

SCHEDULES

SCHEDULE 2

Section 2.

PART I

PRIORITIES BETWEEN APPLICANTS FOR RIGHTS

- 1 (1) If the variety was independently bred or discovered by two or more persons, the first of those persons who makes an application relating to the variety in the form prescribed for the purposes of this Schedule by regulations under section 9 of this Act shall be the person entitled to a grant of plant breeders' rights.
- (2) As between two persons making applications on the same date, the one who was first in a position to make a valid application for the grant of plant breeders' rights (or would have been first in that position if Part I of this Act and the relevant scheme had always been in force) shall be the person entitled to a grant of plant breeders' rights.
- 2 (1) For the purposes of the foregoing paragraph an application duly made in a country to which this paragraph applies when the application is made shall be treated as if duly made under this Act if the conditions in this paragraph are satisfied.
- (2) No account shall be taken under this paragraph of an application made in a country outside the United Kingdom at a time when the plant variety to which the application relates was not one falling within a species or group prescribed by a scheme under this Act as a species or group in respect of which plant breeders' rights may be granted.
- (3) Not more than 12 months after the application duly made in that country the applicant must make his application under this Act in the form prescribed for the purposes of this Schedule by regulations under section 9 of this Act, being a form which includes a claim in respect of the priority of the application in the said country.
- (4) Within 3 months of the application under this Act a copy of the documents constituting the application in the said country, certified as correct by the authority in that country to whom the application is made, must be submitted to the Controller.
- (5) If applications have been made in more than one country to which this paragraph applies, and have been so made at different dates, the period of 12 months mentioned in sub-paragraph (3) of this paragraph shall be taken from the earlier or earliest of those applications, and sub-paragraph (4) of this paragraph shall be construed accordingly.
- (6) If priority is established for an application by virtue of this paragraph after a grant of plant breeders' rights has been made in pursuance of an application against which priority is established, the Controller shall terminate the period for which the rights under the grant are exercisable.

An appeal shall be to the Tribunal against a decision of the Controller to act under this sub-paragraph.

Status: This is the original version (as it was originally enacted).

- (7) The Ministers may by order contained in a statutory instrument from time to time designate any country or territory outside the United Kingdom as a country to which this paragraph applies, and from time to time vary or revoke any such order, but not so as to prejudice applications already made in the United Kingdom or elsewhere.
- 3 Regulations under section 9 of this Act may provide for the forfeiture of any priority obtained under the foregoing provisions of this Schedule if the person making the application does not within a period prescribed by the regulations satisfy all the requirements which are to be satisfied by an applicant before a grant of plant breeders' rights can be made.

PART II

RULES FOR GRANT OF RIGHTS

Distinctness

- 1 (1) The variety must be clearly distinguishable by one or more important morphological, physiological or other characteristics from any other variety whose existence is a matter of common knowledge at the time of the application.
- (2) For the purposes of the foregoing sub-paragraph common knowledge may be established by reference to plant varieties already in cultivation or exploited for commercial purposes, or those included in a recognised commercial or botanical reference collection, or those of which there are precise descriptions in any publication.

Previous commercialisation

- 2 (1) Subject to this Schedule, in the period before the scheme by virtue of which the application is made came into force, no plants of the variety, and no material forming part of, or derived from, plants of the variety may have been offered for sale or sold by any person in the United Kingdom or elsewhere.
- (2) Subject to this Schedule, in the period beginning with the date when the said scheme came into force and ending with the date of the application no plants of the variety, and no material forming part of, or derived from, plants of the variety, may have been offered for sale or sold by or with the consent of the applicant in the United Kingdom or elsewhere:

Provided that the restriction imposed by this sub-paragraph shall not apply to sales or offers made outside the United Kingdom during the period of four years ending with the date of the application.

- (3) Sub-paragraphs (1) and (2) of this paragraph shall not apply—
- (a) to an offer for sale of a stock of material of any plant variety in connection with an offer for sale of the title to apply for the grant of plant breeders' rights in respect of that plant variety, or
 - (b) to any sale of material of any plant variety if at the time of the sale or subsequently the purchaser becomes the person entitled to make an application for the grant of plant breeders' rights in respect of that plant variety.

Status: This is the original version (as it was originally enacted).

- (4) Where an applicant makes, or proposes to make, arrangements under which some other person uses reproductive material of the plant variety under the control of the applicant for the purpose of increasing the applicant's stock, or of carrying out tests or trials, and under which the whole of the material produced, directly or indirectly, from that reproductive material, and any unused reproductive material, becomes or remains the property of the applicant, the said sub-paragraphs (1) and (2) shall not apply—
- (a) to a sale or offer for sale of the reproductive material by the applicant to any such other person as part of such arrangements, or
 - (b) to a sale by the other person to the applicant of the material produced, directly or indirectly, from that reproductive material.
- (5) The said sub-paragraphs (1) and (2) shall not apply to an offer for sale or sale of material, not being reproductive material, which, having been produced in the course of—
- (a) the breeding of the plant variety, or
 - (b) increasing the applicant's stock of material of the plant variety, or carrying out tests or trials of the plant variety,
- has been found to be in excess of what was required for those purposes.
- 3 (1) Where an application in the form prescribed for the purposes of this Schedule by regulations under section 9 of this Act is made at a time not later than 11th May 1965, and the applicant does not ask for a protective direction, sub-paragraphs (1) and (2) of the last foregoing paragraph shall not apply to any offer for sale or sale in the period beginning with 12th November 1963 and ending with that time if the Controller is satisfied that the applicant took all steps reasonably open to him to ensure that any person to whom material of the plant variety has been offered or sold during the said period has been informed in writing that an application for a grant of plant breeders' rights may be made in respect of the variety.
- (2) Where an application is allowed by virtue of this paragraph, section 7(2) of this Act shall not apply to any compulsory licence granted as respects the plant variety to which the application relates.

Uniformity

- 4 The variety must be sufficiently uniform or homogeneous having regard to the particular features of its sexual reproduction or vegetative propagation.

Stability

- 5 The variety must be stable in its essential characteristics, that is to say, it must remain true to its description after repeated reproduction or propagation or, where the application prescribes a particular cycle of reproduction or multiplication, at the end of each cycle.