

S.I. No. 493/2000 — Plant Varieties (Farm Saved Seed) Regulations, 2000.



STATUTORY INSTRUMENTS.

S.I. No. 493 of 2000.

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I, JOE WALSH, Minister for Agriculture, Food and Rural Development, in exercise of the powers conferred on me by section 19(6) of the Plant Varieties (Proprietary Rights) (Amendment) Act 1998 (No. 41 of 1998) (as adapted by the Agriculture and Food (Alteration of Name of Department and Title of Minister) Order, 1999 (S.I. No. 307 of 1999)), hereby make the following regulations:

1. These Regulations may be cited as the Plant Varieties (Farm Saved Seed) Regulations, 2000.

2. In these Regulations—

“Act of 1998” means Plant Varieties (Proprietary Rights) (Amendment) Act, (No. 41 of 1998);

“farmer” means a person who uses a protected variety.

3. If the holder and the farmer do not reach agreement as regards remuneration for the purposes of section 19(4) of the Act of 1998, then the level of remuneration is, by virtue of these Regulations, fixed at 50 per cent of the sum charged for the licensed production of propagating material of the lowest category qualified for official certification of the same variety in the State.

4. A farmer or the service that he or she engages, may process the farm saved seed for planting and may move the farm saved seed from the farm for the purposes of such processing provided that:

- (a) the identity of the farm saved seed is not lost, and
- (b) if the farmer engages a service which is approved by the Minister.

5. If an order has been made pursuant to section 19(2) of the Act of 1998 in relation to a plant variety, the Controller of Plant Breeders' rights, the farmer, the holder and the processor shall provide information in respect of that plant variety in accordance with the Schedule to these Regulations.

6. A farmer who contravenes these regulations shall be deemed to have infringed Plant Breeders' rights pursuant to section 21 of the Act of 1998.

Schedule

Information by the farmer

1. The farmer shall, on request of the holder, be required to provide a statement of relevant information to the holder. The following items shall be considered to be relevant:

- (a) the name of the farmer, the place of his domicile and the address of his holding,
- (b) the fact whether the farmer has made use of the product of the harvest belonging to one or more varieties of the holder for planting in the field or fields of his holding,
- (c) if the farmer has made such use, the amount of the product of the harvest belonging to the variety or varieties concerned,
- (d) under the same condition, the name and address of the person or persons who have supplied a service of processing the relevant product of the harvest for him for planting,
- (e) whether he has already used the variety concerned without payment of a remuneration, and if so, since when.

2. The information under paragraph 1 (b), (c), (d), and (e) shall refer to the current marketing year and to one or more of the three preceeding marketing years for which the farmer had not previously provided relevant information on request made by the holder in accordance with the provisions of paragraphs 3 or 4.

However, the first marketing year to which the information refers, shall not be earlier

than the one in which the first of such requests for information was made in respect of the variety or varieties and the farmer concerned.

3. In his request, the holder shall specify his name and address, the variety or varieties in respect of which he is interested in information, as well as the reference or references to the relevant Plant Breeders, right or rights. If required by the farmer, the request shall be made in writing, and evidence for holdership shall be provided. Without prejudice to the provisions of paragraph 4, the request shall be made directly to the farmer concerned.

4. A request which has not been made directly to the farmer concerned, shall be acceptable to the Minister, if it is sent to farmers through the following bodies or persons, with their prior agreement respectively:

- organisations of farmers or co-operatives, concerning all farmers who are members of such organisation or cooperative, or,
- processors, concerning all farmers to whom they have supplied a service of processing the relevant product of the harvest for planting, in the current marketing year and in the three preceding marketing years, starting in the marketing year as specified in paragraph 2,
- suppliers of licensed propagating material of varieties of the holder, concerning all farmers to whom they have supplied such propagating material in the current marketing year and in the three preceding marketing years, starting in the marketing year as specified in paragraph 2.

5. The organizations, co-operatives, processors or suppliers shall be authorised by the farmers concerned to forward the required information to the holder.

Information by the processor

1. The details of the relevant information to be provided by the processor to the holder are—

- (a) the name of the processor, the place of his domicile and the name and address registered for his business;
- (b) the fact whether the processor has supplied a service of processing the product of the harvest belonging to one or more varieties of the holder for planting, where the variety or varieties were declared or otherwise known to the processor;
- (c) if the processor has supplied such service, the amount of the product of the harvest belonging to the variety or varieties concerned, which has been processed for planting, by the processor, and the total amount resulting from the processing;
- (d) the dates and places of the processing referred to in (c); and

(e) the name and address of the person or persons to whom he has supplied the service of processing referred to in (c), and the respective amounts.

2. The information under paragraph 1(b), (c), (d) and (e) shall refer to the current marketing year and to one or more of the three preceding marketing years for which the farmer had not previously provided relevant information on request made by the holder in accordance with the provisions of paragraphs 3 or 4.

However, the first marketing year to which the information refers, shall not be earlier than the one in which the first of such requests for information was made in respect of the variety or varieties and the farmer concerned.

3. In his request, the holder shall specify his name and address, the variety or varieties in respect of which he is interested in information as well as the reference or references to the relevant Plant Breeders' right or rights. If required by the processor, the request shall be made in writing, and evidence for holdership shall be provided. Without prejudice to the provisions of paragraph 4, the request shall be made directly to the processor concerned.

4. A request which has not been made directly to the processor concerned, shall be acceptable to the Minister if it is sent to processors through the following bodies or persons, with their prior agreement respectively:

- organisations of processors which are established at national, regional or local level, concerning all processors who are members of, or represented in, such organisation,
- farmers, concerning all processors who have supplied a service of processing the relevant product of the harvest to them for planting, in the current marketing year and in the three preceding marketing years, starting in the marketing year as specified in paragraph 2.

5. The organisations or farmers shall be authorised by the processors concerned to forward the required information to the holder.

Information by the holder

1. The details of the information to be provided by the holder to the farmer, on request of the farmer from whom the holder has claimed the payment of remuneration are:

- the amount charged for the licensed production of propagating material of the lowest category qualified for official certification, of the same variety in the area in which the holding of the farmer is located, or,
- if no licensed production of propagating material of the variety concerned has taken place in the area in which the holding of the farmer is located, and if there is no uniform level of the aforesaid amount throughout the Community, the amount

which is normally included, for the above purpose, in the price at which propagating material of the lowest category qualified for official certification, of that variety is sold in that area, as well as the aforesaid amount charged in the area in which that propagating material has been produced.

Information by an Official body

1. In this Schedule “Official body” means any or all of the following—

(a) the Minister for Agriculture, Food and Rural Development,

(b) the Controller of Plant Breeders' Rights,

(c) the Central Statistics Office,

(d) Teagasc, and

(e) the Plant Variety Development Office Limited.

2. A request for information on the actual use of material, by planting, of specific species or varieties, or on the results of such use, which a holder addresses to an Official body, must be made in writing. In this request, the holder shall specify his name and address, the variety or varieties in respect of which he is interested in information and the type of information he seeks. He also shall provide evidence for his holdership.

3. The Official body, may withhold the requested information if—

(a) that Official body is not involved in monitoring agricultural production,

(b) that Official body is prevented, either by the Laws of the European Communities or any enactment or rule of law, from providing such information,

(c) the requested information is not available or is no longer available,

(d) such information cannot be obtained through the ordinary performance of the tasks of the Official body,

(e) such information can only be obtained with additional burden or costs, or,

(f) such information relates specifically to material which does not belong to varieties of the holder.

4. In providing the information, the official body shall not differentiate between

holders. The official body may provide the requested information in making copies available to the holder, which have been produced from documents containing information additional to that relating to material belonging to varieties of the holder, provided that it is ensured that any possibility to identify individuals has been removed.

5. If the official body takes the decision to withhold the requested information, it shall inform the requesting holder thereof in writing and indicate the reason for this decision.



GIVEN under my Official Seal, this 15th day of December, 2000.

JOE WALSH,

Minister for Agriculture, Food and Rural Development.

EXPLANATORY NOTE.

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

The purpose of this Regulation is to enable breeders of plant varieties to collect royalties on the varieties they have bred and developed and which are used for farm saved seed. Until now, there has been no provision for the collection of royalty payments on farm saved seed.

Under this Regulation, farmers retaining a portion of their harvest for re-sowing may be required to pay the holder of a Plant Breeders' Right a royalty fee.

Small farmers (as described in council Regulation (EC) 2100/94 concerning Community Plant Variety Rights) are exempt from the payment of royalties.

The plant species covered by these Regulations are Cereals, Fodder plants, Oil and Fibre plants (excluding Flax) and Potatoes.