



GUERNSEY STATUTORY INSTRUMENT

2015 No. 80

**The Registered Patents and Biotechnological Inventions
(Derogation from Patent Protection in Respect of
Biotechnological Inventions) (Bailiwick of Guernsey)
Regulations, 2015**

Made

22nd October, 2015

Coming into operation

23rd October, 2015

Laid before the States

, 2015

THE COMMERCE AND EMPLOYMENT DEPARTMENT, in exercise of the powers conferred on it by sections 37(5) and 64 of the Registered Patents and Biotechnological Inventions (Bailiwick of Guernsey) Ordinance, 2009^a and all other powers enabling it in that behalf, hereby makes the following Regulations:-

Specified species.

1. Section 37(3)(i) of the Ordinance applies only to varieties of the following plant species and groups –

^a Ordinance No. I of 2009; as amended by Order in Council No. XIV of 2012; G.S.I. No. 4 of 2012.

<i>Name</i>	<i>Common Name</i>
Fodder plants	
<i>Cicer arietinum</i> L	Chickpea milkvetch
<i>Lupinus luteus</i> L	Yellow lupin
<i>Medicago sativa</i> L	Lucerne
<i>Pisum sativum</i> L (partim)	Field pea
<i>Trifolium alexandrinum</i> L	Berseem/Egyptian clover
<i>Trifolium resupinatum</i> L	Persian clover
<i>Vicia faba</i>	Field bean
<i>Vicia sativa</i> L	Common vetch
Cereals	
<i>Avena sativa</i>	Oats
<i>Hordeum vulgare</i> L	Barley
<i>Oryza sativa</i> L	Rice
<i>Phalaris canariensis</i> L	Canary grass
<i>Secale cereale</i> L	Rye
<i>X 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
Potatoes	
<i>Solanum tuberosum</i>	Potatoes
Oil and fibre plants	
<i>Brassica napus</i> L (partim)	Swede rape
<i>Brassica rapa</i> L (partim)	Turnip rape
<i>Linum usitatissimum</i>	Linseed with the exclusion of flax

Liability to pay equitable remuneration.

2. (1) If a farmer's use of protected material is authorised by section 37(3)(i), the farmer shall, at the time of the use, become liable to pay the relevant proprietor equitable remuneration.

(2) That remuneration must be sensibly lower than the amount charged for the production of protected material of the same variety in the same area with the proprietor's authority.

(3) Remuneration is to be taken to be sensibly lower if it would be taken to be sensibly lower within the meaning of Article 14(3) fourth indent of the Council Regulation.

Exemption for small farmers.

3. (1) Regulation 2 does not apply to a farmer who is considered to be a small farmer for the purposes of Article 14(3) third indent of the Council Regulation.

(2) It is for a farmer who claims to be a small farmer to prove it.

Information to be supplied by farmer.

4. (1) At the request of a relevant proprietor ("H"), a farmer must tell H –

(a) the farmer's name and address,

(b) whether the farmer has performed a relevant activity,
and

- (c) if the farmer has performed such an activity, the address of the holding on which it was performed.
- (2) If the farmer has performed such an activity, the farmer must tell H whether –
 - (a) the farmer is liable to pay remuneration as a result of regulation 2, or
 - (b) the farmer is not so liable as a result of regulation 3.
- (3) If the farmer has told H that the farmer is liable to pay remuneration as a result of regulation 2, the farmer must tell H –
 - (a) the amount of the protected material used,
 - (b) whether the protected material has been processed for planting, and
 - (c) if it has, the name and address of the person who processed it.
- (4) The farmer must comply with paragraphs (2) and (3) when complying with paragraph (1).
- (5) If the farmer has told H that the farmer is liable to pay remuneration as a result of regulation 2, the farmer must (if asked to do so by H) tell H –
 - (a) whether the farmer used any protected material with

the authority of H within the same seed year, and

- (b) if so, the amount used and the name and address of the person who supplied it.

Information to be supplied by seed processor.

5. (1) On the request of a relevant proprietor, a seed processor shall supply the following information –

- (a) the name and address of the seed processor,
- (b) the address of the seed processor's principal place of business, and
- (c) whether the seed processor has processed seed of a species specified in regulation 1 above.

(2) If the seed processor has processed seed of a species specified in regulation 1, the seed processor shall also supply the following information with the information referred to in paragraph (1) –

- (a) the name and address of the person for whom the processing was carried out,
- (b) the amount of seed resulting from the processing,
- (c) the date processing commenced,
- (d) the date processing was complete,

- (e) the place where processing was carried out.

Information to be supplied by relevant proprietor.

6. On the request of a farmer or a seed processor a relevant proprietor shall supply the following information –

- (a) the name and address of the relevant proprietor, and
- (b) the amount of royalty charged for certified seed of the lowest certification category for seed containing that protected material.

Period in respect of which inquiry may be made.

7. A request may be made under regulations 4, 5 and 6 in respect of the current seed year and the three preceding seed years.

Restriction on movement for processing from the holding.

8. No person shall remove or cause to be removed from a holding protected material in order to process it unless that person –

- (a) has the permission of the relevant proprietor in respect of that protected material,
- (b) has taken measures to ensure that the same protected material is returned from processing as is sent for processing and the processor has undertaken to that person that the processor has taken measures to ensure that the same protected material is returned from processing as is sent for processing, or

- (c) has the protected material processed by a seed processor on the list of processors referred to in the gazette as being permitted to process seed away from a holding.

Confidentiality.

9. (1) A person who obtains information pursuant to these Regulations shall owe an obligation of confidence in respect of the information to the person who supplied it.

(2) Paragraph (1) shall not have effect to restrict disclosure of information –

- (a) for the purposes of, or in connection with, establishing the amount to be paid to the proprietor of rights pursuant to regulation 2 and obtaining payment of that amount,
- (b) for the purposes of, or in connection with, establishing whether a patent has been infringed, or
- (c) for the purposes of, or in connection with, any proceedings for the infringement of a patent.

Formalities.

10. (1) A request for information under these Regulations, and any information given in response to such a request, must be in writing.

(2) Information requested under these Regulations must be given-

- (a) within 28 days, or
- (b) if the request specifies a longer period, within the specified period.

Remedies.

11. (1) If, in response to a request under these Regulations, a person-

- (a) knowingly fails to provide information which that person is required by these Regulations to give, or
- (b) refuses to provide any such information,

the Court may order that person to provide it.

(2) Paragraph (1) does not affect any of the Court's other powers to make orders.

(3) A person who knowingly provides false information in response to a request under these Regulations is liable in damages to the person who made the request.

(4) In any action for damages under paragraph (3) the Court must have regard, in particular, to –

- (a) how flagrant the defendant was in providing the false information, and
- (b) any benefit which accrued to the defendant as a result

of providing false information,

and shall award such additional damages as the justice of the case may require.

Interpretation.

12. (1) In these Regulations, unless the context requires otherwise –

"**Council Regulation**" means Council Regulation (EC) No. 2100/94 of 27th July 1994 on Community plant variety rights,

"**farmer's own holding**" means any land which a farmer actually exploits for plant growing, whether as the farmer's property or otherwise managed under the farmer's own responsibility and on the farmer's own account,

"**the gazette**" means the gazette published under section 34 of the Plant Variety and Seeds Act 1964^b,

"**the Ordinance**" means the Registered Patents and Biotechnological Inventions (Bailiwick of Guernsey) Ordinance, 2009,

"**protected material**" means plant propagating material which incorporates material subject to a patent,

"**relevant activity**" means the use by a farmer of the product of the farmer's harvest for propagation or multiplication on the farmer's own holding, where the product of the harvest constitutes or contains protected material,

^b An Act of Parliament (1964 c. 14)

"**relevant proprietor**" means the proprietor of a patent to which protected material is subject,

"**seed**" includes seed potatoes,

"**seed year**" means the period from 1st July in one year to 30th June in the following year, both dates inclusive,

and other expressions have the same meanings as in the Intellectual Property (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004^c and in the Ordinance.

(2) The Interpretation (Guernsey) Law, 1948^d applies to the interpretation of these Regulations.

(3) Any reference in these Regulations to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

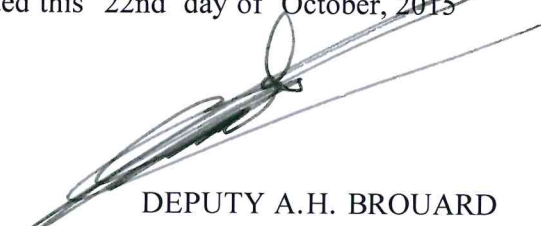
Citation and commencement.

7. These Regulations may be cited as the Registered Patents and Biotechnological Inventions (Derogation from Patent Protection in Respect of Biotechnological Inventions) (Bailiwick of Guernsey) Regulations, 2015 and shall come into force on the 23rd October, 2015.

^c Order in Council No. XIV of 2004; as amended by Ordinance No. XXXIII of 2003 and No. XX of 2015.

^d Ordres en Conseil Vol. XIII, p. 355.

Dated this 22nd day of October, 2015



DEPUTY A.H. BROUARD
Deputy Minister of the States Commerce and Employment
Department
For and on behalf of the Department

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 37(3)(i) of the 2009 Ordinance provides that an act which would otherwise constitute an infringement does not do so if (inter alia) it is the use by a farmer of the product of his harvest for propagation or multiplication by him on his own holding, where there has been a sale of plant propagating material to the farmer by the proprietor of the patent or with his consent for agricultural use. These Regulations make provisions restricting the circumstances in which that paragraph applies and make provisions which apply where an act would constitute an infringement of a patent but for section 37(1)(i).

These Regulations come into force on the 23rd day of October, 2015.

