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STATUTORY INSTRUMENTS

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**2019 No. 204**

**The Plant Breeders' Rights (Amendment  
etc.) (EU Exit) Regulations 2019**

**PART 1**

Citation, commencement and interpretation

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**1.**—(1) These Regulations may be cited as the Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2019 and come into force on exit day.

(2) In these Regulations—

“the 1997 Act” means the Plant Varieties Act 1997(1);

“the Controller” has the meaning given in the 1997 Act;

“the Council Regulation” means Council Regulation (EC) No 2100/94 on Community plant variety rights(2), as it has effect immediately before exit day;

“existing EU right” has the meaning given in regulation 3;

“variety” has the meaning given in section 1(3) of the 1997 Act.

**PART 2**

Revocations

**2.** The provisions of retained direct EU legislation and of domestic law specified in column 1 of the table in the Schedule to these Regulations are revoked to the extent specified in column 2.

**PART 3**

Existing EU rights

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**3.**—(1) For the purposes of these Regulations, an “existing EU right” is a Community plant variety right which, immediately before exit day, is contained in the register maintained under Article 87(2) of the Council Regulation.

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(1) 1997 c. 66.

(2) OJ No L 227, 1.9.1004. p.1, as last amended by Council Regulation 15/2008/EC (OJ No L 8, 11.1.2008, p 2).

(2) On and after exit day, an existing EU right is to be treated as if it were a plant breeders' right granted in accordance with the 1997 Act and as if the variety were registered in accordance with regulations under section 18(1)(c) of the 1997 Act.

(3) Accordingly, on and after exit day, the provisions of the 1997 Act (except sections 1(1), 3 to 5, 11 and 18(3) of, and Schedule 2 to, that Act), any regulations or orders made under that Act and any guidance given under that Act apply in relation to those existing EU rights.

#### **Duration of existing EU rights**

4.—(1) An existing EU right has effect for a period—

- (a) beginning with exit day, and
- (b) ending at the end of the last day of the remaining period.

(2) In paragraph (1)(b), the “remaining period” is the period, on and after exit day, which ends with the day on which the term of that right would otherwise have expired under Article 19(1) of the Council Regulation (leaving aside any possibility of cancellation).

#### **Relationship between existing rights under the 1997 Act and existing EU right**

5.—(1) This regulation applies where—

- (a) immediately before exit day a person had a plant breeders' right granted in accordance with the 1997 Act but was unable to enforce that right because of the operation of paragraph 2 of Article 92 of the Council Regulation (a “suspended UK right”); and
- (b) on and after exit day, that person has an existing EU right in relation to the same plant variety.

(2) While the existing EU right remains in force, the person remains unable to enforce the suspended UK right.

(3) If the existing EU right is cancelled in the United Kingdom in accordance with section 22(1)(d) of the 1997 Act (cancellation on application to surrender rights), the person becomes able to enforce the UK suspended right.

(4) Paragraph (3) does not apply if the suspended UK right has itself been cancelled in accordance with section 22(1)(d) of the 1997 Act.

#### **Information to be provided by the holder of an existing EU right**

6. At the request of the Controller, a person holding an existing EU right under regulation 5(2) must provide the Controller within such period as may be specified in the request with the following information—

- (a) a certified copy of the entry in the register maintained under Article 87(2) of the Council Regulation;
- (b) an address for service in the United Kingdom or the name and address of an agent within the United Kingdom with authority to act for the person in matters which are the subject of the 1997 Act, the Plant Breeders' Rights Regulations 1998(3) or regulation 18 of the Plant Breeders' Rights Regulations 1978(4); and
- (c) such other information as the Controller reasonably requests.

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(3) S.I. 1998/1027, amended by S.I. 2001/3510, 2002/247, 2008/2683.

(4) S.I. 1978/294, amended by S.I. 1998/1027.

### **Information to be provided by non-UK resident holder of right granted in accordance with the 1997 Act**

7.—(1) This regulation applies if the holder of a right granted in accordance with the 1997 Act is neither resident nor established in the United Kingdom on exit day.

(2) At the request of the Controller, the person must supply the Controller within such period as may be specified in the request with—

- (a) an address for service in the United Kingdom; or
- (b) the name and address of an agent within the United Kingdom with authority to act for the person in matters which are the subject of the 1997 Act, the Plant Breeders' Rights Regulations 1998 or regulation 18 of the Plant Breeders' Rights Regulations 1978.

### **Modification of the 1997 Act**

8. In the application of the 1997 Act to existing EU rights, section 22(1)(c) of the 1997 Act (cancellation) has effect as if after “above” there were inserted “or under regulation 6 or 7 of the Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2019”.

## **PART 4**

### **Unresolved applications on exit day**

#### **Unresolved applications**

9.—(1) On exit day, a person has an “unresolved application” for the purposes of this Part if—

- (a) before exit day the person (whether alone or with others) had made an application for a Community plant variety right under the Council Regulation; and
- (b) immediately before exit day that application is unresolved.

(2) An application is unresolved for the purposes of paragraph (1)(b) if—

- (a) no decision in relation to it has been made under Article 61 or 62 of the Council Regulation;
- (b) such a decision has been made but the period under Article 69 of the Council Regulation within which an appeal against it may be lodged under Article 67 of that Regulation has not expired; or
- (c) such a decision has been made and has been appealed, and the appeal has not been finally decided.

(3) In relation to an appeal under Article 67 of the Council Regulation, that appeal is finally decided when—

- (a) the period under Article 73(5) of the Council Regulation for lodging an appeal against the decision under Article 72 of that Regulation on the appeal has expired without a further appeal being lodged;
- (b) if such a further appeal is lodged, at the conclusion of any proceedings on, or resulting from, that appeal.

#### **Right to apply for a plant breeders' right**

10.—(1) A person who has an unresolved application may apply for plant breeders' rights under the 1997 Act in relation to the variety to which the unresolved application relates.

(2) An application under paragraph (1) must be made within the period of 6 months beginning with exit day.

(3) An application under paragraph (1) must contain a statement—

(a) that it is made by, or with the consent of, the person who made the unresolved application; and

(b) that it relates to the same variety as the unresolved application.

(4) Subject to the provisions of regulations 11 to 14, such an application is to be treated as if it were an application under section 3 of the 1997 Act (grant of plant breeders' rights on application).

### **Effect of an application under regulation 10: priority**

**11.**—(1) An application under regulation 10 is to be treated for the purposes of paragraph 5 of Schedule 2 to the 1997 Act (priorities between applicants) as if it were made, not on the date on which it is in fact made, but on the earlier date specified in paragraph (4).

(2) Paragraph (1) applies only if the conditions in paragraph (3) are met.

(3) The conditions are that—

(a) the unresolved application has not been withdrawn or refused when the application under regulation 10 is made;

(b) within the period of 3 months beginning with the date of the application under regulation 10, the applicant submits to the Controller a copy of the documents constituting the unresolved application, certified as a true copy by the Community Plant Variety Office established under the Council Regulation; and

(c) the application under regulation 10 includes a claim to priority by reference to the unresolved application.

(4) The earlier date is the date of the filing of the unresolved application.

### **Application under regulation 10: novelty**

**12.**—(1) The provisions of this regulation apply in determining whether a variety is to be deemed new for the purposes of an application under regulation 10 (and, accordingly, the provisions of paragraph 4(1) to (3) of Schedule 2 to the 1997 Act (criteria for novelty) do not apply).

(2) The variety is to be deemed new if no sale or other disposal of propagating material or harvested material of the variety for the purposes of exploiting the variety has, with the consent of the applicant—

(a) taken place in a relevant territory earlier than one year before the date of the making of the unresolved application; or

(b) taken place elsewhere than in a relevant territory earlier than 4 years, or in the case of trees or vines, 6 years, before the date of the making of the unresolved application.

(3) Sub-paragraphs (4) to (11) of paragraph 4 of Schedule 2 to the 1997 Act (disregard of certain sales and disposals) have effect for the purposes of this paragraph, but as if, in sub-paragraphs (4) and (10), the references to sub-paragraphs (2) and (3) of that paragraph were references to paragraph (2) (a) and (b) of this regulation.

(4) In this regulation—

“applicant” includes, in relation to consent to a sale or other disposal, a person with whose consent the applicant made the application under regulation 10;

“relevant territory” means any part of the territory of a member State (which, in relation to the time in question, includes the United Kingdom).

### **Application under regulation 10: rights in relation to application period**

13. In relation to an application under regulation 10, the application period for the purposes of section 5 of the 1997 Act (reasonable compensation for anything done during the application period) shall be taken to begin on exit day.

### **Refusal of application where there is an existing plant breeders' right**

14. If an application under regulation 10 is made in relation to a variety for which there already exists a plant breeders' right under the 1997 Act, the application must be refused.

## **PART 5**

### **Other amendments**

#### **The 1997 Act**

- 15.—(1) The 1997 Act is amended as follows.
- (2) In section 9 (farm saved seed)—
- (a) in subsection (3), after “liable ” insert “(subject to any contractual agreement entered into between the farmer and the holder of the plant breeders' rights)”;
  - (b) in subsection (4), for the words from “considered to be” to the end substitute “a small farmer for the purposes of this section”;
  - (c) for subsection (10) substitute—
    - “(10) In this section, “small farmer” means—
      - (a) in a case where the material referred to in subsection (3) is used for propagating potatoes, a farmer who grows potatoes in an area no bigger than that which would be needed to produce 185 tonnes of potatoes per harvest, and
      - (b) in a case where the material referred to in subsection (3) is used for propagating any other variety specified for the purpose of subsection (1), a farmer who grows that variety in an area no bigger than that which would be needed to produce 92 tonnes of cereals per harvest.”;
  - (d) omit subsection (12).
- (3) In section 11 (duration), omit subsection (3)(a).
- (4) In section 38 (interpretation of Part 1) omit the definition of “the Council Regulation”.

#### **The Plant Breeders' Rights (Farm Saved Seed) (Specified Information) Regulations 1998**

- 16.—(1) The Plant Breeders' Rights (Farm Saved Seed) (Specified Information) Regulations 1998(5) are amended as follows.
- (2) In regulation 3 (information to be supplied by farmer), after paragraph (6), insert—
- “(7) In this regulation, a person who is the owner of a holding may be treated by the relevant rights holder as the farmer.
  - (8) If the owner of the holding is not the farmer, the owner must supply the relevant rights holder with the name and address of the person who is the farmer.”.
- (3) After regulation 5, insert—

**“Evidence etc.**

- 5A.**—(1) A relevant rights holder (“the holder”) may request—
- (a) a farmer who has provided information under regulation 3, or
  - (b) a seed processor who has provided information under regulation 4,
- to provide the holder with evidence which supports that information.
- (2) That evidence may take any of the following forms—
- (a) the provision of documentary evidence (such as receipts, invoices or official labels);
  - (b) the specification of devices used for ensuring the identity of products processed;
  - (c) allowing land, or processing or storage facilities, to be visited;
  - (d) the provision of samples.”.
- (4) In regulation 6 (period within which inquiry may be made) for “and 5” substitute “, 5 and 5A”.

**The Plant Breeders’ Rights Regulations 1998**

- 17.**—(1) The Plant Breeders’ Rights Regulations 1998<sup>(8)</sup> are amended as follows.
- (2) In regulation 12 (register of plant variety names and records of plant varieties), after paragraph (4) insert—
- “4A) If a variety name is accepted in the form of a code, that fact must be noted in the register.”.
- (3) In regulation 16 (service of documents), in paragraphs (1) and (2), for “European Union” substitute “United Kingdom”.
- (4) In regulation 17 (agency), for “European Union”, in both places where it occurs, substitute “United Kingdom”.
- (5) After regulation 20, insert—

**“Farm saved seed: determination of remuneration**

- 20A.**—(1) This regulation applies for the purpose of determining what constitutes equitable remuneration for the purposes of section 9(3) of the Act.
- (2) The level of remuneration shall be sensibly lower than the amount charged for licensed production.
- (3) If there has been no licensed production in the United Kingdom, the level of remuneration shall be sensibly lower than the amount which is normally included in the price of propagating material of the lowest category qualified for official certification of that variety.
- (4) The level of remuneration is to be considered sensibly lower if it does not exceed the level necessary to establish or stabilise, as an economic factor determining the extent of the farmer’s use of material in reliance on the exception in section 9(1), a reasonably balanced ratio between the use of licensed propagating material and the planting of the product of the harvest of the respective varieties covered by a plant breeders’ right.
- (5) A ratio is to be considered to be reasonably balanced for the purpose of paragraph (4) if it ensures that the holder obtains as a whole a legitimate compensation for the total use of his variety.
- (6) “Licensed production” means the licensed production of propagating material of the lowest category qualified for official certification of the same variety.”.

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<sup>(8)</sup> S.I. 1998/1027, amended by S.I. 2001/3510, 2002/247, 2008/2683.

### **The Plant Breeders' Rights (Information Notices) Regulations 1998**

18. In relation to an existing EU right that by virtue of regulation 5(2) is treated as a plant breeders' right, regulation 3(2)(d) of, and paragraph 4 of Part 1 of the Schedule to, the Plant Breeders' Rights (Information Notices) Regulations 1998<sup>(6)</sup> have effect as if the references to rights being granted under the 1997 Act were references to rights granted under the Council Regulation before exit day.

### **The Plant Breeders' Rights (Naming and Fees) Regulations 2006**

19.—(1) Regulation 3 of the Plant Breeders' Rights (Naming and Fees) Regulations 2006<sup>(7)</sup> (selection of names for plant varieties) is amended in accordance with paragraphs (2) to (5).

(2) In paragraph (2), omit the words from “having” to the end.

(3) After paragraph (2), insert—

“(2A) In determining whether a name is suitable the Controller must consider—

- (a) whether the use of the name in the United Kingdom is precluded by a prior right;
- (b) whether the use of the name may commonly cause its users difficulties as regards recognition or reproduction;
- (c) whether the name is identical to, or may be confused with, a name under which another variety of the same or a closely related species —
  - (i) is entered in any other official register of plants, or
  - (ii) has been marketed in the territory of a Member of the Union for the Protection of New Varieties of Plants,and, if so, whether that other variety remains in existence and whether its denomination has acquired special significance;
- (d) whether the name is liable to give offence or otherwise be contrary to public policy;
- (e) whether the name is liable to mislead or cause confusion concerning the characteristics, the value or the identity of the variety or of the breeder;
- (f) whether the variety is the same as a variety which has been registered in, or marketed in the territory of a Member of the Union for the Protection of New Varieties of Plants or a State which provides equivalent protection under a different name.

(2B) In deciding the issues specified in paragraph (2A), the Controller must apply the rules set out in regulations 3A to 3G.”

(4) In paragraph (4), omit “, on the basis of the EU provisions referred to in paragraph (2),”.

(5) In paragraph (8)—

- (a) omit “having regard to the EU provisions referred to in paragraph (2)”;
- (b) in sub-paragraph (b), omit “, having regard to the EU provisions referred to in paragraph (2),”.

(6) After regulation 3 of those Regulations, insert—

#### **“Selection of plant variety names: prior rights**

**3A.—**(1) This regulation applies for the purposes of regulation 3(2A)(a).

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<sup>(6)</sup> S.I. 1998/1024.

<sup>(7)</sup> S.I. 2006/648, amended by S.I. 2018/942.

(2) The Controller must not accept the proposed name as suitable if the Controller has been notified of a registered trademark which is identical or similar to the proposed name and which relates to goods which are identical or similar to the plant variety for which the name is proposed, unless the Controller is satisfied that consent of the holder of the right has been obtained.

(3) The proposed name must not be accepted as suitable by the Controller if—

- (a) the proposed name contains a protected geographical indication or designation of origin, and
- (b) the use of the proposed name would infringe the protection conferred by registration on goods which are identical to or comparable with the plant variety concerned.

(4) In this Regulation—

“registered trademark” means those trademarks registered in the United Kingdom;

“protected geographical indication or designation of origin” means designation of origin or geographical indication registered in the United Kingdom.

### **Selection of plant variety names: appellation or codes**

**3B.**—(1) This regulation applies for the purposes of regulation 3(2A)(b).

(2) If a proposed name is not in the form of a code, the Controller must not accept it as suitable, on the grounds that it may commonly cause its users difficulties as regards recognition or reproduction, if it—

- (a) consists of a single letter;
- (b) consists of, or contains as a separate element, a series of letters not forming a word readily pronounceable by a person who speaks only English;
- (c) contains a number;
- (d) consists of three or more words or elements, unless the words taken together make it easily recognisable or reproducible;
- (e) consists of or contains an excessively long word or element;
- (f) contains a punctuation mark or other symbol, an upper and lower case mixture, subscript or superscript, or a design.

(3) If a proposed name is in the form of a code, the Controller must not accept it as suitable, on the ground that it may commonly cause its users difficulties as regards recognition or reproduction, if it—

- (a) consists of a number or numbers only;
- (b) consists of a single letter;
- (c) contains more than ten letters, or letters and numbers;
- (d) contains more than four alternating groups of a letter or letters and a number or numbers;
- (e) contains a punctuation mark or other symbol, subscript, superscript or a design.

### **Exceptions to regulation 3B**

**3C.**—(1) Regulation 3B(2)(b) does not require the Controller to refuse to accept a proposed name as suitable if the series of letters concerned is an established abbreviation, provided that any such established abbreviation is limited to a maximum of two sets of three characters each, located at each end of the proposed name.



(2) Regulation 3B(2)(c) does not require the Controller to refuse to accept a proposed name as suitable if—

- (a) the number concerned is an integral part of the name, or
- (b) the number indicates that the variety is or will be one of a numbered series of varieties related through their breeding history.

(3) Regulation 3B(2)(f) does not require the Controller to refuse to accept a proposed name as suitable on the grounds of a mixture of upper and lower case letters, if the first letter is upper case and the remainder are lower case.

(4) Regulation 3B(3)(a) does not require the Controller to refuse to accept a proposed name as suitable if the number or numbers indicate inbred lines or similar specific types of variety.

#### **Declaration on application as to nature of proposed name**

**3D.**—(1) An applicant for a grant of plant breeders' rights must declare whether the proposed name for the plant variety is a code.

(2) If the applicant does not make such a declaration, the Controller is to presume that the proposed name is not a code.

#### **Selection of plant variety names: identical or confusing names**

**3E.**—(1) This regulation applies for the purposes of regulation 3(2A)(c).

(2) In determining whether a proposed name may be confused with another name of a plant variety of a description mentioned in regulation 3(2A)(c), the Controller must regard such confusion as likely to arise if the difference between the proposed name and the name of a variety of a closely related species—

- (a) consists only of a difference of a single letter or digit, or the transposition of two letters;
- (b) consists only of a difference in accents on letters in the names.

(3) If the Controller regards such confusion as likely to arise, he may not accept the proposed name as suitable.

#### **Exceptions to regulation 3E**

**3F.**—(1) Regulation 3E(2)(a) does not prevent a proposed name from being acceptable if the single letter is prominent in a way that makes the proposed name clearly distinct from that of any other plant variety which is already registered in the United Kingdom or in the territory of another Member of the Union for the Protection of New Varieties of Plants.

(2) Differences of two or more letters for the purposes of regulation 3E(2)(a) are not to be regarded as confusing unless the difference results from the transposition of the letters in question.

(3) A difference of a single digit in an appellation (where digits are permitted in that name) is not to be regarded as confusing for the purposes of regulation 3E(2)(a).

#### **Selection of plant variety names: liability to mislead or cause confusion**

**3G.**—(1) This Regulation applies for the purposes of regulation 3(2A)(e).

(2) The Controller must not accept a proposed name as suitable, on the ground that it is liable to mislead or cause confusion, if he considers that—

- (a) it conveys the false impression that the variety has a particular characteristic or value;

- (b) it conveys the false impression that the variety is related to, or derived from, another specific variety;
- (c) it refers to a specific characteristic or value in a way which conveys the false impression that only that variety possesses it, when other varieties of the same species may possess the same characteristic or value;
- (d) by reason of its similarity to a well-known trading name other than a registered trademark or variety denomination, it suggests that the variety is another variety, or conveys a false impression concerning the identity of the applicant, the person responsible for the maintenance of the variety or the breeder;
- (e) it consists of or contains—
  - (i) comparatives or superlatives;
  - (ii) the botanical or common names of species within the group either of agricultural plants species or vegetable species to which the variety belongs;
  - (iii) the name of a natural or legal person, or a reference to such a name, so as to convey a false impression concerning the identity of the applicant, the person responsible for the maintenance of the variety or the breeder;
- (f) it includes a geographical name that would be likely to deceive the public as to the characteristics or the value of the variety.”.

#### **Amendment of the EEA agreement**

**20.** In Annex 1 to the EEA Agreement, in Chapter 3 (Phytosanitary matters), in Section 2 (Application texts), in paragraph 18, omit the words from “The provisions of the Regulation shall” to the end.

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24th January 2019