

2001 No. 3510

AGRICULTURE

The Seeds (National Lists of Varieties) Regulations 2001

<i>Made - - - - -</i>	<i>29th October 2001</i>
<i>Laid before Parliament</i>	<i>31st October 2001</i>
<i>Coming into force - -</i>	<i>1st December 2001</i>



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PART I—Distinctness, stability and sufficient uniformity

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The Secretary of State for Environment, Food and Rural Affairs, the Secretary of State for Scotland and the National Assembly for Wales, being designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to the common agricultural policy of the European Community, acting jointly (the National Assembly for Wales acting in relation to Wales only) in exercise of the powers conferred on them by that section, hereby make the following Regulations:—

Title and commencement

1. These Regulations may be cited as the Seeds (National Lists of Varieties) Regulations 2001 and shall come into force on 1st December 2001.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

“authorised officer” means an officer authorised for the purposes of these Regulations by the Secretary of State, the National Assembly for Wales, the Scottish Ministers or the Department of Agriculture and Rural Development;

“a B List vegetable variety” means a variety whose seed may not be controlled except as standard seed;

“certified”, in relation to seed, has the same meaning as in the Seeds Marketing Regulations and “certification” shall be construed accordingly;

“the Commission Regulation” means the Commission Regulation (EC) No. 930/2000(c) establishing implementing rules as to the suitability of the denominations of varieties of agricultural plant species and vegetable species;

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

“the Common Catalogue Directive” means Council Directive 70/457/EEC(d) on the common catalogue of varieties of agricultural plant species;

“Department of Agriculture and Rural Development” means the Department of Agriculture and Rural Development in Northern Ireland;

“derogated species” means a species of plant specified in Part II of Schedule 1;

“the fees Regulations” means the Seeds (National Lists of Varieties) (Fees) Regulations 1994(e);

(a) S.I. 1972/1811; in the case of the National Assembly for Wales by S.I. 1999/2788.

(b) 1972 c. 68.

(c) OJ No. L108, 5.5.2000, p. 3.

(d) OJ No. L225, 12.10.1970, p. 1. (English Special Edition Supplement Series 1 (66-70) p. 36); as last amended by Council Directive 98/96/EC (OJ No. L25, 1.2.1999, p. 27).

(e) S.I. 1994/676; amended by S.I. 1995/607, 1997/383, 1998/1022 and 1999/1090.

“the Gazette” means the Plant Varieties and Seeds Gazette published in accordance with section 34(1) of the Plant Varieties and Seeds Act 1964(a);

“genetically modified” has the same meaning as for the purposes of Council Directive 90/220/EEC(b) on the deliberate release into the environment of genetically modified organisms;

“maintainer”, in respect of a plant variety, means a person named in or ascertainable by reference to a National List as responsible for maintaining a variety in accordance with the characteristics to which regard was had when that variety was accepted on a National List; and “maintenance” shall be construed accordingly;

“name”, in respect of a plant variety, includes denomination;

“the National Authorities” means the Secretary of State, the National Assembly for Wales, the Scottish Ministers and the Department of Agriculture and Rural Development, acting jointly;

“the National Lists” means the lists of varieties of species of agricultural plants and varieties of species of vegetables, prepared and published in accordance with regulation 3 of these Regulations;

“official measures” includes official examinations, growing trials, tests and assessments;

“person affected”, in respect of a proposed relevant decision or a relevant decision, means—

- (a) any person to whom the National Authorities have given notice of the proposed relevant decision or the relevant decision;
- (b) any person appearing to the National Authorities to have a sufficient interest in the matter to which the decision relates; and
- (c) any person or organisation appearing to them to be representative of a class of persons likely to be affected by the decision;

“relevant decision” means a decision of the National Authorities—

- (a) under regulation 5 to accept or refuse to accept a plant variety on to a National List;
- (b) that they are satisfied a plant variety has a name suitable, in accordance with regulation 6, for publication in the Gazette;
- (c) to accept, or refuse to accept, an application under regulation 7;
- (d) to renew or not to renew the acceptance of a variety under regulation 13; or
- (e) to revoke the acceptance of a variety under regulation 14, replace the original acceptance of a variety under that regulation or delete the name of a person as the maintainer of a variety under regulation 14(4)(e);

and “proposed relevant decision” and “proposal for a relevant decision” shall be construed accordingly;

“the Secretary of State” means the Secretary of State for Environment, Food and Rural Affairs;

“seeds” means seeds for sowing;

“the Seeds Marketing Directives” means—

- (a) Council Directive 66/400/EEC(c) on the marketing of beet seed, as last amended by Council Directive 98/96/EC(d);
- (b) Council Directive 66/402/EEC(e) on the marketing of cereal seed, as last amended by Commission Directive 99/54/EC(f);

(a) 1964 c. 14; see section 38(1) for a definition of “the Ministers”. Under the Transfer of Functions (Wales) (No. 1) Order 1978 (S.I. 1978/272), article 2(1) and Schedule 1, the functions of the Minister of Agriculture, Fisheries and Food under the Plant Varieties and Seeds Act 1964 were, so far as they are exercisable in relation to Wales, transferred to the Secretary of State; and under the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2(1) and Schedule 1, the functions of the Secretary of State transferred by the 1978 transfer order were transferred to the National Assembly for Wales. The functions of the Secretary of State for Scotland are, so far as they are exercisable within devolved competence, now exercisable by the Scottish Ministers by virtue of section 53(1) of the Scotland Act 1998 (c. 46).

(b) OJ No. L117, 8.5.90, p. 15; as last amended by Commission Decision 98/294/EC, OJ No. L131, 5.5.98.

(c) OJ No. 125, 11.7.66, p. 2297, OJ/SE 1965-66, p. 124.

(d) OJ No. L25, 1.2.1999, p. 27.

(e) OJ No. 125, 11.7.66, p. 2309, OJ/SE 1965-66, p. 143.

(f) OJ No. L18, 23.1.1999, p. 1.

- (c) Council Directive 66/401/EEC(a) on the marketing of fodder plant seed, as last amended by Council Directive 98/96/EC;
 - (d) Council Directive 69/208/EEC(b) on the marketing of oil and fibre plant seed, as last amended by Council Directive 98/96/EC;
 - (e) Council Directive 66/403/EEC(c) on the marketing of seed potatoes, as last amended by Commission Decision 1999/742/EC(d); and
 - (f) Council Directive 70/458/EEC(e) on the marketing of vegetable seed as last amended by Council Directive 98/96/EC;
- “the Seeds Marketing Regulations” means—
- (a) in relation to beet seeds—
 - (i) as respects Great Britain, the Beet Seeds Regulations 1993(f); and
 - (ii) as respects Northern Ireland, the Beet Seeds Regulations (Northern Ireland) 1994(g);
 - (b) in relation to cereal seeds—
 - (i) as respects Great Britain, the Cereal Seeds Regulations 1993(h); and
 - (ii) as respects Northern Ireland, the Cereal Seeds Regulations (Northern Ireland) 1994(i);
 - (c) in relation to fodder plant seeds—
 - (i) as respects Great Britain, the Fodder Plant Seeds Regulations 1993(j); and
 - (ii) as respects Northern Ireland, the Fodder Plant Seeds Regulations (Northern Ireland) 1994(k);
 - (d) in relation to oil and fibre plant seeds—
 - (i) as respects Great Britain, the Oil and Fibre Plant Seeds Regulations 1993(l); and
 - (ii) as respects Northern Ireland, the Oil and Fibre Plant Seeds Regulations (Northern Ireland) 1994(m);
 - (e) in relation to seed potatoes—
 - (i) as respects England and Wales, the Seed Potatoes Regulations 1991(n);
 - (ii) as respects Scotland, the Seed Potatoes (Scotland) Regulations 2000(o); and
 - (iii) as respects Northern Ireland, the Seed Potatoes Regulations (Northern Ireland) 2001(p); and
 - (f) in relation to vegetable seeds—
 - (i) as respects Great Britain, the Vegetable Seeds Regulations 1993(q); and
 - (ii) as respects Northern Ireland, the Vegetable Seeds Regulations (Northern Ireland) 1994(r);

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- (a) OJ No. 125, 11.7.66, p. 2298, OJ/SE 1965-66, p. 132.
 - (b) OJ No. L169, 10.7.69, p. 3, OJ/SE 1969 (II), p. 315.
 - (c) OJ No. 125, 11.7.66, p. 2302/66, OJ/SE 1965-66, p.154.
 - (d) OJ No. L297, 18.11.99, p. 39.
 - (e) OJ No. L225, 12.10.1970, p. 7, OJ/SE 1970 (III), p.674.
 - (f) S.I. 1993/2006, as amended by S.I. 1997/616, S.I. 1999/1861 and, as respects England, S.I. 2000/1791; and, as respects Scotland, S.S.I. 2000/246.
 - (g) S.R. 1994 No. 251 as amended by S.R. 1997 No. 240, S.R. 2000 No. 52 and S.R. 2001 No. 331.
 - (h) S.I. 1993/2005, as amended by S.I. 1995/1482, S.I. 1997/616, S.I. 1999/1860 and, as respects England, S.I. 1999/2196 and S.I. 2000/1793; and, as respects Scotland, S.S.I. 2000/248.
 - (i) S.R. 1994 No. 254, as amended by S.R. 1995 No. 366, S.R. 1997 No. 240, S.R. 2000 No. 53, S.R. 2000 No. 128 and S.R. 2001 No. 330.
 - (j) S.I. 1993/2009, as amended by S.I. 1993/2529, S.I. 1996/1453, S.I. 1997/616, S.I. 1999/1864 and, as respects England, S.I. 2000/1792; and as respects Scotland, S.S.I. 2000/247.
 - (k) S.R. 1994 No. 252, as amended by S.R. 1996 No. 311, S.R. 1997 No. 240, S.R. 2000 No. 54 and S.R. 2001 No. 329.
 - (l) S.I. 1993/2007, as amended by S.I. 1994/1423, S.I. 1996/1451, S.I. 1997/616, S.I. 1999/1862 and, as respects England, S.I. 2000/1789; and, as respects Scotland, S.S.I. 2000/249.
 - (m) S.R. 1994, No. 255, as amended by S.R. 1996 No. 312, S.R. 1997 No. 240, S.R. 2000 No. 55 and S.R. 2001 No. 328.
 - (n) S.I. 1991/2206, as amended by S.I. 1992/1031, S.I. 1993/1878, S.I. 1994/2592, S.I. 1997/1474 and, as respects England, S.I. 2000/1788; and, as respects Scotland, S.S.I. 2000/201.
 - (o) S.S.I. 2000/201.
 - (p) S.R. 2001 No. 188.
 - (q) S.I. 1993/2008, as amended by S.I. 1996/1452 and 1997/616, S.I. 1999/1863 and, as respects England, S.I. 2000/1790; and, as respects Scotland, S.S.I. 2000/250.
 - (r) S.R. 1994 No. 250, as amended by S.R. 1996 No. 313, S.R. 1997 No. 240, S.R. 2000 No. 56 and S.R. 2001 No. 327.

“standard seed”, in relation to seed of a vegetable variety, has, as respects Great Britain, the same meaning as in the Vegetable Seeds Regulations 1993 and, as respects Northern Ireland, the same meaning as in the Vegetable Seeds Regulations (Northern Ireland) 1994; “the Tribunal” means the tribunal continued as the Plant Varieties and Seeds Tribunal by section 42 of the Plant Varieties Act 1997(a);

“varietal association” means an association of—

- (a) certified seed of a male-sterile hybrid variety accepted on to a National List or a Common Catalogue; with
- (b) certified seed of one or more varieties capable of shedding pollen accepted on to a National List or a Common Catalogue,

mechanically combined in proportions jointly determined by the maintainers of all the varieties in the association;

“a variety known in the Community”, is any variety—

- (a) accepted on to—
 - (i) a National List;
 - (ii) a list of another member State corresponding to a National List; or
 - (iii) a Common Catalogue, or
- (b) in respect of which an application for acceptance on to a National List or a list of another member State corresponding to a National List has been submitted and has not been determined,

and “a variety not known in the Community” shall be construed accordingly; and

“the Vegetable Seed Marketing Directive” means Council Directive 70/458/EEC on the marketing of vegetable seed.

(2) Subject to paragraph (3) below, in these Regulations “marketing” means—

- (a) selling, holding with a view to sale and offering for sale; and
- (b) any disposal, supply or transfer for the purpose of commercial exploitation of seed to third parties,

whether or not for consideration; and “market” and “marketed” shall be construed accordingly.

(3) Trade in seed not aimed at commercial exploitation of the variety, such as the following operations—

- (a) the supply of seed to official testing and inspection bodies; and
- (b) the supply of seed to a person who provides processing or packaging services but who does not thereby acquire title to the seed supplied,

shall not be regarded as marketing of seed of that variety.

(4) The functions of the National Authorities under these Regulations—

- (a) in so far as they are exercisable by or on behalf of the Scottish Ministers, shall be treated as functions which are exercisable in or as regards Scotland;
- (b) in so far as they are exercisable by or on behalf of the National Assembly for Wales, shall be treated as functions which are exercisable in or as regards Wales; and
- (c) in so far as they are exercisable by or on behalf of the Department of Agriculture and Rural Development, shall be treated as functions which are exercisable in or as regards Northern Ireland.

(5) Expressions in these Regulations which are not defined in the preceding paragraphs of this regulation and which appear or are referred to in the Common Catalogue Directive have the same meaning in these Regulations as in that Directive; and expressions in these Regulations which are not defined in the preceding paragraphs of this regulation and which appear or are referred to in the Vegetable Seed Marketing Directive have the same meaning in these Regulations as in that Directive.

(6) 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.

(a) 1997 c. 66.

National Lists of plant varieties and the Gazette

3.—(1) For the purposes referred to in paragraph (2) below the Secretary of State shall—

- (a) prepare the National Lists of plant varieties of the species specified in Part I of Schedule 1 accepted on to the National Lists by the National Authorities; and
- (b) publish these National Lists in the Gazette.

(2) The National Authorities shall accept a plant variety on to a National List in accordance with these Regulations—

- (a) for purposes in relation to the marketing of seed of the variety; and
- (b) in the case of a plant variety other than a B List vegetable variety, for purposes in relation to the certification of seed of the variety,

and the lists of vegetable plant varieties shall be subdivided into B list vegetable varieties and varieties whose seed may be certified as “pre-basic seed”, “basic seed” or “certified seed”, or may be controlled as “standard seed”, in accordance with the Vegetable Seeds Regulations 1993 and, as respects Northern Ireland, the Vegetable Seeds Regulations (Northern Ireland) 1994.

(3) The National Lists shall not include—

- (a) varieties intended for use solely as components of final varieties except to the extent that seeds belonging to such varieties are to be marketed under the names of those components; and
- (b) varieties the seed or propagating material of which are intended for export to third countries.

(4) In respect of each variety accepted on to a National List the reference to the variety in the List shall include—

- (a) a reference to the name under which the variety is accepted; and
- (b) except in respect of any B List vegetable variety widely known on 1st January 1973, a reference to the maintainer of the variety.

(5) If any plant variety accepted on a National List is a genetically modified variety the Secretary of State shall publish a clear indication of that fact in the List together with the reference number under which the variety has been accepted for marketing in accordance with Council Directive 90/220/EEC on the deliberate release into the environment of genetically modified organisms.

(6) The Secretary of State shall publish in the Gazette notice of any—

- (a) application made in accordance with these Regulations;
- (b) application so made which is withdrawn;
- (c) proposed relevant decision and the reasons for it;
- (d) relevant decision;
- (e) decision of the Tribunal made on an appeal brought in respect of a decision under these Regulations; and
- (f) other change made in accordance with these Regulations to a National List or an application in respect of an National List,

together with, in respect of any notice containing information about a genetically modified variety, a clear indication of that fact.

(7) Where the National Authorities propose to make a relevant decision the Secretary of State, in addition to publishing in the Gazette notice of the proposed decision shall also publish in the Gazette—

- (a) a statement that written and oral representations may be made about the proposed relevant decision by persons who would be affected by it; and
- (b) a statement of the manner in which, and the period (not being less than 14 days) within which, written representations, and a request for oral representations, may be made.

(8) The National Authorities shall not make a relevant decision before the expiry of the period published in the Gazette as being the period within which written representations, and a request for oral representations, in respect of the proposal for the decision may be made.

Applications in relation to National Lists

4.—(1) Applications shall be made to the National Authorities in accordance with the following provisions of this regulation for acceptance by the National Authorities—

- (a) of a plant variety of a species specified in Part I of Schedule 1 on to a National List;
- (b) of a renewal of an acceptance of the kind referred to in subparagraph (a) above;
- (c) of an amendment—
 - (i) to any information published in a National List in relation to a variety accepted on to the List; or
 - (ii) to any information included in an application already made but not yet determined by the National Authorities;
- (d) of a change by a maintainer of a variety on a National List to the name of the variety; or
- (e) of a change to the reference in the List to any maintainer of the variety.

(2) The application shall be in a legible form and—

- (a) shall include such information and documents relevant to the application as the National Authorities may require for the purpose of determining the application; and
- (b) shall be accompanied by any fee prescribed under regulation 10 in relation to the application.

(3) An application for acceptance of a plant variety on to a National List shall include—

- (a) such reproductive or other material of the plant variety, and of any of its components; and
- (b) where a previous application has been made in another Member State for acceptance of the plant variety concerned on any list published in that state corresponding to a National List, such copies of the documents and information relating to the previous application,

as the National Authorities may require for the purpose of determining the application.

(4) An application for—

- (a) a change to the reference in a National List to a maintainer of a variety on the List; or
- (b) the addition of a reference in a National List to a maintainer of a variety on the List,

shall include such reproductive or other material of the plant variety, and of any of its components, as the National Authorities may require for the purpose of determining the application.

(5) If any document required by paragraphs (2)(a) or (3)(b) above to be included with an application is in a language other than English the National Authorities may require it to be accompanied by a complete and adequate translation into the English language.

(6) If the National Authorities have reasonable grounds for believing that any information, document, reproductive or other material of a plant variety relating to but not included with an application referred to in paragraph (1) above is necessary or desirable for the purpose of determining the application, the National Authorities may, by notice to the applicant specifying the information, document or material, require the information, document or material to be given to them within such reasonable period as may be so specified.

(7) If an applicant—

- (a) fails to comply with a notice under paragraph (6) above; or
- (b) fails to pay any fee prescribed under regulation 10 in relation to the application, within such period as may be specified for the payment of the fee under that regulation,

the application shall be treated as if it had been withdrawn.

(8) Where a person has made an application under this regulation in respect of any matter relating to a variety he may not make another application in respect of that matter until the previous application has been finally determined or withdrawn.

Acceptance of plant varieties

5.—(1) Subject to the following provisions of this regulation, the National Authorities shall base acceptance of a variety on to a National List on the results of official measures, particularly growing trials, carried out in respect of the variety by or on behalf of the National Authorities or by or on behalf of a competent authority in any other member State.

(2) In respect of a B List vegetable variety the National Authorities may also take into consideration the results of unofficial tests and knowledge gained from practical experience during cultivation.

(3) The National Authorities shall not accept a plant variety on to a National List unless they are satisfied that—

- (a) the variety is a variety of a species specified in Part I of Schedule 1;
- (b) the variety is distinct, stable and sufficiently uniform as described in Part I of Schedule 2;
- (c) in respect of any variety other than a variety referred to in Part III of Schedule 2, the variety is of satisfactory value for cultivation and use as described in Part II of that Schedule;
- (d) in respect of a genetically modified variety, it has been accepted for marketing in accordance with Council Directive 90/220/EEC on the deliberate release into the environment of genetically modified organisms;
- (e) in respect of a variety any material to be derived from which is intended for use as a food, or a food ingredient, within the meaning of article 1(2) of Council Regulation (EC)258/97(a) concerning novel foods and novel food ingredients, the food or food ingredient intended to be so derived is authorised pursuant to that Council Regulation;
- (f) it has a name suitable, in accordance with regulation 6, for publication in the Gazette; and
- (g) in respect of a variety other than a B list vegetable variety widely known on 1 January 1973, there is a maintainer of the variety accepted in accordance with regulation 7.

(4) The National Authorities may refuse to accept a plant variety on to a National List, whether or not they are satisfied of the matters in respect of the variety specified in paragraph (3) above, if they are satisfied that—

- (a) the refusal is required by virtue of any provision of national law justified on grounds of the protection of health and life of humans, animals or plants; or
- (b) cultivation of the variety could be harmful, in relation to plant health, to the cultivation of other varieties or species.

(5) The National Authorities may determine that the acceptance of a variety in accordance with the Common Catalogue Directive or the Vegetable Seed Marketing Directive on to a list published in another member State corresponding to a National List is equivalent to acceptance for inclusion on a National List and, where they so determine, may accept the variety on to a National List.

(6) The National Authorities shall inform the applicant of an acceptance or refusal to accept a variety under this regulation, or a determination under paragraph (5) of this regulation, and of the reasons.

(7) Any function of the National Authorities under these Regulations, including functions in relation to the administration and determination of any application under these Regulations, the examination or inspection of any documents, records or material, the service of notices, the provision of information and the issue of approvals, may be discharged with the agreement of the other National Authorities by any one or more of the National Authorities acting on their behalf.

Naming of plant varieties

6.—(1) A name of a plant variety is suitable in accordance with this regulation for publication in the Gazette if—

(a) OJ No. L43, 14.2.1997, p. 1.

- (a) the name is not unsuitable as described in paragraph (2) below; and
 - (b) in respect of a plant variety known at the time the National Authorities determine an application for its acceptance on to a National List, the name of the variety is, so far as it can be, the name under which the variety is already known at that time.
- (2) For the purposes of this regulation a name of any plant variety is unsuitable if the National Authorities are satisfied that—
- (a) its use in the territory of the Community is precluded as provided in article 2 of the Commission Regulation (trade mark as prior right of a third party);
 - (b) it may commonly cause its users difficulties as regards recognition or reproduction;
 - (c) it is identical or may be confused with a name of another plant variety as specified in article 4 of the Commission Regulation;
 - (d) it is identical to or may be confused with another name commonly used for the marketing of goods, or which is not available by virtue of other legislation;
 - (e) it is liable to give offence in a member State or is contrary to the public interest; or
 - (f) it is liable to mislead or cause confusion concerning the characteristics, value or identity of the variety.
- (3) For the purposes of this regulation a variety is known at the time the National Authorities determine an application for its acceptance on to a National List if—
- (a) it is registered in an official register of plant varieties, as defined in article 4(d) of the Commission Regulation;
 - (b) it has previously been accepted on to a National List, a list in another member State corresponding to a National List or the Common Catalogue;
 - (c) it is not clearly distinguishable from another variety assessed, with regard to distinctness, stability and uniformity in accordance with rules corresponding to those of the Common Catalogue Directive or the Vegetable Seed Marketing Directive, in a third country—
 - (i) which is a member of the International Union for the Protection of New Varieties of Plants; or
 - (ii) with which there is an agreement in relation to official checks on practices for the maintenance of that other variety in the Annex to Council Decision 97/788/EC(a) on the equivalence of checks on practices for the maintenance of varieties carried out in third countries; or
 - (d) it is not clearly distinguishable from a variety previously accepted on to a National List, on a list in another member State corresponding to a National List or the Common Catalogue.
- (4) If the National Authorities are aware that seed or propagating material of a plant variety, whose name is suitable in accordance with this regulation for publication in the Gazette, is marketed in a third country for commercial purposes under a different name, the National Authorities shall include that name in the reference to the name of the variety on the National List.
- (5) If the National Authorities are satisfied that the name by reference to which the variety was accepted on to a National List was not in accordance with the provisions of this regulation, the Secretary of State—
- (a) shall adapt the name of the variety on the List to ensure it conforms with those provisions and publish in the Gazette a notice of the adapted name; and
 - (b) may publish a notice in the Gazette that the name by reference to which the variety was accepted may be used in addition to the adapted name for a period specified in the notice.
- (6) The National Authorities shall not grant an application for a change to the name of a variety accepted on to a National List or a change to the name of a variety proposed in any application for acceptance of a variety on to a National List, unless they are satisfied that the proposed new name complies with the requirements of this regulation.
- (7) The National Authorities shall inform the applicant of a decision made by them under this regulation relating to the application and of the reasons for it.

(a) OJ No. L322, 25.11.97, p. 39.

Maintainers of plant varieties

7.—(1) The National Authorities shall not grant an application for the substitution or addition of a maintainer of a variety accepted on to a National List unless they are satisfied the applicant is able to maintain the variety in accordance with the characteristics to which regard was had when the variety was accepted on to the National List.

(2) For the purposes of a decision under paragraph (1) above the National Authorities shall have regard to—

- (a) the facilities and services available to the applicant for the purpose of enabling him to maintain the variety; and
- (b) such information, documents, reproductive or other material of the plant variety and any of its components as the National Authorities may have required under regulation 4.

(3) The National Authorities may make arrangements for such examinations of reproductive or other material of the variety and any of its components produced by the applicant as appear to them to be necessary to establish that the material conforms with the characteristics to which regard was had when the variety was accepted on to the National List.

(4) The applicant shall pay any fee prescribed for the purposes of this paragraph under regulation 10 in respect of the costs of any examinations carried out under arrangements made by the National Authorities for the purposes of paragraph (3) above.

(5) If an application for acceptance of a variety on to a National List has not yet been determined the National Authorities shall not accept a person proposed in the application as a maintainer of the variety, or grant an application in respect of that application for the substitution or addition of a person proposed as a maintainer, unless they are satisfied the person—

- (a) is capable of maintaining the variety;
- (b) has access to sufficient facilities and services for the purpose of enabling him to maintain the variety; and
- (c) is willing to maintain the variety.

(6) The National Authorities shall inform the applicant of a decision made by them under this regulation relating to the application and of the reasons for it.

Official measures

8.—(1) Official measures, particularly growing trials, on the results of which an acceptance of a variety on to a National List is based, shall cover a sufficient number of characteristics for the variety to be described; and the methods used for determining characteristics for this purpose shall be exact and reliable.

(2) For the purposes of establishing distinctness the growing trials shall include at least the available comparable varieties known in the Community.

(3) For the purpose of accepting a variety on to a National List under a name determined in accordance with regulation 6, the growing trials for distinctness shall also include other available comparable varieties not known in the Community.

Arrangements for official measures

9.—(1) Subject to the following provisions of this regulation, the National Authorities may make arrangements, in such form as they are of the opinion may be necessary or desirable, for the purpose of enabling any person to act under their responsibility to carry out official measures.

(2) The National Authorities shall not make an arrangement under this regulation unless they are satisfied that it will make provision for the purpose of preventing the person with whom the arrangement is made, and any other person, from—

- (a) deriving any private gain from any official measures carried out under the arrangement; and
- (b) carrying out any official measures under the arrangement except under official supervision.

(3) An arrangement under this regulation may include such conditions as the National Authorities are of the opinion are necessary or desirable for the purposes referred to in paragraphs (1) and (2) above, including conditions—

- (a) specifying—
 - (i) the official measures that the person with whom the arrangement is made shall carry out under it;
 - (ii) the species of plant varieties on which he may carry out the official measures;
 - (iii) the methods to be used in connection with the official measures he carries out under the arrangement;
 - (iv) the fees that may be charged by the person with whom the arrangement is made in relation to the official measures he carries out under it; and
 - (v) the records that must be kept by the person with whom the arrangement is made in connection with the official measures he carries out;
- (b) prohibiting the person with whom the arrangement is made from—
 - (i) carrying out the official measures except under official supervision; and
 - (ii) charging fees in relation to the official measures he carries out under the arrangement except to the extent that these do not exceed the costs he incurs in carrying them out; and
- (c) prohibiting the person with whom the arrangement is made from making any further arrangement for any purpose in connection with the carrying out of any of the official measures he has arranged with the National Authorities to carry out, unless—
 - (i) the National Authorities have first approved all the conditions of the further arrangement and the person with whom the arrangement was made has received the prior written approval of the National Authorities to make the further arrangement;
 - (ii) the further arrangement includes a condition prohibiting the making of any subsequent arrangements for any purpose in connection with the carrying out of any of the official measures in respect of which the National Authorities made the arrangement;
 - (iii) the further arrangement includes an acknowledgement by the person with whom it is made that the National Authorities may vary, suspend or revoke the further arrangement, whether or not they also vary, suspend or revoke the arrangement they made with the person seeking their approval for the further arrangement, if it appears to them that the person with whom the further arrangement is made is not complying, or has failed to comply, with any condition of the further arrangement; and
 - (iv) the further arrangement includes the conditions specified in subparagraphs (a) and (b) above.

(4) The National Authorities shall not approve the making of a further arrangement by any person with whom they make an arrangement under this regulation unless they are satisfied that the person with whom the further arrangement is to be made—

- (a) will not derive any private gain from any official measures he is to be authorised to carry out under the further arrangement; and
- (b) will not carry out any official measures under the further arrangement except under official supervision.

(5) If it appears to the National Authorities that any person with whom an arrangement has been made under this regulation, or any person with whom a further arrangement has been made by any such person, has failed to comply or is failing to comply with any conditions of the arrangement or further arrangement, the National Authorities may, after giving notice to the person concerned, vary, suspend or revoke the arrangement or further arrangement; and a further arrangement may be varied, suspended or revoked under this paragraph notwithstanding that the arrangement in respect of which it was made is not also varied, suspended or revoked.

(6) The National Authorities may vary, suspend or revoke an arrangement or the conditions of an arrangement made under this regulation, or a further arrangement or any of the conditions of a further arrangement under this regulation, by giving notice in writing to the person with whom the arrangement or further arrangement is made.

(7) A notice of a variation, suspension or revocation of an arrangement or further arrangement, or of a condition of an arrangement or further arrangement, shall specify—

(a) in respect of a variation or a revocation, a date on and after which the variation or revocation shall have effect; and

(b) in respect of a suspension, a period during which suspension shall have effect;

and the variation, suspension or revocation shall have effect in accordance with the notice.

(8) When a variation, suspension or revocation has effect the National Authorities may, for any purposes in relation to these Regulations or a determination under these Regulations, continue to have regard to such of the official measures carried out under an arrangement which was varied, suspended or revoked as appear to them to be official measures carried out in accordance with the provisions of these Regulations.

Fees

10.—(1) The National Authorities may charge any person, including any person with whom an arrangement or further arrangement has been made under regulation 9, reasonable fees in respect of costs the National Authorities reasonably incur in carrying out official measures for the purposes of these Regulations.

(2) The National Authorities may charge any person concerned in any matter connected with these Regulations reasonable fees in respect of costs the National Authorities or the Secretary of State reasonably incur in relation to the administration of that matter for the purposes of these Regulations, including—

(a) the administration and determination of any application under these Regulations, including the administration and determination of—

(i) an application for acceptance of a variety on to a National List or a change to any such application;

(ii) an application to change the name of a plant variety for the purposes of these Regulations;

(iii) an application in relation to the maintainer or the maintenance of a plant variety; and

(iv) an application for renewal of acceptance of a variety;

(b) the examination or inspection of any documents, records or material under these Regulations. and

(c) the annual cost of keeping a variety accepted on a National List.

(3) A person with whom an arrangement or further arrangement has been made in accordance with regulation 9, may charge any person, including any other person with whom that or any other arrangement or further arrangement has been made under that regulation, reasonable fees in respect of costs reasonably incurred in carrying out official measures under the responsibility of the National Authorities in accordance with these Regulations.

(4) Where a person has been given reasonable notice—

(a) by or on behalf of the National Authorities of a fee duly charged in accordance with paragraphs (1) or (2) above; or

(b) by a person with whom an arrangement or further arrangement has been made under regulation 9 of a fee duly charged in accordance with paragraph (3) above,

the person given the notice shall pay as specified in the notice the amount of the fee so charged.

(5) A fee charged in accordance with this regulation in respect of which reasonable notice has been given in accordance with paragraph (4) above shall be recoverable as a debt from the person given the notice.

Marketing Prohibition Notices

11.—(1) No person shall market any seeds of a plant variety of a species specified in Schedule 1 if a marketing prohibition notice has been published by the Secretary of State in the Gazette in relation to the variety.

- (2) For the purposes of paragraph (1) above, a “marketing prohibition notice”—
- (a) in relation to a plant variety accepted on to a Common Catalogue, means a notice that an application to prohibit marketing of the variety has been made to the Commission by or on behalf of the National Authorities on the ground that—
 - (i) cultivation of the variety could be harmful, in relation to plant health, to the cultivation of other varieties or species and there is an imminent danger of the spread of harmful organisms; or
 - (ii) the variety presents a risk for human health or the environment and there is an imminent danger for human health or the environment; and
 - (b) in relation to a plant variety not accepted on to a Common Catalogue, being a derogated species referred to in paragraph 2 of Part II of Schedule 1, means a notice specifying that marketing of the variety is prohibited on either of those grounds.
- (3) If the Secretary of State has published a notice in the Gazette in respect of a variety—
- (a) specifying that—
 - (i) official growing trials carried out in the United Kingdom, for the purpose of assessing value for cultivation and use, show that the variety does not, in any part of the United Kingdom, produce results corresponding to those obtained from a comparable variety accepted in the United Kingdom; or
 - (ii) the National Authorities are satisfied the variety is not suitable for cultivation in any part of the United Kingdom by reason of its type or maturity class; and
 - (b) specifying a date after which marketing of the variety is prohibited,
- no person shall market any seeds of the variety after that date.
- (4) If the acceptance of a plant variety—
- (a) of a species specified in Part I of Schedule 1 on to a National List or a Common Catalogue; or
 - (b) of a derogated species specified in paragraph 1 of Part II of Schedule 1 on to a Common Catalogue,

has been revoked or has expired, no person shall market any seeds of the variety unless a residual marketing period has been specified in a notice published by the Secretary of State in the Gazette in respect of seed of that variety and that period has not expired.

(5) No person shall market seed of a variety accepted on to a National List or a Common Catalogue except under the name in which the variety is accepted; and where the National Authorities adapt the name of a variety under regulation 6(5), and specify in a notice published in the Gazette in respect of the variety a period during which seed of the variety may be marketed under the name as it was referred to in the List before it was adapted, seed of the variety may be marketed during that period under the name as it was referred to in the List before it was adapted.

Maintenance of accepted plant varieties

12.—(1) The maintainer of a plant variety on a National List, other than a B List vegetable variety widely known on 1 January 1973, shall maintain the variety according to accepted practices for maintaining the variety.

- (2) The maintainer of a plant variety shall not maintain that variety except—
 - (a) in the United Kingdom or another Member State; or
 - (b) in a third country referred to in Council Decision 97/788/EC(a) on the equivalence of checks on practices for the maintenance of varieties carried out in third countries.
- (3) The maintainer of a plant variety shall keep records of all the generations of the variety he maintains and shall on demand produce at his own expense such records for inspection by or on behalf of the National Authorities and shall also, if so required at any time, at his own expense deliver to the National Authorities samples of seed of that variety.
- (4) The maintainer of a plant variety shall at all reasonable times give to an authorised officer such facilities for the inspection or examination of any—
 - (a) plants, whether growing or harvested;
 - (b) plant materials; and

(a) OJ No. L322, 25.11.97, p. 39.

(c) records,

as may in the opinion of the officer be necessary or desirable for the purposes of checking compliance with any of the provisions of this regulation.

(5) If, for the purposes of checking compliance with any of the provisions of this regulation, an authorised officer considers it is necessary or desirable to take a sample of any seed of a variety requiring to be maintained under these Regulations the officer may, at any premises, take a sample of the seed.

Duration of acceptance of plant varieties

13.—(1) Subject to the following provisions of this regulation and regulation 14, the acceptance of a variety under regulation 5(3) or (5) is valid until the end of the tenth calendar year following acceptance.

(2) Provided the requirements of distinctness, uniformity and stability are still satisfied in respect of a variety the National Authorities may renew acceptance of the variety if they are satisfied that cultivation of the variety is on such a scale as to justify renewed acceptance.

(3) The National Authorities may determine an application for renewal of acceptance of a variety notwithstanding that any fee payable under regulation 10 in relation to the variety, whether in connection with that renewal or any other matter, has not been paid as so prescribed.

(4) An application for renewal of acceptance of a variety shall be made not later than two years before the date on which the acceptance is due to expire.

(5) Acceptance of a variety may be renewed more than once in accordance with this regulation.

(6) If an application for renewal of acceptance of a variety in accordance with this regulation has been made not later than two years before the date on which the acceptance is due to expire and the National Authorities have not determined the application before that date, the National Authorities may provisionally renew the acceptance for a reasonable period extending after that date to permit them to determine the application.

(7) The National Authorities shall inform the applicant of a determination made by them under this regulation relating to the application and of the reasons for the determination.

Revocation of acceptance of plant varieties and maintainers

14.—(1) The National Authorities shall revoke acceptance of a variety if they are satisfied that—

- (a) on examination, the variety is no longer distinct, stable or sufficiently uniform; or
- (b) in respect of a variety other than a B List vegetable variety widely known on 1 January 1973—
 - (i) there is no maintainer of the variety and no application in relation to a maintainer of the variety has been made and not yet determined; or
 - (ii) whether or not there is a maintainer of the variety, it is not being properly maintained.

(2) If after a variety is accepted on to a National List the National Authorities are satisfied that, at the time the variety was accepted, the variety was not distinct as specified in Schedule 2 they shall make such other determination as they consider to be in accordance with the Common Catalogue Directive or, in respect of a vegetable variety, the Vegetable Seed Marketing Directive; and this other determination may be a determination—

- (a) to revoke and replace the original acceptance; or
- (b) to revoke and not replace the acceptance.

(3) If a determination is replaced by another determination under paragraph (2) above the variety replaced shall, with effect from the date of the determination replaced, no longer be regarded as a variety known in the Community within the meaning of article 5(1) of the Common Catalogue Directive or, in respect of a vegetable variety, the Vegetable Seed Marketing Directive.

(4) If, in relation to any variety accepted on to a National List, it appears to the National Authorities that—

- (a) cultivation of the variety, in relation to plant health, could be harmful to the cultivation of other varieties or species;
- (b) in respect of a genetically modified variety, the acceptance for marketing of the variety in accordance with Council Directive 90/220/EEC has been revoked;
- (c) in respect of a variety any material derived from which is intended for use as a food, or a food ingredient, within the meaning of article 2(1) of Council Regulation (EC) 258/97, the authorisation of the food or food ingredient for the purposes of that Council Regulation has been revoked;
- (d) false information material to the acceptance of the variety on to a National List was given to the National Authorities in relation to that acceptance;
- (e) the maintainer of the variety has failed to comply with a requirement of these Regulations in relation to maintenance of the variety; or
- (f) any fee prescribed under regulation 10 has not been paid as so prescribed,

the National Authorities may revoke the acceptance of the variety and, in respect of a failure by the maintainer of the variety to comply with a requirement of these Regulations in relation to maintenance of the variety, delete the reference to the name of that person as the maintainer of the variety.

(5) The National Authorities may revoke acceptance of a variety, whether or not they are satisfied of any of the matters in respect of the variety specified in paragraph (4) above, if they are satisfied that revocation is required by virtue of any provision of national law justified on grounds of the protection of health and life of humans, animals or plants.

(6) On being given notice by a maintainer that he intends to stop, or has stopped, maintaining the variety with effect from a date specified in the notice the National Authorities shall delete the reference to the name of that person as the maintainer of the variety with effect from that date.

(7) Where a notice is given under paragraph (6) above by the only maintainer of a variety the National Authorities shall not revoke the acceptance of the variety under paragraph (1)(b) above until—

- (a) the Secretary of State has published a notice in the Gazette for the purpose of advertising for a new maintainer; and
- (b) after the period specified in the notice, during which a person may apply to be a maintainer of the variety, has expired.

(8) Where the National Authorities make a determination under this regulation in relation to a variety or a maintainer of a variety, they shall inform the maintainer, and any other person whose name is in the record of the variety kept by the Secretary of State under regulation 15 below, of the determination and of the reasons for it.

Records

15.—(1) The Secretary of State shall keep a record of each application for acceptance of a variety on to a National List containing—

- (a) the date on which the application was received by the National Authorities and the reference number given to it by the Secretary of State for the purposes of these Regulations;
- (b) the date on which details of the application were published in the Gazette;
- (c) the name and address of the applicant;
- (d) the description of the characteristics of the plant variety provided by the applicant;
- (e) the proposed name of the variety as published in the Gazette; and
- (f) such other information as appears to the Secretary of State to be desirable.

(2) Subject to paragraph (3) below, in respect of each variety accepted on to a National List the Secretary of State shall keep a record of—

- (a) the information contained in the record kept under paragraph (1) above of the application for acceptance of the variety;
- (b) the species, name and description of the variety and, so far as the National Authorities are aware, any other name by which the variety is known;

- (c) the date of acceptance of the variety on to the National List and a summary of all the facts on which the acceptance was based;
- (d) in respect of a genetically modified variety, the reference number under which the variety was accepted for marketing in accordance with Council Directive 90/220/EEC on the deliberate release into the environment of genetically modified organisms;
- (e) in respect of a variety any material to be derived from which is intended for use as a food, or a food ingredient, within the meaning of article 1(2) of Council Regulation (EC) 258/97 concerning novel foods and novel food ingredients, the reference under which the material may be placed on the market under that Regulation;
- (f) the date on which the acceptance of the variety on to the National List is due to expire;
- (g) the name and address of any maintainer of the variety or a reference sufficient to enable their name and address to be ascertained;
- (h) each—
 - (i) renewal of the variety under regulation 13;
 - (ii) revocation of the acceptance of the variety under regulation 14; and
 - (iii) deletion of the reference to the name of a person as the maintainer of the variety under regulation 14; and
- (i) such other information as appears to the Secretary of State to be desirable.

(3) Where, for the purposes of a relevant decision under these Regulations in relation to a variety, examination of the components of the variety is necessary in order to study hybrids and synthetic varieties, the Secretary of State shall ensure, if the applicant concerned in respect of that determination so requests, that she excludes from the record kept in respect of the variety under paragraph (2) above and treats as confidential the results of the examination and the description of the components.

(4) The description in paragraph (2)(b) above shall be the description obtained in the course of the official examination of the variety for the purposes of determining whether it is distinct, stable and sufficiently uniform.

(5) Subject to paragraph (3) above, the Secretary of State shall disclose a record kept under this regulation on payment of any fee charged by the National Authorities under regulation 10 for the disclosure of the record.

Representations and hearings

16.—(1) The National Authorities shall provide any person who would be affected by a proposed relevant decision an opportunity—

- (a) to make written representations to them about it in the manner, and within the period, published for the purpose in the Gazette under regulation 3; or
- (b) if a request for oral representations is made within the period published for the purpose in the Gazette under regulation 3, to make oral representations about the proposed relevant decision to a person appointed by them,

or to do both, subject to the payment of any fee in respect of such representations payable under the fees Regulations.

(2) The National Authorities may afford to any person entitled to make representations in accordance with paragraph (1) above in respect of a proposed relevant decision an opportunity to make representations to them about it 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 to any such person the opportunity to do so without charging any fee.

(3) The National Authorities shall send to each person entitled to make written representations in accordance with paragraph (1) above of whom they are aware a copy of any representations so made.

(4) Where any person entitled to make oral representations in accordance with paragraph (1) above in respect of a proposed relevant decision makes a request to do so in accordance with that paragraph, or is afforded an opportunity to make oral representations in respect of it in accordance with paragraph (2) above, the National Authorities shall—

- (a) appoint a time and place in the United Kingdom for the hearing of oral representations in respect of the proposed relevant decision, having regard to—
 - (i) the convenience, wishes of and expenses of any such person;

- (ii) the situation of any land or premises to be viewed in relation to the oral representations; and
- (iii) all other relevant circumstances;
- (b) appoint a person to conduct the hearing of the oral representations; and
- (c) give not less than 14 days notice of the time and place appointed for the hearing to—
 - (i) the persons affected by the proposed relevant decision; and
 - (ii) the Council on Tribunals or its Scottish Committee, for the purpose of enabling their representative in their capacity as such to attend the hearing.

(5) Any person entitled to make oral representations at a hearing in accordance with this regulation shall, not later than 7 days before the day appointed for the hearing, deliver to the National Authorities two copies of any documents which the person proposes to rely upon; and the National Authorities shall deliver a copy of these documents to each of the other persons who appear to them to be concerned in the matter.

(6) The procedure in relation to the preparation for the hearing of oral representations in respect of a proposed relevant decision, and, subject to paragraph (7) below, the procedure at the hearing of them, including any adjournment or subsequent convening of the hearing, shall be as the person conducting the hearing directs having regard to the wishes of the persons affected by the proposed relevant decision who are entitled to make the oral representations in respect of it or who have been afforded an opportunity to make oral representations in respect of it in accordance with paragraph (2) above.

- (7) A person who makes oral representations in accordance with this regulation may—
- (a) rely upon the documents in respect of which copies have been delivered to the National Authorities as required by paragraph (5) above;
 - (b) call witnesses; and
 - (c) put questions directly to any witnesses called by or on behalf of any other person making oral representations at the hearing,

and may be represented for the purpose by a person of their choice.

(8) The National Authorities shall not take a relevant decision until they have considered any oral or written representations made to them in accordance with this regulation in respect of the proposal for it and any documents relied on and evidence adduced at the hearing of any oral representations.

(9) The National Authorities shall give to each person who has made oral or written representations in accordance with this regulation notice of their decision together with their reasons for it and shall inform them of the time and manner in which an appeal against the relevant decision may be brought to the Tribunal.

Appeals

17.—(1) Any person affected by a relevant decision, except a decision in respect of the naming of a plant variety, may appeal against the relevant decision to the Tribunal.

(2) Schedule 3 to the Plant Varieties Act 1997 (which makes provision about the Tribunal) shall apply for the purposes of appeals under this regulation as it applies for the purposes of appeals in respect of which provision is made for the Tribunal to have jurisdiction in Regulations made under section 44 of that Act or in Rules under or having effect as if made under paragraph 13 of Schedule 3 to that Act.

(3) Where an appeal is made against a relevant decision, regulation 9 of the Plant Breeders' Rights Regulations 1998^(a) shall apply in relation to the appeal as it applies for the purposes of appeals made under those Regulations with the modifications that—

- (a) references in that regulation to “the Controller” shall be construed as references to “the National Authorities”; and
- (b) for the reference in regulation 9(3) of those Regulations to suspension of the operation of decisions pending the final determination of the appeal, in respect of any decision of the National Authorities the effect of which is to revoke the acceptance of

(a) S.I. 1998/1027.

a variety on grounds relating to human health, animal health or plant health, there shall be substituted a reference to the operation of the decision having effect in the period beginning on the date on which notice of the decision was given in accordance with these Regulations.

(4) Where—

- (a) a relevant decision of the National Authorities is to revoke the acceptance of a variety from a National List;
- (b) an appeal is brought against that decision;
- (c) by virtue of regulation 9 of the Plant Breeders' Rights Regulations 1998, as applied by paragraph (3) above, the effect of the decision is suspended pending the final determination of the appeal; and
- (d) the appeal is determined in favour of the appellant,

the Secretary of State shall publish a notice in the Gazette confirming the appeal has been successful and, accordingly, that the variety is still accepted on to the National List.

Obstruction

18.—(1) No person shall—

- (a) intentionally obstruct any person acting in the execution of these Regulations;
- (b) without reasonable cause, fail to give to any person acting in the execution of these Regulations any assistance or information which that person may reasonably require of him for the purpose of carrying out his functions under these Regulations; or
- (c) furnish to any person acting in the execution of these Regulations any information which he knows to be false or misleading.

(2) Nothing in paragraph (1)(b) above shall be construed as requiring any person to answer any question or give any information if to do so might incriminate him.

Offences and penalties

19.—(1) A person contravening or failing to comply with any provision of regulation 11 or 18 shall be guilty of an offence and shall be liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months or to both;
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.

(2) Where a body corporate is guilty of an offence under these Regulations, and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar person of the body corporate, or
- (b) any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(3) For the purposes of paragraph (1) above, “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(4) Where an offence under these Regulations which has been committed by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he as well as the partnership shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Offences due to fault of another person and defence of due diligence

20.—(1) Where the commission by any person of an offence under any of the provisions of these Regulations is due to the act or default of some other person, that other person shall be guilty of the offence; and a person may be charged with and convicted of the offence by virtue of this paragraph of this regulation whether or not proceedings are taken against the first-mentioned person.

(2) In any proceedings for an offence under any of the provisions of these Regulations, it shall, subject to paragraph (3) below, be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by a person under his control.

(3) If in any case the defence provided by paragraph (2) above involves the allegation that the commission of the offence was due to an act or default of another person, or to reliance on information supplied by another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless—

- (a) at least seven clear days before the hearing; and
- (b) where he has previously appeared before a court in connection with the alleged offence, within one month of his first such appearance,

he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.

(4) In paragraph (3) above any reference to appearing before a court shall be construed as including a reference to being brought before a court.

Application of provisions of the Plant Varieties and Seeds Act 1964

21.—(1) As respects Great Britain, the following provisions of the Plant Varieties and Seeds Act 1964 shall apply for the purposes of these Regulations as they apply for the purposes of seeds Regulations having effect under Part II of that Act and, unless the context otherwise requires, any reference in them to seeds Regulations or to that Part shall be construed as a reference to these Regulations and any reference to a person duly authorised by the Minister or to an authorised officer shall be taken to be references to an authorised officer within the meaning of these Regulations—

- section 25 (powers of entry);
- section 26 (use of samples in criminal proceedings);
- section 27 (tampering with samples);
- section 28 (institution of criminal proceedings), subject to the modification that it shall apply to proceedings in respect of any offence under these Regulations as it applies to the proceedings to which it refers;
- section 29(1) (application of Part II to seed potatoes); and
- section 30(2) (interpretation of Part II: contravention and failure of compliance).

(2) As respects Northern Ireland, the following provisions of the Seeds Act (Northern Ireland) 1965(a) shall apply for the purposes of these Regulations as they apply for the purposes of seeds Regulations having effect under that Act and, unless the context otherwise requires, any reference in them to seeds Regulations or to that Act shall be construed as a reference to these Regulations—

- section 8 (powers of entry);
- section 9 (use of samples in criminal proceedings);
- section 10 (tampering with samples);
- section 11 (institution of criminal proceedings), subject to the modification that it shall apply to proceedings in respect of any offence under these Regulations as it applies to the proceedings to which it refers;
- section 12(1) (application of the Act to seed potatoes); and
- section 14(2) (interpretation: contravention and failure of compliance).

Enforcement

22. These Regulations shall be enforced—

- (a) in relation to England, by the Secretary of State;
- (b) in relation to Scotland, by the Scottish Ministers;
- (c) in relation to Wales, by the National Assembly for Wales; and
- (d) in relation to Northern Ireland, by the Department of Agriculture and Rural Development.

(a) 1965 c. 22 (N.I.).

Service of notices etc.

23.—(1) Any notice or other document to be given or served on any person under or in relation to these Regulations may be given or served—

- (a) by delivering it to that person;
- (b) in the case of an incorporated body, by delivering it to their secretary or clerk at their registered or principal office, or by sending it by post to him at that office; or
- (c) in the case of any other person, by leaving it, or sending it by post to him, at his usual or last known address.

(2) Where a notice or other document is to be given or served on the owner, proprietor, operator or occupier of any premises and it is not practicable after reasonable enquiry to ascertain the name and address of the person to or on whom it should be given or served, or the premises are unoccupied, the document may be given or served by addressing it to the person concerned by the description of “owner”, “proprietor”, “operator” or “occupier” of the premises (naming them) and—

- (a) by delivering it to some person on the premises; or
- (b) if there is no person on the premises to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises.

Revocations and savings and transitional provisions

24.—(1) Subject to the savings and transitional provisions in the following provisions of this regulation—

- (a) the Seeds (National Lists of Varieties) Regulations 1982(a) (“the 1982 Regulations”) shall be revoked;
- (b) the following provisions of the Seeds (National Lists of Varieties) (Fees) Regulations 1994 shall be revoked: sub-paragraphs (a), (b), (c) and (d) of regulation 3(1), paragraphs (2), (2A) and (4) of that regulation, regulation 4, Schedules 1, 2, 3 and 4 and paragraphs 1, 4, 5 and 6 of Schedule 5; and
- (c) the following provisions of the Seeds (National Lists of Varieties) (Fees) Regulations 1994 shall be amended—
 - (i) in regulation 2(1), for the definition of “the Ministers”, there shall be substituted—

“the National Authorities” means the Secretary of State, the National Assembly for Wales, the Scottish Ministers and the Department of Agriculture and Rural Development, acting jointly;”;
 - (ii) in paragraphs 2 and 3 of Schedule 5, for the words “the Ministers” there shall be substituted the words “the National Authorities”.

(2) Any application—

- (a) lawfully entertained in accordance with regulation 5(1) of the 1982 Regulations but not determined at the coming into force of these Regulations; or
- (b) referred to in regulation 5A of the 1982 Regulations (inserted by the Seeds (National Lists of Varieties) (Amendment) Regulations 1998(b)), and treated as being lawfully entertained in accordance with regulation 5(1) of those Regulations, but not determined at the coming into force of these Regulations,

shall be treated as an application referred to in paragraph (1) of regulation 4 of these Regulations and accordingly shall be subject to the remaining provisions of that regulation (in respect of anything needing to be done at the coming into force of these Regulations in relation to the application by or on behalf of the applicant) and shall be determined in accordance with these Regulations.

(3) Any entry of a variety in a National List—

- (a) made in respect of an application referred to in regulation 5(1) of the 1982 Regulations;
- (b) made in respect of an application referred to in regulation 5A of those Regulations and treated as having been lawfully entertained in accordance with regulation 5(1) of those Regulations; or

(a) S.I. 1982/844; amended by S.I. 1985/1529, S.I. 1989/1314, S.I. 1990/1353, S.I. 1992/1615 and S.I. 1998/2726.
(b) S.I. 1998/2726.

(c) renewed under regulation 14 of those Regulations, and having effect at the coming into force of these Regulations, shall have effect as an acceptance of the variety on to that List in accordance with the provisions of these Regulations.

(4) Any test or trial being conducted at the coming into force of these Regulations for the purpose of regulation 11(1) of the 1982 Regulations shall have effect as if it were an official measure for the purposes of these Regulations.

(5) Any arrangement under regulation 11(1) of the 1982 Regulations having effect at the coming into force of these Regulations shall have effect as if it were an arrangement for an official measure entered into under regulation 9 of these Regulations.

(6) Any licence to conduct a trial referred to in regulation 11A(1) of the 1982 Regulations, issued under that regulation and having effect at the coming into force of these Regulations, shall have effect as if it were an arrangement for an official measure entered into under regulation 9 of these Regulations.

(7) Any provision of a contract, entered into by the Minister of Agriculture, Fisheries and Food in connection with a trial referred to in regulation 11A(1) of the 1982 Regulations and having effect at the coming into force of these Regulations, shall have effect as if it were a provision of an arrangement entered into under regulation 9 of these Regulations.

(8) For the purposes of these Regulations the tests and trials referred to in regulation 11AA of the 1982 Regulations (inserted by the Seeds (National Lists of Varieties) (Amendment) Regulations 1998) shall continue to be taken to be tests and trials required by those Regulations, as provided by that regulation 11AA, notwithstanding the failure of compliance referred to in that regulation.

(9) Any period specified in a notice published in the Gazette under paragraph (3) of regulation 16 of the 1982 Regulations, in respect of which a plant variety may be marketed in accordance with paragraphs (1) or (2) of that regulation, which has not expired at the coming into force of these Regulations, shall have effect for the residue of that period as if it were a residual marketing period specified in a notice published under regulation 11(4) of these Regulations.

(10) Any acceptance of a name of a variety under regulation 17 of the 1982 Regulations having effect at the coming into force of these Regulations, shall have effect as an acceptance of that name under regulation 6 of these Regulations.

(11) Any acceptance of a maintainer of a variety under regulation 18 of the 1982 Regulations having effect at the coming into force of these Regulations, shall have effect as an acceptance of that maintainer under regulation 7 of these Regulations.

(12) Any proposal for a decision referred to in paragraphs (1) or (2) of regulation 21 of the 1982 Regulations, in respect of which the decision has not been taken under those Regulations at the coming into force of these Regulations, shall have effect as a proposal for a relevant decision under these Regulations.

(13) Any oral or written representations made in accordance with Part III of the 1982 Regulations, in respect of a decision—

(a) proposed but not taken under those Regulations at the coming into force of these Regulations; or

(b) proposed and taken under those Regulations at the coming into force of these Regulations,

shall have effect as if they were oral or written representations made in accordance with regulation 16 of these Regulations.

(14) Any appeal referred to in regulation 30 of the 1982 Regulations which, at the coming into force of these Regulations,—

(a) may be made to the Tribunal under that regulation; or

(b) has been made to that Tribunal but not finally determined,

shall have effect respectively as an appeal which may be or has been made to the Tribunal under regulation 17 of these Regulations.

(15) Any fee payable under regulation 3 of the fees Regulations in respect of a matter mentioned in that regulation, arising under the 1982 Regulations but not paid at the coming into force of these Regulations, shall be treated as a fee charged under, and recoverable as a debt in accordance with, regulation 10 of these Regulations.

Amendments of Seeds Marketing Regulations

25.—(1) The Seeds Marketing Regulations shall be amended in accordance with the following provisions of this regulation.

(2) In relation to beet seeds—

(a) in the Beet Seeds Regulations 1993—

- (i) in regulation 3(1), in the definition of “National List”, for the words “the Seeds (National Lists of Varieties) Regulations 1982” there shall be substituted the words “the Seeds (National Lists of Varieties) Regulations 2001”;
- (ii) in regulation 5(1) for the words “no person shall market any seeds unless they are seeds of plant varieties which may, for the time being, be marketed in accordance with regulation 31 of the Seeds (National Lists of Varieties) Regulations 1982 unless they are marketed in seed lots or parts of seed lots and unless they are” there shall be substituted the words “no person shall market any seeds of a plant variety of a species specified in Part I of Schedule 1 to the Seeds (National Lists of Varieties) Regulations 2001 unless the variety is accepted on to a National List or the Common Catalogue, unless the seeds are marketed in seed lots or parts of seed lots and unless they are”;
- (iii) in regulation 5(3)(c) for the words “the Seeds (National Lists of Varieties) Regulations 1982” there shall be substituted the words “paragraph (1) above”;
- (iv) after paragraph (3) of regulation 5 there shall be added the following paragraph—

“(3A) Paragraph (1) above shall not prevent the marketing of seeds of a variety intended for use solely as a component of a final variety where, by reason only of article 3(1)(a) of Council Directive 70/457/EEC, the component is not included on a National List and the seeds are not marketed under the names of the component.”; and
- (v) in regulation 6(5), for the words “regulation 31 of the Seeds (National Lists of Varieties) Regulations 1982” there shall be substituted the words “regulation 5(1) above”; and

(b) in the Beet Seeds Regulations (Northern Ireland) 1994—

- (i) in regulation 3(1), in the definition of “National List”, for the words “the Seeds (National Lists of Varieties) Regulations 1982” there shall be substituted the words “the Seeds (National Lists of Varieties) Regulations 2001”;
- (ii) in regulation 5(1) for the words “a person shall not market any seeds unless they are seeds of plant varieties which may, for the time being, be marketed in accordance with regulation 31 of the Seeds (National Lists of Varieties) Regulations 1982 unless they are marketed in seed lots or parts of seed lots and unless they are” there shall be substituted the words “a person shall not market any seeds of a plant variety of a species specified in Part I of Schedule 1 to the Seeds (National Lists of Varieties) Regulations 2001 unless the variety is accepted on to a National List or the Common Catalogue, unless the seeds are marketed in seed lots or parts of seed lots and unless they are”;
- (iii) in regulation 5(3)(c) for the words “the Seeds (National Lists of Varieties) Regulations 1982” there shall be substituted the words “paragraph (1) above”;
- (iv) after paragraph (3) of regulation 5 there shall be added the following paragraph—

“(3A) Paragraph (1) above shall not prevent the marketing of seeds of a variety intended for use solely as a component of a final variety where, by reason only of article 3(1)(a) of Council Directive 70/457/EEC, the component is not included on a National List and the seeds are not marketed under the names of the component.”; and
- (v) in regulation 6(5), for the words “regulation 31 of the Seeds (National Lists of Varieties) Regulations 1982” there shall be substituted the words “regulation 5(1) above”.

(3) In relation to cereal seeds—

(a) in the Cereal Seeds Regulations 1993—

- (i) in regulation 3(1), in the definition of “National List”, for the words “the Seeds (National Lists of Varieties) Regulations 1982” there shall be substituted the words “the Seeds (National Lists of Varieties) Regulations 2001”;
 - (ii) in regulation 5(1) for the words “no person shall market any seeds unless they are seeds of plant varieties which may be marketed in accordance with regulation 31 of the Seeds (National Lists of Varieties) Regulations 1982 unless they are marketed in seed lots or parts of seed lots and unless they are” there shall be substituted the words “no person shall market any seeds of a plant variety of a species specified in Part I of Schedule 1 to the Seeds (National Lists of Varieties) Regulations 2001 unless the variety is accepted on to a National List or the Common Catalogue, unless the seeds are marketed in seed lots or parts of seed lots and unless they are”;
 - (iii) in regulation 5(3)(c) for the words “the Seeds (National Lists of Varieties) Regulations 1982” there shall be substituted the words “paragraph (1) above”;
 - (iv) after paragraph (3) of regulation 5 there shall be added the following paragraph—
 - “(3A) Paragraph (1) above shall not prevent the marketing of seeds of a variety intended for use solely as a component of a final variety where, by reason only of article 3(1)(a) of Council Directive 70/457/EEC, the component is not included on a National List and the seeds are not marketed under the names of the component.”; and
 - (v) in regulation 6(5), for the words “regulation 31 of the Seeds (National Lists of Varieties) Regulations 1982” there shall be substituted the words “regulation 5(1) above”; and
- (b) in the Cereal Seeds Regulations (Northern Ireland) 1994—
- (i) in regulation 3(1), in the definition of “National List”, for the words “the Seeds (National Lists of Varieties) Regulations 1982” there shall be substituted the words “the Seeds (National Lists of Varieties) Regulations 2001”;
 - (ii) in regulation 5(1) for the words “a person shall not market any seeds unless they are seeds of plant varieties which may, for the time being, be marketed in accordance with regulation 31 of the Seeds (National Lists of Varieties) Regulations 1982 unless they are marketed in seed lots or parts of seed lots and unless they are” there shall be substituted the words “a person shall not market any seeds of a plant variety of a species specified in Part I of Schedule 1 to the Seeds (National Lists of Varieties) Regulations 2001 unless the variety is accepted on to a National List or the Common Catalogue, unless the seeds are marketed in seed lots or parts of seed lots and unless they are”;
 - (iii) in regulation 5(3)(c) for the words “the Seeds (National Lists of Varieties) Regulations 1982” there shall be substituted the words “paragraph (1) above”;
 - (iv) after paragraph (3) of regulation 5 there shall be added the following paragraph—
 - “(3A) Paragraph (1) above shall not prevent the marketing of seeds of a variety intended for use solely as a component of a final variety where, by reason only of article 3(1)(a) of Council Directive 70/457/EEC, the component is not included on a National List and the seeds are not marketed under the names of the component.”; and
 - (v) in regulation 6(5), for the words “regulation 31 of the Seeds (National Lists of Varieties) Regulations 1982” there shall be substituted the words “regulation 5(1) above”.
- (4) In relation to fodder plant seeds—
- (a) in the Fodder Plant Seeds Regulations 1993—
- (i) in regulation 3(1), in the definition of “National List”, for the words “the Seeds (National Lists of Varieties) Regulations 1982” there shall be substituted the words “the Seeds (National Lists of Varieties) Regulations 2001”;
 - (ii) in regulation 5(1)(b) for the words “seeds of plant varieties which may, for the time being, be marketed in accordance with regulation 31 of the Seeds (National Lists of Varieties) Regulations 1982 and which are” there shall be substituted the

- words “seeds of a plant variety of a species specified in Part I of Schedule 1 to the Seeds (National Lists of Varieties) Regulations 2001 accepted on to a National List or the Common Catalogue and which are”;
- (iii) in regulation 5(3)(c) for the words “the Seeds (National Lists of Varieties) Regulations 1982” there shall be substituted the words “paragraph (1)(b) above”;
 - (iv) after paragraph (3) of regulation 5 there shall be added the following paragraph—
 - “(3A) Paragraph (1)(b) above shall not prevent the marketing of seeds of a variety intended for use solely as a component of a final variety where, by reason only of article 3(1)(a) of Council Directive 70/457/EEC, the component is not included on a National List and the seeds are not marketed under the names of the component.”; and
 - (v) in regulation 6(5), for the words “regulation 31 of the Seeds (National Lists of Varieties) Regulations 1982” there shall be substituted the words “regulation 5(1)(b) above”; and
- (b) in the Fodder Plant Seeds Regulations (Northern Ireland) 1994—
- (i) in regulation 3(1), in the definition of “National List”, for the words “the Seeds (National Lists of Varieties) Regulations 1982” there shall be substituted the words “the Seeds (National Lists of Varieties) Regulations 2001”;
 - (ii) in regulation 5(1)(b) for the words “seeds of plant varieties which may, for the time being, be marketed in accordance with regulation 31 of the Seeds (National Lists of Varieties) Regulations 1982 and which are” there shall be substituted the words “seeds of a plant variety of a species specified in Part I of Schedule 1 to the Seeds (National Lists of Varieties) Regulations 2001 accepted on to a National List or the Common Catalogue and which are”;
 - (iii) in regulation 5(3)(c) for the words “the Seeds (National Lists of Varieties) Regulations 1982” there shall be substituted the words “paragraph (1)(b) above”;
 - (iv) after paragraph (3) of regulation 5 there shall be added the following paragraph—
 - “(3A) Paragraph (1)(b) above shall not prevent the marketing of seeds of a variety intended for use solely as a component of a final variety where, by reason only of article 3(1)(a) of Council Directive 70/457/EEC, the component is not included on a National List and the seeds are not marketed under the names of the component.”; and
 - (v) in regulation 6(5), for the words “regulation 31 of the Seeds (National Lists of Varieties) Regulations 1982” there shall be substituted the words “regulation 5(1)(b) above”.
- (5) In relation to oil and fibre plant seeds—
- (a) in the Oil and Fibre Plant Seeds Regulations 1993—
 - (i) in regulation 3(1), in the definition of “National List”, for the words “the Seeds (National Lists of Varieties) Regulations 1982” there shall be substituted the words “the Seeds (National Lists of Varieties) Regulations 2001”;
 - (ii) in regulation 5(1)(b) for the words “seeds of plant varieties which may, for the time being, be marketed in accordance with regulation 31 of the Seeds (National Lists of Varieties) Regulations 1982 and which are” there shall be substituted the words “seeds of a plant variety of a species specified in Part I of Schedule 1 to the Seeds (National Lists of Varieties) Regulations 2001 accepted on to a National List or the Common Catalogue and which are”;
 - (iii) in regulation 5(3)(c) for the words “the Seeds (National Lists of Varieties) Regulations 1982” there shall be substituted the words “paragraph (1)(b) above”;
 - (iv) after paragraph (3) of regulation 5 there shall be added the following paragraph—
 - “(3A) Paragraph (1)(b) above shall not prevent the marketing of seeds of a variety intended for use solely as a component of a final variety where, by

- reason only of article 3(1)(a) of Council Directive 70/457/EEC, the component is not included on a National List and the seeds are not marketed under the names of the component.”; and
- (v) in regulation 6(5), for the words “regulation 31 of the Seeds (National Lists of Varieties) Regulations 1982” there shall be substituted the words “regulation 5(1)(b) above”; and
- (b) in the Oil and Fibre Plant Seeds Regulations (Northern Ireland) 1994—
- (i) in regulation 3(1), in the definition of “National List”, for the words “the Seeds (National Lists of Varieties) Regulations 1982” there shall be substituted the words “the Seeds (National Lists of Varieties) Regulations 2001”;
- (ii) in regulation 5(1)(b) for the words “seeds of plant varieties which may, for the time being, be marketed in accordance with regulation 31 of the Seeds (National Lists of Varieties) Regulations 1982 and which are” there shall be substituted the words “seeds of a plant variety of a species specified in Part 1 of Schedule 1 to the Seeds (National Lists of Varieties) Regulations 2001 accepted on to a National List or the Common Catalogue and which are”;
- (iii) in regulation 5(3)(c) for the words “the Seeds (National Lists of Varieties) Regulations 1982” there shall be substituted the words “paragraph (1)(b) above”;
- (iv) after paragraph (3) of regulation 5 there shall be added the following paragraph—
- “(3A) Paragraph (1)(b) above shall not prevent the marketing of seeds of a variety intended for use solely as a component of a final variety where, by reason only of article 3(1)(a) of Council Directive 70/457/EEC, the component is not included on a National List and the seeds are not marketed under the names of the component.”; and
- (v) in regulation 6(5), for the words “regulation 31 of the Seeds (National Lists of Varieties) Regulations 1982” there shall be substituted the words “regulation 5(1)(b) above”.
- (6) In relation to seed potatoes—
- (a) in paragraph 3(a) of Part 1 of Schedule 1 to the Seed Potatoes Regulations 1991, for the words “the Seeds (National Lists of Varieties) Regulations 1982” there shall be substituted the words “the Seeds (National Lists of Varieties) Regulations 2001”;
- (b) in paragraph 3(b) of Schedule 1 to the Seed Potatoes (Scotland) Regulations 2000, for the words “the Seeds (National Lists of Varieties) Regulations 1982” there shall be substituted the words “the Seeds (National Lists of Varieties) Regulations 2001”; and
- (c) in paragraph 2(a) of Schedule 1 to the Seed Potatoes Regulations (Northern Ireland) 2001, for the words “the Seeds (National Lists of Varieties) Regulations 1982” there shall be substituted the words “the Seeds (National Lists of Varieties) Regulations 2001”.
- (7) In relation to vegetable seeds—
- (a) in the Vegetable Seeds Regulations 1993—
- (i) in regulation 3(1), in the definition of “National List”, for the words “the Seeds (National Lists of Varieties) Regulations 1982” there shall be substituted the words “the Seeds (National Lists of Varieties) Regulations 2001”;
- (ii) in regulation 5(1) for the words “no person shall market any seeds unless they are seeds of plant varieties which may, for the time being, be marketed in accordance with regulation 31 of the Seeds (National Lists of Varieties) Regulations 1982, unless they are marketed in seed lots or parts of seed lots and unless they are” there shall be substituted the words “no person shall market any seeds of a plant variety of a species specified in Part I of Schedule 1 to the Seeds (National Lists of Varieties) Regulations 2001 unless the variety is accepted on to a National List or the Common Catalogue and no person shall market any seeds of a plant variety of a derogated species specified in paragraph 1 of Part II of Schedule 1 to those Regulations unless the variety is accepted on to the Common Catalogue; and no person shall market any seeds of a plant variety of a species specified in Part I of that Schedule or paragraph 1 of Part II of that Schedule unless the seeds are marketed in seed lots or parts of seed lots and unless they are”;

- (iii) in regulation 5(4)(c) for the words “the Seeds (National Lists of Varieties) Regulations 1982” there shall be substituted the words “paragraph (1) above”;
 - (iv) after paragraph (4) of regulation 5 there shall be added the following paragraph—
 - “(4A) Paragraph (1) above shall not prevent the marketing of seeds of a variety intended for use solely as a component of a final variety where, by reason only of article 3(1)(a) of Council Directive 70/457/EEC, the component is not included on a National List and the seeds are not marketed under the names of the component.”;
 - (v) in regulation 5(11) the words “regulation 32(1) and (2) of the Seeds (National Lists of Varieties) Regulations 1982, and” shall be deleted; and
 - (vi) in regulation 6(5), for the words “regulation 31 of the Seeds (National Lists of Varieties) Regulations 1982” there shall be substituted the words “regulation 5(1) above”; and
- (b) in the Vegetable Seeds Regulations (Northern Ireland) 1994—
- (i) in regulation 3(1), in the definition of “National List”, for the words “the Seeds (National Lists of Varieties) Regulations 1982” there shall be substituted the words “the Seeds (National Lists of Varieties) Regulations 2001”;
 - (ii) in regulation 5(1) for the words “a person shall not market any seeds unless they are seeds of plant varieties which may, for the time being, be marketed in accordance with regulation 31 of the Seeds (National Lists of Varieties) Regulations 1982 unless they are marketed in seed lots or parts of seed lots and unless they are” there shall be substituted the words “a person shall not market any seeds of a plant variety of a species specified in Part I of Schedule 1 to the Seeds (National Lists of Varieties) Regulations 2001 unless the variety is accepted on to a National List or the Common Catalogue and a person shall not market any seeds of a plant variety of a derogated species specified in paragraph 1 of Part II of Schedule 1 to those Regulations unless the variety is accepted on to the Common Catalogue; and a person shall not market any seeds of a plant variety of a species specified in Part I of that Schedule or paragraph 1 of Part II of that Schedule unless the seeds are marketed in seed lots or parts of seed lots and unless they are”;
 - (iii) in regulation 5(4)(c) for the words “the Seeds (National Lists of Varieties) Regulations 1982” there shall be substituted the words “paragraph (1) above”;
 - (iv) after paragraph (4) of regulation 5 there shall be added the following paragraph—
 - “(4A) Paragraph (1) above shall not prevent the marketing of seeds of a variety intended for use solely as a component of a final variety where, by reason only of article 3(1)(a) of Council Directive 70/457/EEC, the component is not included on a National List and the seeds are not marketed under the names of the component.”;
 - (v) in regulation 5(11) the words “regulation 32(1) and (2) of the Seeds (National Lists of Varieties) Regulations 1982, and” shall be deleted; and
 - (vi) in regulation 6(5), for the words “regulation 31 of the Seeds (National Lists of Varieties) Regulations 1982” there shall be substituted the words “regulation 5(1) above”.

26th October 2001 *Whitty*
Parliamentary Under-Secretary,
Department for Environment, Food and Rural Affairs

29th October 2001 *Helen Liddell*
Secretary of State for Scotland

Signed on behalf of the National Assembly for Wales

23rd October 2001 *D. Elis Thomas*
The Presiding Officer

VARIETIES OF PLANT SPECIES ON NATIONAL LISTS AND
DEROGATED SPECIES

PART I

Varieties of plant species on National Lists

Agricultural crop varieties

1. Plants conforming with the characteristics of cultivated plant varieties of the following species intended for agricultural production but not for ornamental use:

<i>Name</i>	<i>Common Name</i>
Cereals	
<i>Avena sativa</i> L.	Oats
<i>Hordeum vulgare</i> L.	Barley
<i>Secale cereale</i> L.	Rye
x <i>Triticosecale</i> Wittm.	Triticale
<i>Triticum aestivum</i> L. emend. Fiori et Paol.	Wheat
<i>Triticum durum</i> Desf.	Durum Wheat
<i>Triticum spelta</i> L.	Spelt wheat
<i>Zea Mays</i> L. (partim)	Maize (except popcorn and sweetcorn)
Potatoes	
<i>Solanum tuberosum</i> L., including any other tuber-forming species or hybrids of <i>Solanum</i>	Potatoes
Beet	
<i>Beta vulgaris</i> L.	Sugar beet, Fodder beet (including mangel)
Fodder plants	
(a) Grasses	
<i>Agrostis canina</i> L.	Velvet bent
<i>Agrostis gigantea</i> Roth	Red top
<i>Agrostis capillaris</i> L.	Brown top
<i>Agrostis stolonifera</i> L.	Creeping bent
<i>Arrhenatherum elatius</i> (L.) P. Beauv. ex J.S. et K.B. Presl	Tall oatgrass
<i>Bromus catharticus</i> Vahl.	Rescue grass
<i>Bromus stichensis</i> Trin.	Alaska brome-grass
<i>Dactylis glomerata</i> L.	Cocksfoot
<i>Festuca arundinacea</i> Schreber	Tall fescue
<i>Festuca ovina</i> L.	Sheep's fescue, Fine-leaved Sheep's fescue and Hard fescue
<i>Festuca pratensis</i> Hudson	Meadow fescue
<i>Festuca rubra</i> L.	Red fescue, Chewings fescue
<i>Festuca pratensis</i> Huds. x <i>Lolium multiflorum</i> Lam.	Festulolium
<i>Lolium multiflorum</i> Lam.	Italian and Westerwolds ryegrass
<i>Lolium perenne</i> L.	Perennial ryegrass
<i>Lolium x boucheanum</i> Kunth	Hybrid ryegrass
<i>Phleum bertolonii</i> DC.	Small Timothy
<i>Phleum pratense</i> L.	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
(b) Legumes	
<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> T. Martyn	Lucerne

<i>Name</i>	<i>Common Name</i>
<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) Other fodder plants	
<i>Brassica napus</i> L. var. <i>napobrassica</i> (L.) Rchb.	Swede
<i>Brassica oleracea</i> L. convar. <i>acephala</i> (DC.) Alef. var. <i>Medullosa</i> Thell. + var. <i>viridis</i> L.	Fodder kale
<i>Raphanus sativus</i> L. var. <i>oleiformis</i> Pers.	Fodder radish
Oleaginous and fibrous plants	
<i>Brassica juncea</i> (L.) Czernj. et Cosson	Brown mustard
<i>Brassica napus</i> (L.) (partim)	Swede rape (including fodder rape and oilseed rape)
<i>Brassica nigra</i> (L.) Koch	Black Mustard
<i>Brassica rapa</i> L. var. <i>silvestris</i> (Lam.) Briggs	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

Vegetable varieties

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

<i>Name</i>	<i>Common Name</i>
<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>vulgaris</i>	Spinach beet, Chard
<i>Beta vulgaris</i> L. var. <i>conditiva</i> Alef.	Beetroot or Red beet
<i>Brassica oleracea</i> L. convar. <i>acephala</i> (DC.) Alef. var. <i>gongylodes</i>	Kohlrabi
<i>Brassica oleracea</i> L. convar. <i>acephala</i> (DC.) Alef. var. <i>sabellica</i>	Curly kale
<i>Brassica oleracea</i> L. convar. <i>botrytis</i> (L.) Alef. var. <i>botrytis</i> L.	Cauliflower
<i>Brassica oleracea</i> L. convar. <i>botrytis</i> (L.) Alef. var. <i>cymosa</i> Duch.	Sprouting broccoli or calabrese
<i>Brassica oleracea</i> L. convar. <i>capitata</i> (L.) Alef. var. <i>alba</i> DC.	White cabbage
<i>Brassica oleracea</i> L. convar. <i>capitata</i> (L.) Alef. var. <i>rubra</i> DC.	Red cabbage
<i>Brassica oleracea</i> L. convar. <i>capitata</i> (L.) Alef. var. <i>sabauda</i> L.	Savoy cabbage
<i>Brassica oleracea</i> L. convar. <i>oleracea</i> var. <i>gemmifera</i> DC.	Brussels sprouts
<i>Brassica pekinensis</i> (Lour.) Rupr.	Chinese cabbage
<i>Brassica rapa</i> L. var. <i>rapa</i>	Turnip
<i>Cichorium endivia</i> L.	Endive
<i>Cucumis melo</i> L.	Melon
<i>Cucumis sativus</i> L.	Cucumber, Gherkin
<i>Cucurbita maxima</i> Duchesne	Gourd
<i>Cucurbita pepo</i> L.	Marrow
<i>Daucus carota</i> L.	Carrot
<i>Lactuca sativa</i> L.	Lettuce
<i>Lycopersicon lycopersicum</i> (L.) Karsten ex Farw.	Tomato

<i>Name</i>	<i>Common Name</i>
<i>Petroselinum crispum</i> (Miller) Nyman 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> L. (partim)	Broad bean

PART II

Derogated species

Derogation in respect of requirement to provide a national list

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

Agricultural crop species

<i>Name</i>	<i>Common Name</i>
None	

Vegetable species

<i>Name</i>	<i>Common Name</i>
<i>Asparagus officinalis</i> L.	Asparagus
<i>Cichorium intybus</i> L. (partim)	Witloof chicory
<i>Cichorium intybus</i> L. (partim)	Large leaved (Italian) chicory

Derogation in respect of requirement to provide a national list or restrict marketing

2. Other plants conforming with the characteristics of cultivated plant varieties of the following species intended for agricultural or horticultural production but not for ornamental use:

Agricultural crop species

<i>Name</i>	<i>Common Name</i>
<i>Alopecurus pratensis</i> L.	Meadow foxtail
<i>Arachis hypogaea</i> L.	Groundnut (peanut)
<i>Cannabis sativa</i> L.	Hemp
<i>Carthamus tinctorius</i> L.	Safflower
<i>Carum carvi</i> L.	Caraway
<i>Cynodon dactylon</i> (L.) Pers.	Bermuda grass
<i>Gossypium</i> spp.	Cotton
<i>Hedysarum coronarium</i> L.	Sulla
<i>Oryza sativa</i> L.	Rice
<i>Papaver somniferum</i> L.	Opium poppy
<i>Phacelia tanacetifolia</i> Benth.	California bluebell
<i>Phalaris aquatica</i> L.	Harding grass, Phalaris
<i>Phalaris canariensis</i> L.	Canary grass
<i>Poa palustris</i> L.	Swamp meadowgrass
<i>Sorghum bicolor</i> (L.) Moench	Sorghum
<i>Sorghum sudanense</i> (Piper) Stapf	Sudan grass
<i>Sorghum bicolor</i> (L.) Moench x <i>Sorghum sudanense</i> (Piper) Stapf	Hybrids resulting from the crossing of sorghum and Sudan grass
<i>Trisetum flavescens</i> (L.) P. Beauv.	Golden oatgrass
<i>Trifolium alexandrinum</i> L.	Berseem, Egyptian clover
<i>Trifolium incarnatum</i> L.	Crimson clover

<i>Name</i>	<i>Common Name</i>
<i>Trifolium resupinatum</i> L.	Persian clover
<i>Trigonella foenum-graecum</i> L.	Fenugreek

Vegetable species

<i>Name</i>	<i>Common Name</i>
<i>Anthriscus cerefolium</i> (L.) Hoffm.	Chervil
<i>Capsicum annuum</i> L.	Chilli pepper or Capsicum
<i>Cichorium intybus</i> L. (partim)	Industrial chicory
<i>Citrullus vulgaris</i> (<i>C. lanatus</i>)	Water melon
<i>Cynara cardunculus</i> L.	Cardoon
<i>Foeniculum vulgare</i> Mill	Fennel
<i>Scorzonera hispanica</i> L.	Scorzonera
<i>Solanum melongena</i> L.	Aubergine or egg plant
<i>Valerianella locusta</i> (L.) Betcke	Corn salad or lamb's lettuce

DISTINCTNESS, STABILITY, SUFFICIENT UNIFORMITY AND SATISFACTORY VALUE FOR CULTIVATION AND USE**PART I****Distinctness, stability and sufficient uniformity****Distinctness**

1.—(1) A plant variety shall be regarded as distinct if, whatever the origin, artificial or natural, of the initial variation from which it has resulted, it is clearly distinguishable in one or more important characteristics from any other variety known in the Community at the time when the application for acceptance of the variety is duly made.

(2) The characteristics of a variety must be capable of precise recognition and precise definition.

(3) Where a variety is known in the Community at the time when an application for acceptance of a variety is duly made, but is no longer known in the Community when that application is determined, for the purpose of determining distinctness as part of that application the variety no longer known in the Community shall be disregarded.

Stability

2. A variety shall be regarded as stable if, after successive propagation or multiplications, or, where the applicant has defined a particular cycle of propagations or multiplications, at the end of each cycle, it remains true to the description of its essential characteristics.

Sufficient uniformity

3. A plant variety shall be regarded as sufficiently uniform if, apart from a very few aberrations, the plants of which it is composed are, 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, considered by the National Authorities for the purpose of determining whether the variety is sufficiently uniform.

PART II**Satisfactory value for cultivation and use****Satisfactory value for cultivation and use**

1.—(1) The value of a variety for cultivation or use shall be regarded as satisfactory if compared to other varieties accepted in a National List its qualities taken as a whole offer, at least as far as production in any given region is concerned, a clear improvement either for cultivation or as regards the uses which can be made of the crops or the products derived from the crops.

(2) Where other superior characteristics are present individual inferior characteristics may be disregarded.

Satisfactory value for cultivation and use of component varieties of varietal associations

2.—(1) Where a variety is intended solely for use as a component of a varietal association the value of the variety for cultivation or use shall be regarded as satisfactory if compared to other varieties accepted in a National List the qualities of the varietal association taken as a whole offer, at least as far as production in any given region is concerned, a clear improvement either for cultivation or as regards the uses which can be made of the crops or the products derived from the crops resulting from the varietal association.

(2) Where other superior characteristics are present in the varietal association individual inferior characteristics in it may be disregarded.

PART III**Varieties National Authorities do not need to be satisfied are of satisfactory value for cultivation and use**

Part II of this Schedule does not apply to—

- (a) varieties of vegetables;
- (b) varieties of grasses not intended for the production of fodder plants if the applicant declares that the seed of the variety is not intended for the production of fodder plants;

- (c) any plant variety whose seed is to be marketed in another member State which has already accepted it on to a list corresponding to a National List, having regard to its value for cultivation and use; or
- (d) any variety intended for use only as a component of a final plant variety.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend to the whole of the United Kingdom, revoke and replace the Seeds (National Lists of Varieties) Regulations 1982, S.I. 1982/844 as amended. The Regulations give effect to Council Directives 70/457/EEC (OJ No. L225, 12.10.1970, p. 1) on the common catalogue of varieties of agricultural plant species and those elements of Council Directive 70/458/EEC (OJ No. L225, 12.10.1970, p. 7) on the marketing of vegetable seed which require member States to establish national lists of vegetable varieties. These directives were last amended by Council Directive 98/95/EC (OJ No. L25, 1.2.1999, p. 1) in respect of the consolidation of the internal market, genetically modified plant varieties and plant genetic resources and Council Directive 98/96/EC (OJ No. L25, 1.2.1999, p. 27) as regards naming of plant varieties. The amending directives also amended directives in respect of the marketing of seeds.

Certain requirements of Council Directive 98/95/EC have not been transposed in full in these Regulations where there is existing provision in the Environmental Protection Act 1990 (c. 43). Part VI of that Act makes general provision for preventing damage to the environment from the release of genetically modified organisms. Relevant provisions include carrying out environmental risk assessments for genetically modified plant varieties, imposition of conditions appropriate for their cultivation and prohibition of their use where their cultivation could be harmful.

Regulation 1 provides the title of the Regulations and the coming into force date of 1st December 2001. Regulation 2 defines expressions used in the Regulations and provides that expressions in the Regulations not so defined and which appear in Council Directives 70/457/EEC and 70/458/EEC have the same meaning in the Regulations as they have in those directives. Regulation 3 makes provision in relation to National Lists of plant varieties prepared and published in the Plant Varieties and Seeds Gazette.

Regulation 4 provides for applications in relation to national lists, regulation 5 provides for acceptance of plant varieties and regulation 6 makes provision for the naming of plant varieties. The National Authorities must be satisfied of the matters referred to in regulation 5(3) for acceptance on to National Lists of plant varieties of the species specified in Schedule 1. These include matters relating to genetically modified organisms; distinctness, stability and sufficient uniformity described in Part I of Schedule 2; and, in respect of the species of plant varieties other than the species described in Part III of Schedule 2, value for cultivation and use as described in Part II of Schedule 2.

Regulation 7 makes provision in relation to maintainers of plant varieties. Regulation 8 makes provision in relation to official measures and regulation 9 makes provision for arrangements for official measures. Regulation 10 makes provision for the charging of fees. National Authorities and persons with whom arrangements are made under regulation 9 may charge reasonable fees to cover the costs they reasonably incur in carrying out official measures. National Authorities may also charge persons concerned in matters connected with the Regulations reasonable fees to cover the costs the National Authorities reasonably incur in relation to the administration of official measures for the purposes of these Regulations; for example the administration and determination of applications for acceptance of plant varieties on to the National Lists.

Regulation 11 makes provision for marketing prohibition notices. Regulation 12 makes provision for maintenance of plant varieties accepted on to national lists. Regulation 13 provides that acceptance of plant varieties is initially for a period of 10 years and provides the conditions for renewal of acceptance. Regulation 14 provides for revocation of acceptance of plant varieties and maintainers of plant varieties and regulation 15 makes provision for records. Regulation 16 makes provision for representations and hearings in respect of proposed relevant decisions and regulation 17 makes provision for appeals against relevant decisions, except those in respect of naming of plant varieties.

Regulation 18 makes provision for obstruction and regulation 19 for offences and penalties. Regulation 20 makes provision for offences due to the fault of another person and the defence of due diligence, regulation 21 applies provisions of the Plant Varieties and Seeds Act 1964 and the Seeds Act (Northern Ireland) 1965 for the purposes of the Regulations, regulation 22 makes provision for enforcement and regulation 23 for service of notices etc. Regulation 24 revokes

the Seeds (National Lists of Varieties) Regulations 1982, and the provisions of the Seeds (National Lists of Varieties) (Fees) Regulations 1994 replaced by regulation 10 of these Regulations, with consequential amendments, savings and transitional provisions. Regulation 25 amends Seeds Marketing Regulations.

A regulatory impact assessment has been prepared for these Regulations and placed in the library of each House of Parliament. Copies of the assessment can be obtained from the Plant Variety Rights Office and Seeds Division of the Department for Environment, Food and Rural Affairs, White House Lane, Huntingdon Road, Cambridge CB3 0LF.



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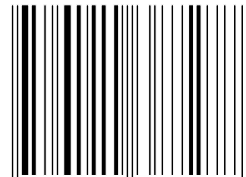
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