
 STATUTORY INSTRUMENTS

1982 No. 844

SEEDS

The Seeds (National Lists of Varieties) Regulations 1982

<i>Made - - - -</i>	22nd June 1982
<i>Laid before Parliament</i>	30th June 1982
<i>Coming into Operation</i>	21st July 1982

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The Minister of Agriculture, Fisheries and Food, the Secretary of State for Scotland, the Secretary of State for Wales and the Secretary of State for Northern Ireland, acting jointly, in exercise of the powers conferred by section 16(1), 1(A), (5) and (8) 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 the Plant Varieties and Seeds (Northern Ireland) Order 1973 (c) and now vested in them (d) and of all other powers enabling them in that behalf, after consultation with the Council on Tribunals in accordance with section 10(1) of the Tribunals and Inquiries Act 1971 (e) as applied to the Plant Varieties and Seeds Tribunal and with representatives of such interests as appear to them to be concerned in accordance with section 16(1) of the said Act of 1964, hereby make the following regulations:—

PART I

Title and commencement

1. These regulations may be cited as the Seeds (National Lists of Varieties) Regulations 1982 and shall come into operation on 21st July 1982.

Revocation of previous regulations

2. The Seeds (National Lists of Varieties) Regulations 1979 (f) and the Seeds (National Lists of Varieties) (Amendment) Regulations 1980 (g) are hereby revoked.

Interpretation

3.—(1) A reference in these regulations to a numbered regulation or Schedule shall be construed as a reference to the regulation or Schedule bearing that number in these regulations.

(2) In these regulations—

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

“Common Catalogue” means, as the case may be, either the Common Catalogue of varieties of agricultural plant species or the Common Catalogue of varieties of vegetable species, both published in the Official Journal of the European Communities;

“deliver” includes send by post and “delivered”, “delivering” and “delivery” shall be construed accordingly;

(a) 1964 c.14; section 16 was amended by the European Communities Act 1972 (c.68), section 4(1) and paragraph 5(1), (2) and (3) of Schedule 4.

(b) S.I. 1964/1574.

(c) S.I. 1973/609.

(d) In the case of the Secretary of State for Wales, by virtue of the Transfer of Functions (Wales) (No. 1) Order 1978 (S.I. 1978/272).

(e) 1971 c.62.

(f) S.I. 1979/133.

(g) S.I. 1980/898.

“the gazette” means the Plant Varieties and Seeds Gazette published in accordance with section 34(1) of the Act;

“indicated in a National List”, in relation to a maintainer, means named in a National List or named in a source indicated in a National List in accordance with regulation 4(2), and similar expressions shall be construed accordingly;

“maintainer” means a person who is indicated in a National List as responsible for maintaining a variety in accordance with the characteristics to which regard was had when that variety was entered in a National List;

“market” includes, according to the context, the offer for sale, exposure for sale, sale and possession with a view to sale of seeds and any transaction in the course of business—

(a) under which the property in the seed passes from one person to another;

or

(b) under which the seed is made over by one person to another in pursuance of a contract under which he will use the seed for growing further seed,

and paragraph (b) of this paragraph shall apply irrespective of whether the contract provides that the property in the crop will be in the person to be regarded as the seller, or the person to be regarded as the purchaser, or a third party, and “marketed” and “marketing” should be construed accordingly;

“member State” means a member of the Communities other than the United Kingdom;

“the Ministers” means the Minister of Agriculture, Fisheries and Food, the Secretary of State for Scotland, the Secretary of State for Wales and the Secretary of State for Northern Ireland, acting jointly;

“name” includes any designation;

“National List” means a list of plant varieties prepared and published in accordance with regulation 4 of these regulations;

“plant breeders’ rights” means rights which may be granted in accordance with Part I of the Act;

“seeds” includes seed potatoes.

PART II

National Lists

4.—(1) The Ministers shall for the purposes of these regulations prepare and publish in the gazette National Lists of plant varieties (not being varieties which are intended for use only as hereditary sources of hybrid or synthetic plant varieties) of the kinds specified in Schedule 1, and may for the purposes of a National List establish or arrange for the establishment of, a reference collection of plant material.

(2) A National List shall contain the name and address of the maintainer of each plant variety listed therein or, where in relation to a plant variety there is more than one maintainer, an indication of the source from which their names and addresses may be obtained.

5.—(1) At any time after the publication of a National List the Ministers may—

- (a) entertain applications from persons seeking additions to, corrections in or removals from any such List and may, subject to the following provisions of these regulations and to the payment of any fee imposed by regulations made under the Act, grant or refuse such applications, and
- (b) in relation to varieties which have been entered in a list of a member State corresponding to a National List, make such additions to the National List as appear to them to be desirable.

(2) The Ministers shall publish in the gazette any additions to, corrections in or removals from, a National List.

Applications

6.—(1) An application made in pursuance of these regulations shall be made in writing and, together with any document submitted in support thereof, shall be delivered to the Ministers at the Ministry of Agriculture, Fisheries and Food, White House Lane, Huntingdon Road, Cambridge CB3 0LF.

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

7. Where an application is made by a person who does not reside in the United Kingdom he shall, on making the application, give to the Ministers an address for service of documents in the United Kingdom.

8. An agent who acts for any person in delivering to the Ministers any application or other document in pursuance of these regulations shall deliver an authorisation in writing so to act to the Ministers.

9. Any document required or authorised by these regulations to be delivered to any person other than the Ministers may be delivered to him at his last known address in the United Kingdom, or to that of his agent or to an address given to the Ministers in accordance with regulation 7.

10. Where an application is made for the entry of a plant variety in a National List by a person who is not the breeder of that variety the Ministers shall give notice to the breeder of the fact that an application has been so made and that the breeder and any person approved by him will be entitled to be indicated in the National List as a maintainer of that variety in accordance with regulation 18(2) if the said application is successful and if the breeder or, as the case may be, the person approved by him agrees in writing to be so indicated.

11.—(1) The Ministers shall conduct or make arrangements for such tests and trials of a plant variety which is the subject of an application for entry in a National List as appear to them to be necessary to establish that it conforms to the requirements of Schedule 2.

(2) Any person making an application for the entry of a plant variety in a National List or for the renewal of such an entry, or making an application to be indicated in a National List as a maintainer of a variety under regulation 18(3), shall—

- (a) give to the Ministers such information and produce or deliver to them such documents, records and illustrations as they may from time to time require, and
- (b) deliver to the Ministers such reproductive and other material of the plant variety and, in the case of a hybrid or synthetic variety, of any of its hereditary sources, in the quantity and of the description and quality, and packed and in such condition, as they may from time to time require and such further reproductive and other material of the variety or hereditary source, as the case may be, in the quantity and of the description and quality, and packed and in such condition, as they may require to replace any material already delivered as may have been damaged in transit or damaged or lost in the course of tests and trials or which is, or has in the course of tests or trials been shown to be, unhealthy or otherwise unsuitable,

being information, documents, records, illustrations and material relevant to the application and in the possession of or available to the person making the application.

(3) Without prejudice to the generality of the foregoing, no application shall be entertained for the entry in a National List of a variety of—

- (a) oats, wheat or barley, unless the applicant submits to the Ministers with the application the results of three replicated trials of that variety conducted in the United Kingdom, such results—
 - (i) being expressed relative to the control varieties named by the Ministers and published in the gazette and to such other named control varieties as the applicant shall choose, and
 - (ii) relating to yield, with the standard error of the variety mean yield for each trial, disease resistance, field characters and, except in relation to those varieties intended only for feeding purposes, grain quality.
- (b) any species of—
 - (i) grass intended for fodder production, being a variety of a species of *Agrostis*, *Festuca*, *Lolium*, *Phleum* or *Poa* named in Part I of Schedule 1, of cocksfoot or of tall oatgrass,
 - (ii) legume, being a variety of a species of *Lupinus*, *Medicago* or *Trifolium* named in Part I of Schedule 1, or of hungarian, common or hairy vetch, of sainfoin or of birdsfoot trefoil,
 - (iii) fodder radish, linseed, sunflower, soya bean, black mustard, or of white mustard for green manuring, or
 - (iv) spelt, durum wheat, fodder beet or of rye for grain,

unless in each case the applicant submits to the Ministers with the application the results of two replicated trials conducted in the United Kingdom or a member State, such results being expressed relative to named control varieties and relating to yield, with the standard error of the variety mean yield for each trial, and field characters.

(4) Anything required to be given, produced or delivered in accordance with paragraph (2) of this regulation shall be so given, produced or delivered to the Ministers at such place as they shall require in writing within 14 days of the requirement, or within such longer time as the Ministers may allow and if it is not so given, produced or delivered within the said 14 days or within such further time as may be allowed, as the case may be, the application shall be deemed to have been withdrawn.

Refusal of applications for entry in a National List

12. The Ministers shall refuse an application for the entry of a plant variety in a National List if it appears to them that—

- (a) the variety does not conform to the requirements of Schedule 2;
- or
- (b) the cultivation in the United Kingdom of the variety is likely to affect adversely the health of any persons, animals or plants.

Period of entry in a National List

13. Subject to regulations 14 and 15 and to the payment of any fee imposed by regulations made under the Act, a plant variety entered in a National List shall remain in that List until the end of the tenth calendar year following the calendar year in which it was so entered, and at the end of that period it shall be removed from the List.

Renewal of period of entry in a National List

14.—(1) Subject to paragraph (3) of this regulation the Ministers may, upon an application made not later than two years before the expiry of the period during which a plant variety may remain in a National List, whether such period is that for which the variety was first entered in the National List or is an extension of that period, and subject to the payment of any fee imposed by regulations made under the Act, renew such period for a further period not exceeding ten years from the date when it would otherwise expire.

(2) The Ministers may extend the period during which a plant variety which is the subject of an application under paragraph (1) of this regulation may remain in a National List until a decision is made upon that application.

(3) The period during which a plant variety may remain in a National List shall not be renewed unless the Ministers are satisfied that the scale of the cultivation in the United Kingdom of the variety is such as to justify such an extension and that the variety continues to conform to the requirements of Schedule 2 as regards its distinctness, uniformity and stability.

Removal of a variety from a National List

15.—(1) The Ministers shall remove a plant variety from a National List—

- (a) if it appears to them the variety does not conform to the requirements of Schedule 2 as regards its distinctness, uniformity and stability, to the extent that such matters were taken into account when the variety was first entered in the National List;
- (b) facts have been discovered which, if known before the variety was added to a National List, would have resulted in the application for its addition to a National List being refused on the ground that it did not conform to the requirement set out in paragraph 1 of Schedule 2;
- (c) if there is no maintainer and no person whose application to be indicated in the National List as a maintainer under regulation 18(3) is under consideration;
- (d) if a fee payable in respect of the retention of that variety in the National List, imposed by regulations made under the Act, has not been paid as required by such regulations.

(2) The Ministers may at any time remove a plant variety from a National List if it appears to them that—

- (a) false information was given to them before the variety was entered in the National List, and that information was material to the decision to enter the variety in such List;
 - (b) the maintainer of that variety has failed to comply in a material respect with the requirements of these regulations;
 - (c) the scale of cultivation of the variety is such that the retention of the variety in the National List could not be justified, due regard being had to the length of time during which the variety has been entered in the National List; or
 - (d) the cultivation in the United Kingdom of the variety is likely to affect adversely the health of any persons, animals or plants.
- (3) The Ministers may at any time remove the name of a plant variety from a National List if that variety is also entered in that List under another name.

16.—(1) The Ministers may, if it appears to them to be necessary or desirable, allow a period expiring not later than 30 June of the third year following the removal of a plant variety from a National List during which seed of that variety, being seed which was in the course of being produced or which was produced before the date of such removal, may be marketed in such a manner as would have been lawful had the variety remained in the National List during such period.

(2) Where a plant variety is removed from a Common Catalogue and that variety had, at the time of its removal from the Common Catalogue, recently been included in a list of one or more member States corresponding to a National List, seed of that variety may be marketed in such manner as would have been lawful had the variety remained in the Common Catalogue, during the period, if any, which expires last among those granted by the various member States under any provision of those member States corresponding to paragraph (1) of this regulation.

(3) The Ministers shall publish a notice in the gazette stating whether or not there is a period during which seed of a plant variety which has been removed from a National List or a Common Catalogue may be marketed in accordance with paragraph (1) or (2) of this regulation, and, if there is such a period, the date on which that period expires.

Naming of plant varieties in a National List

17.—(1) A person applying for the entry of a plant variety in a National List shall on making his application or when so required by the Ministers and within such time as they may direct, propose a name for that variety, which name shall be that, if any, under which the variety is already known.

(2) A person applying for the entry of a plant variety in a National List may propose a name for that variety in substitution for one already submitted and a maintainer of a plant variety may, subject to the payment of any fee imposed by regulations made under the Act, propose a name for that variety in substitution for that under which it is already entered in the National List and the Ministers, if they consider it desirable, may substitute the name so proposed for the name already submitted or entered.

(3) The Ministers may reject a name proposed in pursuance of either of the two preceding paragraphs if it appears to them that such name—

- (a) is the same as that of any other plant variety of the class to which the variety in respect of which the application is made belongs, being either a class consisting of the varieties of the species or groups prescribed by a scheme under Part I of the Act or a class prescribed for the purposes of section 5(7) of the Act, or which so nearly resembles the name of any such other plant variety that it would be likely to deceive or to cause confusion as to the identity of the variety;
 - (b) is liable to deceive or cause confusion as to the characteristics or value of the variety or as to the identity of the breeder;
 - (c) does not in other respects conform to international usage with respect to the nomenclature of cultivated plants;
 - (d) is the same as, or is likely to be confused with, a trade mark registered or applied for or a trade name used in respect of reproductive material of any kind or with produce or products of the variety in respect of which the application is made or of another variety of the class to which such variety belongs, being a class as described in sub-paragraph (a) of this paragraph; or
 - (e) is liable to give offence or is otherwise objectionable.
- (4) Upon the rejection of a name proposed for a plant variety in accordance with the last preceding paragraph the Ministers shall inform the applicant of the ground upon which it was rejected and require him to propose within such time as they may direct another name for the variety, and upon a name being so proposed the last preceding paragraph and this paragraph shall apply in relation to that name.
- (5) The Ministers shall publish in the gazette and in such other manner as appears to them to be necessary or desirable a notice of the name proposed for a plant variety if that name has not been rejected by them in accordance with the preceding paragraphs of this regulation.
- (6) Any person may object to the approval of the name proposed for a plant variety as being unsuitable on one or more of the grounds set out in sub-paragraphs (a) to (e) of paragraph (3) of this regulation and may make representations to the Ministers accordingly within such time as shall be specified in the notice referred to in the last preceding paragraph.
- (7) Before approving a name for a plant variety the Ministers shall consider any representations in writing which may have been made to them.
- (8) The name approved by the Ministers for a plant variety shall be published by them in the gazette and in such other manner as they shall consider appropriate to inform persons concerned.
- (9) If an applicant for the entry of a plant variety in a National List fails to propose a name in accordance with the requirements of this regulation the Ministers shall not be obliged to take any further steps in relation to the application until the said requirements (except as regards the time allowed for compliance) have been complied with and if after the delivery by the Ministers on the applicant of a notice informing him of the consequence of a continuance of such failure the applicant has not complied with the said requirements within a time, not being less than 14 days, specified in the said notice, the application shall be deemed to have been withdrawn.
- (10) If at any time it should appear that the name under which a plant variety is listed in a National List is not the name by which it was already known at the time when it was entered in the National List the Ministers may delete the name under which that variety is entered and substitute therefor the name by which it was previously known.

(11) Where the Ministers delete the name under which a plant variety is entered in a National List and substitute therefor another name under paragraph (10) of this regulation they may, if it appears to them to be necessary or desirable, allow a period during which seed of that variety may be marketed or advertised under the deleted name in addition to the substituted name.

(12) The Ministers shall publish a notice in the gazette of any period allowed under paragraph (11) of this regulation.

(13) In this regulation "known" includes known in connection with a grant of plant breeders' rights, known by reason of entry in the list of a member State corresponding to a National List, or known by virtue of having been assessed with regard to distinctness, uniformity and stability, in accordance with rules corresponding to those set out in Schedule 2.

Maintenance of varieties in a National List

18.—(1) No plant variety shall be entered in a National List unless at least one person is indicated therein as a maintainer of that plant variety.

(2) On the entry of a variety in a National List the breeder of that variety and any person approved by him shall be entitled to be indicated therein as a maintainer of that variety, but no such person shall be indicated in a National List as a maintainer of a variety unless he has agreed in writing to be so indicated.

(3) A person who is not entitled, by virtue of paragraph (2) of this regulation, to be indicated in a National List as a maintainer of a variety shall, on application to the Ministers, be entitled to be so indicated where—

- (a) the Ministers are satisfied that there are available to that person such premises, machinery, equipment and facilities, and the services of such persons, as appear to the Ministers to be adequate to enable him to maintain the variety, and
- (b) either—
 - (i) the variety is entered in a National List and that person is approved by a person who was indicated as a maintainer when it was first so entered, or
 - (ii) the Ministers are satisfied that that person has reproduced material of the plant variety in accordance with the characteristics to which regard was had when it was entered in the National List.

(4) The Ministers shall conduct or make arrangements for such tests and examinations of reproductive and other plant material of the variety which has been produced by a person applying to be indicated as a maintainer of that variety as may appear to be necessary to establish that that material conforms with the characteristics to which regard was had when that variety was entered on the National List.

(5) There shall be paid to the Minister of Agriculture, Fisheries and Food in respect of the tests and examinations referred to in paragraph (4) above a fee being the amount set out in the third column of Part 1 of the Schedule to the Seeds (National Lists of Varieties) (Fees) Regulations 1980 (a) in relation to tests for distinctness, uniformity and stability of the relevant variety, but no such fee shall be paid in respect of examinations to establish that a person is capable of maintaining a vegetable variety whose existence was a matter of common knowledge on 1 January 1973 and of which the seed may be controlled only as standard seed in accordance with regulations made under the Act.

(a) S.I. 1980/330, amended by S.I. 1981/342.

(6) A maintainer of a plant variety may maintain that variety either in the United Kingdom, in a member State or in a country where the Ministers or the Council of the European Communities are satisfied that official examinations and inspections of the maintenance procedures are adequate, except that a person who is indicated as a maintainer of a variety under paragraph (3) of this regulation shall maintain that variety in the United Kingdom, and a maintainer who maintains a variety other than in the United Kingdom shall give to the Ministers an address in the United Kingdom where any notices or other documents may be delivered to him.

19.—(1) A maintainer of a plant variety shall maintain that variety in accordance with the characteristics to which regard was had when the variety was entered in the National List, and, except in the case of a plant variety being a vegetable variety described in paragraph (5) of regulation 18, according to accepted practices for the maintenance of that variety.

(2) The maintainer of a plant variety shall keep records of all the generations in his maintenance of that variety and shall on demand produce such records for inspection by or on behalf of the Ministers and shall also, if so required at any time, deliver to the Ministers samples of seed of that variety.

(3) The maintainer of a plant variety shall, at all reasonable times, afford to an officer authorised by one of the Ministers facilities for the inspection or examination of plants, plant material, trial grounds or other land or premises used in connection with the maintenance of a plant variety and permit him to take a sample of any seed of the variety which is in the possession or under the control of the maintainer.

20.—(1) If in relation to a plant variety a maintainer being one of two or more maintainers fails in the opinion of the Ministers to comply in a material respect with the requirements of these regulations in relation to that variety the Ministers may remove the indication of that maintainer from the relevant entry in the National List and thereafter his responsibilities under these regulations shall cease.

(2) The Ministers shall remove the indication of a maintainer of a variety from the National List if so requested by that maintainer in writing, but, if that maintainer is the only maintainer of that variety and no application under regulation 18(3) by any person to be indicated as a maintainer of that variety is under consideration, the said indication shall not be so removed before a notice of the request and of the fact that as a consequence the variety will be removed from the National List in pursuance of regulation 15(1)(c) unless an application in relation to that variety is made under regulation 18(3) has been published in the gazette and 3 months have elapsed since the said notice was published.

PART III

Representations and hearings

21.—(1) The Ministers shall—

(a) before taking a decision upon an application—

- (i) for the addition of a plant variety to a National List in accordance with regulation 5,
- (ii) for the renewal of the period during which a plant variety may remain in a National List in accordance with regulation 14(1), or
- (iii) to be indicated in a National List as a maintainer of a plant variety in accordance with regulation 18(3)

give notice of their proposed decision to the applicant, and

(b) before taking a decision—

- (i) to remove a plant variety from a National List in accordance with regulation 15(1)(a) and (b) or regulation 15(2), or
- (ii) to remove from the relevant entry in a National List in accordance with regulation 20(1) the indication of a maintainer of a plant variety,

give notice of their proposed decision to the maintainer of that variety.

(2) The Ministers shall, before taking a decision referred to in paragraph (1) of this regulation or a decision to enter in a National List in accordance with regulation 5(1)(b) a plant variety which has been entered in a list of a member State corresponding to a National List, afford to any person who would be affected by the decision, subject to the payment of any fee imposed by regulations made under the Act, an opportunity of making representations to them in writing, of being heard by a person appointed by them for the purpose or, if any such person shall so desire, of both making such representations and being so heard.

(3) For the purposes of paragraph (2) of this regulation, “person affected” means, as the case may be—

- (a) the person who has made the application referred to in sub-paragraph (a) of paragraph (1) of this regulation,
- (b) any person appearing to the Ministers to have a sufficient interest in the matter to which the proposed decision relates, and
- (c) any person or organisation appearing to the Ministers to be representative of a class of persons likely to be affected by the decision.

(4) The Ministers may afford to any or to all of the persons or organisations entitled to make representations in accordance with paragraph (2) of this regulation an opportunity to make representations to them on more than one occasion if in the circumstances it appears to them to be necessary or desirable to do so and on a second or subsequent such occasion may afford such an opportunity without charging any fee.

22. The Ministers shall publish in the gazette a notice indicating the nature of the matter under consideration and of their proposed decision together with a statement of the descriptions of persons entitled to make representations and to be heard and of the manner in which and the time (not being less than 14 days) within which representations may be made to them in writing and an application made for an opportunity to be heard.

23. The Ministers shall deliver to the applicant or to the maintainer of the variety, as the case may be, a notice informing him of his right to make representations, of the manner in which and the time (not being less than 14 days) within which representations may be made and of his right to be heard and of the manner in which and the time (not being less than 14 days) within which he may apply for an opportunity to be heard.

24. The Ministers shall deliver to each person or organisation entitled to make representations in accordance with regulation 21(2) of whom they are aware a copy of any representations made in accordance with regulation 21(2) and 21(4).

25. If no person or organisation within the time allowed for the purpose has made any representations to the Ministers in writing or has applied to be heard the Ministers shall proceed to make their decision.

26. Any person or organisation making representations to the Ministers in writing and any person or organisation applying to be heard shall, not later than 7 days before the day appointed for the hearing, deliver to the Ministers two copies of any documents which such person or organisation proposes to rely upon, and the Ministers shall deliver copies thereof to each of the other persons or organisations who appear to them to be concerned in the matter.

27.—(1) If any person or organisation entitled to be heard by the Ministers shall apply to be heard the Ministers shall, subject to the payment of any fee imposed by regulations made under the Act, appoint a time and place in the United Kingdom at which that person or organisation and any other such persons or organisations so applying shall be heard.

(2) In appointing such time and place the Ministers shall have regard to the convenience of the parties and their witnesses, the situation of any land or premises to be viewed in connection with the matter and to the other circumstances of the case, including the wishes of and expense to the parties.

(3) The Ministers shall give to each of the parties at least 14 days notice of the time and place of the hearing.

(4) The hearing may be adjourned from time to time, and, if an adjournment is announced in the course of the hearing, no further notice thereof to the parties shall be required.

(5) Any of the parties may be represented at the hearing by a person chosen by him.

(6) Any of the parties attending the hearing may give evidence and he or his representatives may call witnesses and produce documents and shall be given an opportunity of putting questions directly to any witness called at the hearing but except with the leave of the person conducting the hearing no document shall be produced unless copies thereof were delivered to the Ministers in accordance with regulation 26.

(7) The person conducting the hearing may require any witness to give his evidence on oath or affirmation and may for that purpose administer an oath or affirmation in due form.

(8) The hearing shall be in public unless the person conducting the hearing after consultation with the parties or their representatives, otherwise directs

28. Where any document or article is to be delivered or any act is to be done within a time prescribed or required by or under these regulations the Ministers may, if in all the circumstances of the case they consider it reasonable, extend the time for such period and upon such terms, if any, as they think fit, but this regulation shall not have effect so as to permit an extension of the time for the making of an application in pursuance of regulation 14(1) or to allow a period exceeding that to which reference is made in regulations 16(1) and 16(2) for the marketing of seed.

29.—(1) The Ministers shall not take their decision until they have considered, in addition to the submissions made and evidence adduced at the hearing, any representations made to them in writing.

(2) The Ministers shall give to each of the parties notice of their decision together with their reasons for it and also inform them of the time within which and manner in which an appeal may be brought.

Appeals

30.—(1) An appeal shall lie to the Tribunal against any decision of the Ministers relating to one of the matters referred to in regulation 21 and may be brought by, as the case may be, the applicant or a maintainer of a plant variety, or by any person or organisation who made representations in writing to the Ministers in accordance with regulation 21 or who attended or was represented at a hearing conducted by a person appointed by the Ministers.

(2) 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 of the Tribunal appointed by the Lord Chancellor who shall have regard to the matters referred to in regulation 27(2) as well as to the convenience of the members of the Tribunal.

(3) Where an appeal is brought against any decision of the Ministers the operation of the decision shall be suspended pending the final determination of the appeal except in a case where the appeal is from a decision to renew the period during which a plant variety may remain in a National List, and, in a case where the appeal is from a decision to refuse to renew such a period, any extension of the period granted in accordance with regulation 14(2) shall continue until the final determination of the appeal.

(4) The Ministers shall publish in the gazette a notice of the proposed appeal, of any suspension of the operation of their decision and of any withdrawal of the appeal, as the case may be.

(5) The Ministers shall take such steps as may be necessary to give effect to any decision given on the final determination of the appeal.

(6) The Tribunal shall give to each of the parties to the appeal notice of its decision together with its reasons.

PART IV

Dealings in seeds of plant varieties

31.—(1) Except as provided in regulation 32 no person shall market seed of a plant variety (not being a variety which is intended for use only as one of the hereditary sources of a hybrid or synthetic plant variety) of a kind specified in Schedule 1 unless that variety—

- (a) is entered in a National List, or
- (b) is entered in—
 - (i) a Common Catalogue, or
 - (ii) a list of a member State corresponding to a National List of plant varieties of the kinds specified in Part 1 of Schedule 1 and two complete calendar years following the calendar year in which the variety was so entered have expired,

and no application for its entry in a National List is under consideration or has been refused.

(2) Except as provided in regulation 32—

- (a) no person shall market seed of a plant variety of a kind specified in Schedule 1 which is entered in a National List or the Common Catalogue except under the name given in the National List or the Common Catalogue for that variety,
- (b) no person shall advertise seed of a plant variety of a kind specified in Schedule 1 before the procedure laid down by regulation 17 has been completed and except under the name thus approved for that variety by the Ministers.

32.—(1) Where a person makes arrangements under which some other person uses seed under the control of the first-mentioned person, for the purposes of increasing the first-mentioned person's stock or of carrying out tests or trials and under which the whole of the material produced, directly or indirectly, from the seed, and any unused seed, becomes or remains the property of the first-mentioned person, regulation 31(1) and (2) shall not apply to the marketing of seed by the first-mentioned person to the other person as part of the arrangements or to a sale by that other person to the first-mentioned person of seed produced, directly or indirectly, from that seed.

(2) Regulation 31(1) and (2) shall not apply to the marketing of seed where—

- (a) the seed is or is intended to be delivered in pursuance of a sale or proposed sale elsewhere than in the United Kingdom or a member State;
- (b) the seed is used or to be used for research or experiment; or
- (c) the seed is to be used for a purpose other than as seed for sowing.

(3) Regulation 31(1) shall not apply to—

- (a) the marketing of seed of a plant variety which has been removed from a National List if that marketing takes place within a period allowed by the Ministers in relation to that variety under regulation 16(1); and
- (b) the marketing of seed of a plant variety which has been removed from a Common Catalogue if that marketing is in accordance with regulation 16(2).

(4) Where the name under which a plant variety is entered in a National List has been deleted and another name has been substituted therefor, regulation 31(2) shall not apply to the marketing or advertising of seed of that variety under the deleted name in addition to the name under which that variety is entered if that marketing or advertising takes place within the period allowed by the Ministers in relation to that variety under regulation 17(11).

Exemptions

33. The Ministers may exempt persons generally from compliance with regulation 31(1) in relation to a specified plant variety and any exemptions so made may be subject to conditions.

PART V

Publication of notices

34.—(1) The Ministers shall publish in the gazette, in addition to the matters which they are so required to publish in accordance with the preceding provisions of these regulations, notices of the following matters—

- (a) any application made in accordance with these regulations;
- (b) any decision made by the Ministers in relation to such an application;
- (c) the entry of a plant variety in the Common Catalogue where the Common Catalogue does not provide that seed of that variety may not be marketed in the United Kingdom;
- (d) the fact that in respect of a specified plant variety the requirements of paragraph (1)(b) of regulation 31 have been fulfilled or have ceased to be fulfilled;
- (e) any exemption granted by the Ministers under regulation 33;
- (f) any decision made by the Ministers to remove a plant variety from a National List; and
- (g) any decision made by the Tribunal consequent upon an appeal made in pursuance of these regulations.

(2) It shall be no defence in civil or criminal proceedings to show that at any time a person did not know of an entry in a National List or a Common Catalogue or did not know that a National List or a Common Catalogue had come into force or did not know of a fact of a kind mentioned in paragraph (1)(d) of this regulation, if before that time notice of that entry or fact had been published in the gazette.

National List record

35.—(1) The Ministers shall keep in respect of each of the plant varieties entered in a National List a record of—

- (a) the name of the variety and any other name under which the variety is marketed in another country;
- (b) the kind to which the variety belongs;
- (c) an indication of the characteristics of the variety including (except in the case of vegetables and of grasses where the maintainer of the variety has declared that seeds of that variety are not intended for fodder production) those determining its value for cultivation and use;

- (d) the date of entry of the variety in the National List and the date of any renewal of such entry;
- (e) the date of the expiry of such entry; and
- (f) the name and address of the maintainer of the variety, or, where there is more than one maintainer, an indication of the source from which their names and addresses may be obtained.

(2) The record kept in accordance with paragraph (1) of this regulation shall, subject to the payment of any fee prescribed by regulations made under the Act, be available for inspection by any person.

Plant variety files

36.—(1) The Ministers shall maintain a file for each plant variety entered in a National List.

(2) The file shall include a description of the plant variety and a summary of the facts in reliance on which it was entered in the List.

(3) The file shall, subject to the payment of any fee prescribed by regulations made under the Act, be available for inspection by any person who is able to satisfy the Ministers that his particular interest in the plant variety is such that its production to him is justified, except that in the case of a plant variety which is a hybrid or synthetic variety where knowledge of hereditary sources is necessary for an understanding of the variety, and the breeder has so requested, particulars of those sources shall not be disclosed otherwise than to member States and to the Commission of the European Communities and any such disclosure shall, in each case, be on a confidential basis.

In Witness whereof the official seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on 16th June 1982.



Peter Walker,
Minister of Agriculture, Fisheries
and Food.

George Younger,
Secretary of State for Scotland.

18th June 1982.

Wyn Roberts,
Parliamentary Under-Secretary of
State for Wales.

21st June 1982.

James Prior,
Secretary of State for
Northern Ireland.

22nd June 1982.

Regulations 4, 11(3)(b) and 31

SCHEDULE 1

KINDS OF PLANT VARIETIES IN NATIONAL LISTS

PART I

Agricultural Crop Varieties

Plants conforming with the characteristics of cultivated plant varieties of the following kinds:—

Name	Common Name
<i>Cereals</i>	
<i>Avena sativa</i> L.	Oats
<i>Hordeum vulgare</i> L.	Barley
<i>Secale cereale</i> L.	Rye
<i>Triticum aestivum</i> L. emend. Fiori et Paol.	Wheat
<i>Triticum durum</i> Desf.	Durum wheat
<i>Triticum spelta</i> L.	Spelt
<i>Zea mays</i> L., except for <i>Zea mays</i> L. convar. <i>saccharata</i> Koern and <i>Zea mays</i> L. convar. <i>microperma</i> Koern	Maize (except for Sweetcorn and Popcorn)
<i>Potatoes</i>	
<i>Solanum tuberosum</i> L.	Potatoes
<i>Beet</i>	
<i>Beta vulgaris</i> L.	Sugar beet, Fodder beet, Mangel
<i>Fodder plants</i>	
(a) <i>Grasses</i>	
<i>Agrostis canina</i> L.	Velvet bent
<i>Agrostis gigantea</i> Roth	Red top
<i>Agrostis stolonifera</i> L.	Creeping bent
<i>Agrostis tenuis</i> Sibth	Brown top
<i>Arrhenatherum elatius</i> (L.) Beauv. ex J. et K. Presl	Tall oatgrass
<i>Dactylis glomerata</i> L.	Cocksfoot
<i>Festuca arundinacea</i> Schreb.	Tall fescue
<i>Festuca ovina</i> L.	Sheep's fescue, Fine-leaved Sheep's fescue and Hard fescue
<i>Festuca pratensis</i> Huds.	Meadow fescue
<i>Festuca rubra</i> L.	Red fescue, Chewings fescue
<i>Lolium multiflorum</i> Lam.	Italian and Westerwolds ryegrass
<i>Lolium perenne</i> L.	Perennial ryegrass
<i>Lolium x hybridum</i> Hausskn.	Hybrid ryegrass
<i>Phleum pratense</i> L.	Timothy
<i>Phleum bertolonii</i> DC.	Timothy
<i>Poa annua</i> L.	Annual meadowgrass
<i>Poa nemoralis</i> L.	Wood meadowgrass
<i>Poa pratensis</i> L.	Smooth-stalked meadowgrass
<i>Poa trivialis</i> L.	Rough-stalked meadowgrass

Name	Common Name
(b) <i>Legumes</i>	
<i>Lotus corniculatus</i> L.	Birdsfoot trefoil
<i>Lupinus albus</i> L.	White lupin
<i>Lupinus angustifolius</i> L.	Blue lupin
<i>Lupinus luteus</i> L.	Yellow lupin
<i>Medicago lupulina</i> L.	Black medick, Trefoil
<i>Medicago sativa</i> L.	Lucerne
<i>Medicago x varia</i> Martyn	Lucerne
<i>Onobrychis viciifolia</i> Scop.	Sainfoin
<i>Pisum sativum</i> L. (partim)	Field pea
<i>Trifolium hybridum</i> L.	Alsike clover
<i>Trifolium pratense</i> L.	Red clover
<i>Trifolium repens</i> L.	White clover
<i>Vicia faba</i> L. (partim)	Field bean
<i>Vicia pannonica</i> Crantz	Hungarian vetch
<i>Vicia sativa</i> L.	Common vetch
<i>Vicia villosa</i> Roth	Hairy vetch

(c) <i>Other fodder plants</i>	
<i>Brassica napus</i> L. var. <i>napobrassica</i> Peterm.	Swede
<i>Brassica oleracea</i> L. convar. <i>acephala</i> (DC.)	Fodder kale
<i>Raphanus sativus</i> L. ssp. <i>oleifera</i> (DC.) Metzg.	Fodder radish

Oleaginous and fibrous plants

<i>Brassica juncea</i> (L.) Czern. et Coss. in Czern.	Brown mustard
<i>Brassica napus</i> L. ssp. <i>oleifera</i> (Metzg.) Sinsk.	Swede rape (including oilseed rape)
<i>Brassica nigra</i> (L.) W. Koch	Black mustard
<i>Brassica rapa</i> L. (partim)	Turnip rape
<i>Glycine max</i> (L.) Merr.	Soya bean
<i>Helianthus annuus</i> L.	Sunflower
<i>Linum usitatissimum</i> L.	Flax, Linseed
<i>Sinapis alba</i> L.	White mustard

PART II

Vegetable Varieties

Plants conforming with the characteristics of cultivated plant varieties of the following kinds intended for agricultural or horticultural production but not for ornamental use:

Name	Common Name
<i>Allium cepa</i> L.	Onion
<i>Allium porrum</i> L.	Leek
<i>Apium graveolens</i> L.	Celery, Celeriac
<i>Beta vulgaris</i> L. var. <i>cycla</i> (L.) Ulrich	Spinach beet, Chard
<i>Beta vulgaris</i> L. var. <i>esculenta</i> L.	Beetroot
<i>Brassica oleracea</i> L. var. <i>acephala</i> DC. subvar. <i>laciniata</i> L.	Curly kale
<i>Brassica oleracea</i> L. convar. <i>botrytis</i> (L.) Alef. var. <i>botrytis</i>	Cauliflower
<i>Brassica oleracea</i> L. var. <i>bullata</i> subvar. <i>gemmifera</i> DC.	Brussels sprouts
<i>Brassica oleracea</i> L. var. <i>bullata</i> DC. et var. <i>sabauda</i> L.	Savoy cabbage
<i>Brassica oleracea</i> L. var. <i>capitata</i> L.f. <i>alba</i> DC.	White cabbage
<i>Brassica oleracea</i> L. var. <i>capitata</i> L.f. <i>rubra</i> (L.) Thell.	Red cabbage
<i>Brassica oleracea</i> L. var. <i>gongylodes</i> L.	Kohlrabi
<i>Brassica rapa</i> L. var. <i>rapa</i> (L.) Thell.	Turnip
<i>Cichorium endivia</i> L.	Endive
<i>Cucumis melo</i> L.	Melon
<i>Cucumis sativus</i> L.	Cucumber, Gherkin
<i>Cucurbita pepo</i> L.	Marrow
<i>Daucus carota</i> L.	Carrot
<i>Lactuca sativa</i> L.	Lettuce
<i>Lycopersicon lycopersicum</i> (L.) Karst. ex Farwell	Tomato
<i>Petroselinum crispum</i> (Mill.) Nym. ex A.W. Hill	Parsley
<i>Phaseolus coccineus</i> L.	Runner bean
<i>Phaseolus vulgaris</i> L.	French bean
<i>Pisum sativum</i> L. (partim)	Pea (excluding field pea)
<i>Raphanus sativus</i> L.	Radish
<i>Spinacia oleracea</i> L.	Spinach
<i>Vicia faba</i> (partim)	Broad bean

Regulations 11(1), 12, 14(3),
15(1)(a), 15(1)(b) and 17(13)

SCHEDULE 2

REQUIREMENTS WITH WHICH A PLANT VARIETY IS TO COMPLY FOR ENTRY IN A NATIONAL LIST

Distinctness

1. The plant variety, whatever the origin, artificial or natural, of the initial variation from which it has resulted shall be clearly distinguishable, by one or more important characteristics, from any other plant variety—

- (a) entered in a National List, a list of a member State corresponding to a National List or in the Common Catalogue, or
- (b) in respect of which an application for entry in a National List or a list of a member State corresponding to a National List has been previously made and is still under consideration.

Such characteristics must be capable of precise recognition and precise definition.

Uniformity

2. The plant variety shall be such that the plants of which it is composed are, apart from a very few aberrations, and account being taken of the distinctive features of the reproductive system of the plants, similar or genetically identical as regards the characteristics, taken as a whole, which are considered by the Ministers for the purpose of determining whether the variety is uniform or not.

Stability

3. The plant variety shall continue to exhibit its essential characteristics after successive reproductions or, where the breeder has defined a particular cycle of reproduction, at the end of each cycle of reproduction.

Value for cultivation and use

4. The qualities of the plant variety shall, in comparison with the qualities of other plant varieties in a National List, constitute either generally or as far as production in a specific area is concerned, a clear improvement either as regards crop farming or the use made of harvested crops or of products produced from those crops. The qualities of the plant variety shall for this purpose be taken as a whole, and inferiority in respect of certain characteristics may be offset by other favourable characteristics.

Exceptions

5. Requirement 4 does not apply to—
- (a) varieties of vegetables,
 - (b) varieties of grasses not intended for fodder production, or
 - (c) any plant variety intended for ultimate sale only in a member State which has already accepted it, having regard to its value for cultivation and use.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations, which supersede the Seeds (National Lists of Varieties) Regulations 1979 (“the superseded Regulations”) are made for the purpose of implementing Council Directive No. 70/457/EEC of 29 September 1970 on the Common Catalogue of agricultural plant species and Council Directive No. 70/458/EEC, also of 29 September 1970, on the marketing of vegetable seed (O.J. No. L225, 12.10.1970), as amended. They require the Minister of Agriculture, Fisheries and Food and the Secretaries of State for Scotland, Wales and Northern Ireland jointly to prepare and publish National Lists of varieties of specified kinds of agricultural and vegetable crops (Regulation 4).

Regulation 11 indicates the requirements to be met before a plant variety can be entered in a National List. Provision is made in Regulation 5 for applications for alterations to Lists, and in Regulation 14 for the renewal of entries at 10-yearly intervals. A plant variety must be removed from a List in the circumstances set out in Regulation 15(1), and the Ministers may remove a variety from a List in the circumstances set out in Regulation 15(2).

Regulation 17 provides for the naming of plant varieties in a National List, and for the publication of names proposed in accordance with the Regulations and of names approved by the Ministers.

Provision is made in Regulations 18 to 20 for the maintenance of plant varieties.

Written and oral representations may be made by all interested parties before the Ministers make decisions concerning alterations to National Lists, and there is provision for appeals against decisions of the Ministers to the Plant Varieties and Seeds Tribunal (Regulations 21-30).

Except as indicated in Regulations 31-33 it is an offence to market seed of a plant variety which is not entered in a National List, in a Common Catalogue published in the Official Journal of the European Communities or in a list of a member State corresponding to a National List. The use of the variety’s registered name is generally obligatory.

Provision is made in Regulations 34-36 for the publication of notices of specified matters in the Plant Varieties and Seeds Gazette and for the keeping by the Ministers of a National List record and plant variety files.

Variations from the superseded Regulations include the following, in addition to certain minor amendments and re-arrangements:—

1. The Ministers are now under an obligation to notify the breeder of a plant variety of any applications made for the entry of that plant variety in a National List to which the breeder is not a party. The breeder must also be notified that he and any person approved by him will be entitled to be indicated in the National List as a maintainer of that variety (Regulation 10).

2. The control varieties relative to which the results of three replicated trials required to be submitted by applicants in relation to an application for the entry in a National List of a variety of oats, wheat or barley are expressed must include the control varieties named by the Ministers and published in the gazette for this purpose (Regulation 11(3)(a)(i)).

3. In the case of a variety of some species an application for the entry in a National List must be accompanied by the results of two replicated trials, and such results must conform to the requirements set out in Regulation 11(3)(b). Further species have now been added to these species.

4. The Ministers must now remove a plant variety from a National List if facts have been discovered which, if known before the variety was added to the National List, would have resulted in the application for its addition to the List being refused on the grounds that it did not conform to the requirements set out in paragraph 1 of Schedule 2 (Regulation 15(1)(b)).

5. The Ministers may now, if it appears to them to be necessary or desirable, allow a limited period following the removal of a plant variety from a National List during which seed of that variety which was in the course of being produced, or which was produced before the date of such removal, may be marketed in such manner as would have been lawful had the variety remained in the National List during such period. Similarly, where a plant variety is removed from a Common Catalogue and that variety had, at the time of its removal from the Common Catalogue, recently been included in a List of one or more member States corresponding to a National List, seed of that variety may now be marketed in such manner as would have been lawful had the variety remained in the Common Catalogue during the period, if any, which expires last among those granted by the various member States under a corresponding provision of those member States. The Ministers must publish a notice in the gazette stating whether or not there is such a period and, if so, the date on which that period expires. (Regulation 16).

6. The Ministers are given a power to delete the name under which a variety is entered in a National List if it appears to them that the name under which that variety is listed is not the name by which it was already known at the time when it was entered in the National List. The name by which the variety was previously known may be substituted for the name under which the variety was entered in the List. Where the Ministers use this power they may allow a period during which seed of that variety may be marketed under the deleted name in addition to the substituted name, and if they allow such a period, they must publish a notice in the gazette to that effect (Regulation 17(10)-(12)).

7. It has been made clear that new maintainers can be added to those already indicated in a National List as responsible for maintenance of a variety. Such a new maintainer must satisfy the Ministers as to matters specified in Regulation 18(3). A new maintainer must maintain the variety in respect of which he is a maintainer in the United Kingdom (Regulation 18(6)).

8. The duties of a maintainer are spelt out in Regulation 19 instead of being contained in an undertaking signed by the maintainer.

9. The Ministers have been given a power to exempt persons generally from compliance with Regulation 31(1) (Regulation 33). Notice of any such exemptions must be published in the gazette (Regulation 34(1)(e)).

10. In considering whether a plant variety is distinct, Ministers must now take account of varieties entered in Lists of other member States in addition to varieties included in the National List or the Common Catalogue.

The variations described in paragraphs 4, 5, 6 and 10 above have been made in order to implement Council Directive 79/692/EEC (OJ No. L.205, 13.8.79, p.2) and Council Directive 79/967/EEC (OJ No. L.293, 20.11.79, p. 16), both of which amended Council Directives 70/457/EEC and 70/458/EEC.

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