
STATUTORY INSTRUMENTS

1998 No. 1021

PLANT BREEDERS' RIGHTS

The Plants Breeders' Rights (Fees) Regulations 1998

<i>Made</i>	- - - -	<i>8th April 1998</i>
<i>Laid before Parliament</i>		<i>9th April 1998</i>
<i>Coming into force</i>	- -	<i>8th May 1998</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, in exercise of the powers conferred on them by sections 29(1) and (2) and 48(1) of the Plant Varieties Act 1997⁽¹⁾, after consultation with such organisations as appear to them to be representative of persons likely to be substantially affected, and after consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992⁽²⁾, hereby make the following Regulations:

Title and commencement

1. These Regulations may be cited as the Plant Breeders' Rights (Fees) Regulations 1998 and shall come into force on 8th May 1998.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Plant Varieties Act 1997;

“Community plant variety right” means a right granted in accordance with the Council Regulation;

“the principal Regulations” means the Plant Breeders' Rights Regulations 1998⁽³⁾; and

“renewal fee” means a fee payable in respect of the continued exercise of plant breeders' rights in a plant variety.

(2) Words and phrases defined in the principal Regulations shall have the same meaning when used in these Regulations.

(3) Any reference in these Regulations in a regulation to a numbered paragraph is to the paragraph in that regulation bearing that number.

(1) 1997 c. 66; see section 49(1) for the definition of “the Ministers”.

(2) 1992 c. 53. Schedule 1 is amended by section 51(5) of the Plant Varieties Act 1997.

(3) 1998/1027.

(4) Any reference in these Regulations to a numbered Schedule shall be construed as a reference to the Schedule to these Regulations bearing that number.

Payment of fees

3. There shall be paid to the Controller—

- (a) in respect of every application for a grant of plant breeders' rights in respect of a variety of a kind specified in the first column of Part I of Schedule 1, the fee set out in the second column (New fee) of that Part opposite the reference in the first column to the kind of variety, such fee being payable on making the application;
- (b) in respect of tests or examination of a variety of a kind specified in the first column of Part II of Schedule 1 which is the subject of an application for a grant of plant breeders' rights, the fee set out in the third column (New fee) of that Part opposite the reference in the first column to the kind of variety, such fee being payable for the tests or examination referred to in the second column of that Part within fourteen days of a written demand made by the Controller;
- (c) in respect of renewal fees—
 - (i) in the case of a variety of a kind specified in the first column of Part III of Schedule 1 in respect of which there is no subsisting Community plant variety right, the fee set out in the second column (New standard fee) of that Part opposite the reference in the first column to the kind of variety;
 - (ii) in the case of a variety of a kind specified in the first column of Part III of Schedule 1 in respect of which there is a subsisting Community plant variety right, the fee set out in the third column (New reduced fee) of that Part opposite the reference in the first column of that Part to the kind of variety,
such fee being due on, but not payable more than three months before, each anniversary of the date of the grant of plant breeders' rights;
- (d) in respect of the matters referred to in the first column of Part IV of Schedule 1, the fees set out in the third column (New fees) of that Part opposite the respective references to those matters, such fees being payable at the respective times specified in the second column of that Part.

Non-payment of fees—other than renewal fees

4.—(1) If a fee payable pursuant to these Regulations, other than a renewal fee, shall not have been paid on the due date, the Controller shall not be obliged to take any further steps in relation to that matter until the fee shall have been paid.

(2) In the case of a fee payable pursuant to regulation 3(a) or (b), if the fee remains unpaid after the expiration of 28 days from the service by the Controller on the applicant of a notice informing him that continued failure to pay the fee may result in his application being refused, the Controller may refuse the application.

Non-payment of fees—renewal fees

5.—(1) The Controller shall at least 28 days before the date when a renewal fee becomes due, if the fee shall not already have been paid, give to the holder of rights a notice informing him that the fee is payable, of the date when it is due and of the consequences of a failure to pay it.

(2) If the renewal fee shall not have been paid at the expiration of 7 days from the date when it was due, the Controller shall give to the holder of rights a notice informing him that the period for which the rights are exercisable will be terminated unless he either—

- (a) pays the penalty fee within 35 days of the date when the renewal fee became due; or
- (b) following an application by him for an extension of time under paragraph (3), pays the renewal fee within the period allowed under that paragraph.

(3) The Controller may on application made to him by a holder of rights, within 28 days from the date when the renewal fee became due, allow a period, expiring not later than three months from the date when the renewal fee became due, within which the renewal fee is to be paid.

(4) If a penalty fee shall not have been paid within 35 days from the date when the renewal fee became due, or if the renewal fee shall not have been paid within such longer period as the Controller shall have allowed in accordance with paragraph (3), the Controller may terminate the period for which plant breeders' rights in the variety in question are exercisable.

(5) The Controller shall publish in the gazette notice of the termination by virtue of paragraph (4) of the period for which plant breeders' rights are exercisable and shall inform the holder of the plant breeders' rights of such termination.

(6) In this regulation, 'penalty fee' means a fee which is the total of the renewal fee and the fee payable pursuant to paragraph 6 of Part IV of Schedule 1.

Application of the principal Regulations

6. Regulations 3, 14, 16, 18, 19 and 20 of the principal Regulations shall apply to these Regulations as if the expression "relevant legislation" in those regulations included these Regulations.

Revocation and savings

7. Save in their application to the Isle of Man, the Regulations mentioned in Schedule 2 are hereby revoked.

7th April 1998

Donoghue
Parliamentary Secretary, Ministry of Agriculture,
Fisheries and Food

8th April 1998

Sewel
Parliamentary Under Secretary of State, Scottish
Office

Signed by authority of the Secretary of State for Wales

7th April 1998

Win Griffiths
Parliamentary Under Secretary of State, Welsh
Office

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

8th April 1998

Dubs
Parliamentary Under Secretary of State,
Northern Ireland Office

SCHEDULE 1

Regulation 3

FEES

PART I

FEES PAYABLE ON AN APPLICATION FOR
A GRANT OF PLANT BREEDERS' RIGHTS

<i>Plant Variety</i>	<i>Amount</i>	
	<i>New fee</i>	<i>Old fee</i>
	£	£ ^(*)
1. A rose variety	70	(50)
2. A chrysanthemum variety	260	(250)
3. Any other decorative variety	130	(125)
4. Any other variety	260	(250)

Note:

(*) The figures in italics are the fees which were charged under the Plant Breeders' Rights (Fees) Regulations 1990 (S.I.1990/618) as amended by the Plant Breeders' Rights (Fees) (Amendment) Regulations 1997 (S.I. 1997/382) before the coming into force of these Regulations on 8th May 1998.

PART II

FEES PAYABLE IN RESPECT OF TESTS OR EXAMINATION
OF A PLANT VARIETY WHICH IS THE SUBJECT OF AN
APPLICATION FOR A GRANT OF PLANT BREEDERS' RIGHTS

<i>Plant Variety</i>	<i>Test or examination for which payable</i>	<i>Amount</i>	
		<i>New fee</i>	<i>Old fee</i>
		£	£ ^(*)
1. A (excluding variety)	cereal Tests in any one year	710	(685)
2. A maize variety	Tests in any one year	435	(420)
3. A potato variety	Tests in any one year	660	(640)
4. A Brussels cabbage, variety	beetroot, sprout, celery, Tests in any one year	615	(595)

Note:

(*) The figures in italics are the fees which were charged under the Plant Breeders' Rights (Fees) Regulations 1990 (S.I. 1990/618) as amended by the Plant Breeders' Rights (Fees) (Amendment) Regulations 1997 (S.I. 1997/382) before the coming into force of these Regulations on 8th May 1998.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

<i>Plant Variety</i>	<i>Test or examination for which payable</i>	<i>Amount</i>	
		<i>New fee</i>	<i>Old fee</i>
		£	£ ^(*)
fenugreek, leek, turnip or fodder variety			
5. A carrot, curly kale, onion or radish variety	Tests in any one year	615	(—)
6. A field pea, vegetable pea, field bean or broad bean variety	Tests in any one year	530	(510)
7. A herbage variety	Tests in any one year	435	(420)
8. An oil and fibre (including oilseed rape) variety	Tests in any one year	435	(420)
9. A sugar beet or fodder beet variety	Tests in any one year	170	(—)
10. A rose variety	Tests in any one year	115	(80)
11. A year-round perennial chrysanthemum variety	Tests in each flowering season	175	(170)
12. Any other chrysanthemum variety	Tests in any one year	175	(170)
13. A cymbidium variety	Each examination	220	(215)
14. A fruit variety	Tests in any one year	175	(170)
15. Any other variety	Tests in any one year	220	(215)
Note:			
(*) The figures in italics are the fees which were charged under the Plant Breeders' Rights (Fees) Regulations 1990 (S.I. 1990/618) as amended by the Plant Breeders' Rights (Fees) (Amendment) Regulations 1997 (S.I. 1997/382) before the coming into force of these Regulations on 8th May 1998.			

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

PART III RENEWAL FEES

<i>Plant Variety</i>	<i>Amount each year</i>			
	<i>New standard fee</i> £	<i>New reduced fee</i> £	<i>Old standard fee</i> £ ^(*)	<i>Old reduced fee</i> £ ^(*)
1. A rose variety	70	35	<i>(50)</i>	<i>(25)</i>
2. A chrysanthemum variety	315	160	<i>(305)</i>	<i>(155)</i>
3. Any other decorative variety	165	85	<i>(160)</i>	<i>(80)</i>
4. A vegetable variety (excluding a vegetable pea or broad bean variety)	160	80	<i>(155)</i>	<i>(80)</i>
5. A fruit variety	315	160	<i>(305)</i>	<i>(155)</i>
6. Any other variety (including a vegetable pea or broad bean variety)	415	210	<i>(400)</i>	<i>(200)</i>

Note:

(*) The figures in italics are the fees which were charged under the Plant Breeders' Rights (Fees) Regulations 1990 (S.I. 1990/618) as amended by the Plant Breeders' Rights (Fees) (Amendment) Regulations 1997 (S.I. 1997/382) before the coming into force of these Regulations on 8th May 1998.

PART IV FEES PAYABLE IN RESPECT OF OTHER MATTERS

<i>Matter</i>	<i>When payable</i>	<i>Amount</i>	
		<i>New fee</i> £	<i>Old fee</i> £ ^(*)
1. Application for a compulsory licence	On making the application	55	<i>(50)</i>

Note:

(*) Note: The figures in italics are the fees which were charged under the Plant Breeders' Rights (Fees) Regulations 1990 (S.I. 1990/618) as amended by the Plant Breeders' Rights (Fees) (Amendment) Regulations 1997 (S.I. 1997/382) before the coming into force of these Regulations on 8th May 1998.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

<i>Matter</i>	<i>When payable</i>	<i>Amount</i>	
		<i>New fee</i> £	<i>Old fee</i> £ ^(*)
2. Application to extend, limit, vary or revoke a compulsory licence	On making the application	55	(50)
3. Making representations in writing to the Controller as provided in the Act or the principal Regulations	On delivering the representations	30	(25)
4. Attending to be heard by the Controller or by a person appointed by him for the purpose	Before the hearing	55	(50)
5. Grant of plant breeders' rights in—	Before the issue of the plant breeders' certificate constituting evidence of the grant	55	(40)
(a) a variety referred to in item 1 in Part I of this Schedule			
(b) (b) a variety referred to in item 3 in Part I of this Schedule		115	(110)
(c) (c) a variety referred to in item 2 or item 4 in Part I of this Schedule		140	(135)
6. Payment of a renewal fee after the expiration of 7 days from the date when it fell due (having regard to any extension	On payment of the renewal fee	30	(25)

Note:

(*) Note: The figures in italics are the fees which were charged under the Plant Breeders' Rights (Fees) Regulations 1990 (S.I. 1990/618) as amended by the Plant Breeders' Rights (Fees) (Amendment) Regulations 1997 (S.I. 1997/382) before the coming into force of these Regulations on 8th May 1998.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

<i>Matter</i>	<i>When payable</i>	<i>Amount</i>	
		<i>New fee</i> £	<i>Old fee</i> £ ^(*)
granted under these Regulations)			
7. Application for the approval of a substituted name for a plant variety	On making the application	30	(25)
8. Amendment of the record of plant varieties on a transfer of plant breeders' rights	On making the application for amendment	30	(25)
9. Purchase of a report from a testing authority in another country	Within 14 days of demand by the Controller	150	(180)
Note:			
(*) Note: The figures in italics are the fees which were charged under the Plant Breeders' Rights (Fees) Regulations 1990 (S.I. 1990/618) as amended by the Plant Breeders' Rights (Fees) (Amendment) Regulations 1997 (S.I. 1997/382) before the coming into force of these Regulations on 8th May 1998.			

SCHEDULE 2

Regulation 7(1)

REVOCATIONS

<i>Regulations revoked</i>	<i>References</i>
The Plant Breeders' Rights (Fees) Regulations 1990	S.I. 1990/618
The Plant Breeders' Rights (Fees) (Amendment) Regulations 1994	S.I. 1994/675
The Plant Breeders' Rights (Fees) (Amendment) Regulations 1995	S.I. 1995/606
The Plant Breeders' Rights (Fees) (Amendment) (No. 2) Regulations 1995	S.I. 1995/2947
The Plant Breeders' Rights (Fees) (Amendment) Regulations 1997(4)	S.I. 1997/382

(4) The Plant Breeders' Rights (Fees) (Amendment) Regulations 1991 (S.I. 1991/655) and the Plant Breeders' Rights (Fees) (Amendment) Regulations 1992 (S.I. 1992/438) were revoked by the Plant Breeders' Rights (Fees) (Amendment) Regulations 1993 (S.I. 1993/430). The Plant Breeders' Rights (Fees) (Amendment) Regulations 1993 were revoked by the Plant Breeders' Rights (Fees) (Amendment) Regulations 1994 (S.I. 1994/675).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and re-enact, with amendments, the Plant Breeders' Rights (Fees) Regulations 1990, as amended. They prescribe fees in respect of various matters relating to plant breeders' rights arising under the Plant Varieties Act 1997 or the Plant Breeders' Rights Regulations 1998 (regulation 3 and Schedule 1).

Application, test, grant and renewal fees have been increased by 3.5 per cent, rounded to the nearest £5, except for roses where the fees reflect improved testing arrangements. Other fees have been increased by £5 except the fee for the purchase of a report from a testing authority in another country which has been decreased to accord with the international charge of 350 Swiss francs.

The matters in respect of which the revised fees are prescribed are listed in Schedule 1 and the fees which were chargeable before these Regulations come into force are printed in italics beside the revised fees.

One of the effects of the Plant Varieties Act 1997 is that plant breeders' rights are available in respect of all genera and species and not merely those which were identified in Schemes made under the Plant Varieties and Seeds Act 1964. This means that many of the entries listed in Parts I, II and III encompass more species or groups than under the previous regulations. However, it is not practicable to identify all those species or groups so as to separate those varieties in respect of which a fee was previously payable from those in respect of which it was not.

These Regulations also make provision for the consequences of non-payment of fees (regulations 4 and 5).

A Regulatory Appraisal has been prepared and placed in the libraries of both Houses of Parliament. Copies can be obtained from the Plant Variety Rights Office and Seeds Division of the Ministry of Agriculture, Fisheries and Food, White House Lane, Huntingdon Road, Cambridge CB3 0LF.