

1990 No. 1594

PLANT BREEDERS' RIGHTS

**The Plant Breeders' Rights (Miscellaneous Ornamental
Plants) Scheme 1990**

<i>Made</i> - - - -	<i>30th July 1990</i>
<i>Laid before Parliament</i>	<i>7th August 1990</i>
<i>Coming into force</i>	<i>28th August 1990</i>

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, as respects the United Kingdom, in exercise of the powers conferred on them by sections 1(1) and (5), 3(1), 5(7), 7(2) and 38(1) of, and paragraph 1(1) of Schedule 3 to, the Plant Varieties and Seeds Act 1964(a) as extended to Northern Ireland(b) and the said Minister and the Secretary of State, acting jointly, as respects the Isle of Man, in exercise of the said powers as extended to the Isle of Man(c), after consultation in accordance with section 1(5) of the said Act with the Controller of Plant Variety Rights and with representatives of such interests as appear to them to be concerned, and in exercise of all other powers enabling them in that behalf, hereby make the following Scheme:

Title, commencement and interpretation

1.—(1) This Scheme may be cited as the Plant Breeders' Rights (Miscellaneous Ornamental Plants) Scheme 1990 and shall come into force on 28th August 1990.

(2) In this Scheme "the Act" means the Plant Varieties and Seeds Act 1964.

Plant varieties for which plant breeders' rights may be granted

2. There are prescribed for the purposes of the grant of plant breeders' rights all plant varieties which conform with the characteristics of cultivated plant varieties of any of the genera or species specified in column 1 of the Schedule to this Scheme or of any cultivated varieties which are the product of hybridization between members of any of those genera or species.

Period for which rights are exercisable

3. The period for which plant breeders' rights shall be exercisable in respect of any of the plant varieties referred to in paragraph 2 of this Scheme shall be 20 years.

Classes of plant varieties for the purposes of section 5(7) of the Act

4. In relation to any of the plant varieties referred to in paragraph 2 of this Scheme, the class of plant varieties prescribed for the purposes of section 5(7) of the Act (which enables classes of plant varieties to be prescribed in connection with the use of names likely to deceive or cause confusion) consists of all plant varieties of the genera or species specified in column 2 of the said Schedule.

(a) 1964 c.14; section 3 was amended by section 1 of the Plant Varieties Act 1983 (c.17), and paragraph 1(1) of Schedule 3 was amended by section 2 of that Act; section 38(1) (as amended by S.I. 1978/272) contains a definition of "the Ministers" relevant to the exercise of the statutory powers under which this Scheme is made.

(b) By section 39(3) of the Plant Varieties and Seeds Act 1964 and by the Plant Varieties and Seeds (Northern Ireland) Order 1964 (S.I. 1964/1574).

(c) By the Plant Varieties and Seeds (Isle of Man) Order 1969 (S.I. 1969/1829, amended by S.I. 1987/2210).

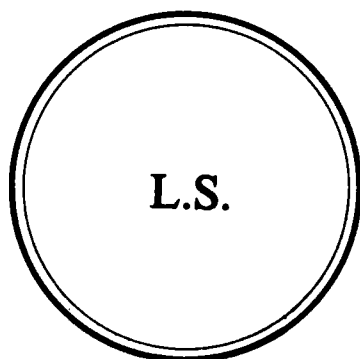
Periods prescribed for purposes of section 7(2) of the Act

5. In relation to any of the plant varieties referred to in paragraph 2 of this Scheme the period prescribed for the purposes of section 7(2) of the Act (which enables a provision to be made whereby a compulsory licence granted by the Controller as respects a plant variety of a species or group specified in a scheme shall not have effect for a prescribed period after the grant of rights in that plant variety) shall be 3 years.

Additional rights

6. Plant breeders' rights exercisable in respect of any of the plant varieties of the genus or species *Kalanchoe* Adans. shall include the exclusive right to produce or propagate and to authorise others to produce or propagate that plant variety for the purpose of selling cut blooms of that variety.

In Witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on 23rd July 1990.



John Selwyn Gummer
Minister of Agriculture, Fisheries and Food

20th July 1990

Sanderson of Bowden
Minister of State, Scottish Office

23rd July 1990

David Hunt
Secretary of State for Wales

30th July 1990

Peter Brooke
Secretary of State for Northern Ireland

Home Office
27th July 1990

David Waddington
Secretary of State for the Home Department
(being the Secretary of State concerned
with matters relating to the Isle of Man)

SCHEDULE

Paragraphs 2 and 4

Column 1 Genera or species	Column 2 Class of plant varieties prescribed for the purposes of section 5(7)
<i>Euphorbia Mili</i> <i>Impatiens hawkeri</i> Bull (including <i>I. Linearifolia</i> Warb.) <i>Kalanchoe</i> Adans. <i>Scaevola Aemula</i>	<i>Euphorbia Mili</i> <i>Impatiens</i> <i>Kalanchoe</i> <i>Scaevola Aemula</i>

EXPLANATORY NOTE

(This note is not part of the Scheme)

This Scheme, made under the Plant Varieties and Seeds Act 1964, prescribes the varieties of miscellaneous ornamental plants in respect of which grants of plant breeders' rights may be made and also prescribes the period of 20 years as that during which the rights may be exercised (paragraphs 2 and 3 and Schedule).

The 1964 Act, as read with this Scheme, provides that infringements of the rights in the registered name of a variety of such specified miscellaneous ornamental plants may be the subject of legal proceedings when committed in connection with a variety of the genera or species which is specified for that purpose in the Schedule to this Scheme (paragraph 4 and Schedule).

This Scheme also provides that a compulsory licence granted by the Controller of Plant Variety Rights in respect of a variety of such specified miscellaneous ornamental plants shall not have effect during a period of 3 years from the date of the grant of rights in that variety (paragraph 5).

Plant breeders' rights in respect of the varieties of *Kalanchoe* Adans. to which this Scheme applies are extended to the production and propagation of the varieties for the purpose of selling cut blooms of these varieties (paragraph 6).

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