. with leaf roll or severe mosaic;
- (iii) 0.25 per cent. with mild mosaic; or
- (iv) 2 per cent. with blackleg.

(b) The seed crop from which the seed tubers were produced shall not have been so affected with any other disease or pest as to render it unsuitable for seed purposes.

(c) The seed tubers shall be accompanied by a health certificate issued by the Minister of Agriculture, Fisheries and Food, the Secretary of State for Scotland, the Minister of Agriculture for Northern Ireland or the Isle of Man Board of Agriculture and Fisheries stating that—

- (i) on visual examination they were found to be free from signs of Wart Disease and that they were grown on land on which this disease has not been known to have occurred; and
- (ii) the soil in which they were grown has been tested and found on laboratory examination to be free from Potato Root Eelworm.

(2) *Dressings and Treatments*

The seed tubers shall not have been treated with a fungicide, pesticide or sprout depressant.

4. *Time for Delivery of Plant Material*

The seed tubers shall be delivered in any year not earlier than the 1st September and not later than the 30th November.

Regulation 2

SCHEDULE 3

INJURIOUS WEEDS

Wild oat (*Avena fatua* L. and *Avena ludoviciana* Durieu).

Dodder (*Cuscuta* spp.).

Docks and Sorrels (*Rumex* spp.).

Black grass (*Alopecurus myosuroides* Huds.).

Couch grass (*Agropyron repens* (L.) Beauv.).

Regulations 3, 12 and 13

SCHEDULE 4

DATES OF PERFORMANCE TRIALS AND TIME LIMITS FOR REPORTS

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Class of Plant Varieties</i>	<i>Last Date for Submission of Application for Performance Trials</i>	<i>Date of Commencement of Performance Trials</i>	<i>Time Limit for Publication of Reports</i>
Winter wheat	22nd August	1st October	2 years, 9 months
Spring wheat	30th November	1st March	2 years, 4 months
Winter barley	22nd August	1st October	2 years, 9 months
Spring barley	30th November	1st March	2 years, 4 months
Winter oats	22nd August	1st October	2 years, 9 months
Spring oats	30th November	1st March	2 years, 4 months
Potatoes	15th October	1st April	2 years, 5 months

Regulation 15

SCHEDULE 5

Matter	When Payable	Amount
Performance trials for one year of a plant variety being—	Within 14 days of demand made by the Ministers before the commencement of the performance trials for the particular year.	£ s. d.
(a) a cereal variety		45 0 0
(b) a potato variety		25 0 0

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

Section 22 of the Plant Varieties and Seeds Act 1964 empowers the Ministers concerned with agriculture in the United Kingdom to carry out performance trials of new plant varieties of the classes to which the section applies. The Performance Trials (No. 1) Order 1966 has applied section 22 to wheat, barley, oats and potatoes. New plant varieties within these classes may not be sold, offered or exposed for sale or advertised until they have been subjected to performance trials and the reports of the trials have been published. Time limits are provided in the Regulations after which, if a report has not yet been published, these restrictions are removed.

The Regulations deal with the steps to be taken in connection with the making of applications for performance trials or for exemption from such trials, appeals from refusals to grant exemption, the publication of reports of performance trials and of other incidental matters, the payment of fees for the carrying out of performance trials and the maintenance of a register to include details of applications and reports and to be open for public inspection.