

Island of



Guernsey

Ordinance of the States

IV
2007

Made28th March, 2007

Coming into Operation28th March, 2007

The Registered Plant Breeders' Rights (Bailiwick of Guernsey) Ordinance, 2007

**The Registered Plant Breeders' Rights
(Bailiwick of Guernsey) Ordinance, 2007**

ARRANGEMENT OF SECTIONS

PART I

PLANT BREEDERS' RIGHTS & REGISTER OF PLANT BREEDERS' RIGHTS

1. Plant breeders' rights.
2. Register of Plant Breeders' Rights.
3. Evidence of entries in Register.

PART II

REGISTRATION

4. Entitlement to registration.
5. Applications for registration.
6. Registration of plant breeders' rights in Register.
7. Certificate and date of registration.
8. Revocation or suspension of registration.
9. Registration of assignments etc.
10. Notice of Registrar's decision to refuse registration, etc.

PART III

MODIFICATION & CORRECTION BY REGISTRAR

11. Modification of registration.
12. Power to correct clerical errors.

PART IV

APPEALS AND RECTIFICATION

13. Right of appeal to Royal Court.
14. Rectification of Register by order of Royal Court.

PART V

RIGHTS ETC. OF PROPRIETOR OF PLANT BREEDERS' RIGHTS

15. Rights given by registration in respect of protected varieties.
16. Rights given by registration in respect of dependent varieties.
17. General exceptions to rights.
18. Exceptions for farm saved seed.

19. Exhaustion of rights.
20. Duration and nature of rights.
21. Remedies for infringement.
22. Presumptions in proceedings related to harvested material.
23. Presumptions in proceedings related to products made from harvested material.
24. Disclosure of information obtained under section 22 or 23.
25. Maintenance of protected variety.
26. Compulsory licences.
27. Duty to use registered name.
28. Improper use of registered name.
29. Assignments, etc.

PART VI
CROWN OR STATES USE OF PLANT BREEDERS' RIGHTS

30. Crown or States use of plant breeders' rights.
31. Settlement of terms for Crown or States use.
32. Rights of third parties in case of Crown or States use.
33. Crown or States use: compensation for loss of profit.
34. Special provisions for Crown or States use during emergency.
35. References of disputes relating to Crown or States use.

PART VII
OFFENCES

36. False representations as to rights.
37. Falsification of Register, etc.
38. Offences committed by bodies corporate and partnerships, etc.

PART VIII
GENERAL PROVISIONS

39. Reference collections of plant material.
40. Inspection of plant material.
41. Information as to existence of plant breeders' rights.
42. Interpretation.
43. General provisions as to subordinate legislation.
44. Saving for forfeited goods.
45. Territorial waters.
46. Guernsey ships.
47. Citation.
48. Extent.

49. Commencement.

Schedule - Qualifying variety.

The Registered Plant Breeders' Rights (Bailiwick of Guernsey) Ordinance, 2007

THE STATES, in pursuance of their Resolution of the 27th November, 2002^a, and in exercise of the powers conferred on them by sections 1 and 3 of the Intellectual Property (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004^b, sections 1 and 4 of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994^c, and all other powers enabling them in that behalf, hereby order:-

PART I

PLANT BREEDERS' RIGHTS & REGISTER OF PLANT BREEDERS' RIGHTS

Plant breeders' rights.

1. "Plant breeders' rights" are property rights which, upon registration under this Ordinance, subsist in varieties of all plant genera and species in accordance with this Ordinance.

Register of Plant Breeders' Rights.

2. (1) The Registrar of Intellectual Property ("**the Registrar**") shall establish and maintain a register to be called the Register of Plant Breeder's Rights in which, subject to the provisions of this Ordinance, persons may be registered as the proprietors of plant breeders' rights.

(2) The Register of Plant Breeders' Rights need not be kept in

^a Article XIX of Billet d'État No. XXIII of 2002.

^b Order in Council No. XIV of 2004.

^c Order in Council No. III of 1994.

documentary form.

- (3) The Register of Plant Breeders' Rights shall contain -
- (a) the names and addresses of persons registered in it as the proprietors of plant breeders' rights,
 - (b) the date on which persons were so registered,
 - (c) the name of the variety in relation to which the plant breeders' rights subsist,
 - (d) notices of assignments and transmissions of plant breeders' rights,
 - (e) details of any limitations subject to which plant breeders' rights are registered in it, and
 - (f) such other matters as may be prescribed, or as the Registrar may think fit.

(4) Subject to such circumstances as may be prescribed, in which the Registrar may impose a prohibition or restriction on the publication or communication of information appearing on, or relating to, any entry on the Register of Plant Breeders' Rights -

- (a) the Register of Plant Breeders' Rights shall be open for public inspection, and
- (b) the Registrar shall, on payment of the appropriate fee,

supply copies and extracts (certified or uncertified) of any entry in it.

(5) No notice of any trust, whether express, implied or constructive, shall be entered in the Register of Plant Breeders' Rights, and the Registrar is not affected by any such notice.

Evidence of entries in Register.

3. (1) The Register of Plant Breeders' Rights is prima facie evidence of anything required or authorised to be entered in it.

(2) A copy or extract of an entry in the Register of Plant Breeders' Rights supplied under section 2(4)(b) and purporting to be a certified copy or extract is admissible in evidence without further proof and without production of the original.

PART II
REGISTRATION

Entitlement to registration.

4. (1) Only the overseas registered proprietor of overseas plant breeders' rights may be registered as the proprietor of plant breeders' rights in the Register of Plant Breeders' Rights, and in this Ordinance -

(a) "**overseas plant breeders' rights**" means plant breeders' rights granted, or registered, in a designated country in accordance with the laws relating to the grant, or registration, of plant breeders' rights in force there,

- (b) the "**oversea registered proprietor**" of oversea plant breeders' rights means the person registered in a designated country as the registered proprietor of those rights in accordance with the laws described in paragraph (a), and
- (c) a "**designated country**" means a country designated for the purposes of this Ordinance by regulations of the Department.

(2) Regulations of the Department under this section may also designate, for the purposes of this Ordinance, any office which is responsible, elsewhere than in the Bailiwick, for the grant, or registration, of plant breeders' rights; and references in this Ordinance (however expressed) -

- (a) to a designated country, include references to an office which is so designated,
- (b) to the grant or registration, or being registered or granted, in a designated country, include references to the grant or registration, or being registered or granted, by such an office in accordance with the laws relating to the grant, or registration, of plant breeders' rights which govern that office, and
- (c) to the laws relating to the grant, or registration, of plant breeders' rights in force in a designated country, include references to the laws relating to the grant, or registration, of plant breeders' rights which govern that office,

and the provisions of this Ordinance shall be construed accordingly with such modifications as may be necessary.

Applications for registration.

5. (1) A person wishing to be registered as the proprietor of plant breeders' rights in the Register of Plant Breeders' Rights shall apply in that behalf to the Registrar.

(2) An application for registration shall be made in such form and manner as the Registrar may determine and shall be accompanied by -

- (a) such information and documents as the Registrar may reasonably require for the purpose of determining the application,
- (b) the appropriate fee,
- (c) a specimen of plant material representing the variety to which the application relates, and
- (d) anything else prescribed by regulations of the Department under this subsection.

(3) On receipt of an application for registration and at any time thereafter the Registrar may by notice in writing require the applicant to provide such additional information, documents and specimens as the Registrar may reasonably require for the purpose of determining the application.

(4) Any information, document or specimen to be provided to the

Registrar under this section shall be in such form, and authenticated in such manner, as the Registrar may require.

(5) The Registrar's requirements under subsections (2), (3) and (4) may differ as between different applications.

(6) An application for registration may be withdrawn by notice in writing to the Registrar at any time before it is determined.

(7) The Registrar -

(a) shall refuse an application for registration which is not accompanied by the appropriate fee, and

(b) may refuse an application for registration which is otherwise not made in accordance with the provisions of this Ordinance.

Registration of plant breeders' rights in Register.

6. (1) The Registrar shall, on receipt of an application under section 5 from a person wishing to be registered as the proprietor of plant breeders' rights in the Register of Plant Breeders' Rights, grant the application if, and only if, he is satisfied that -

(a) the plant breeders' rights are overseas plant breeders' rights,

(b) the applicant is the overseas registered proprietor of those rights, and

- (c) the variety, to which the application relates, is a qualifying variety in accordance with the schedule to this Ordinance.

(2) The registration shall include the entry on the Register of Plant Breeders' Rights of any limitation which attaches to the rights in the designated country concerned and which has been made under the laws relating to plant breeders' rights in force in that country.

(3) Where the Registrar decides -

- (a) to refuse an application for registration in the Register of Plant Breeders' Rights, or
- (b) otherwise than with the consent of the applicant, to include an entry in the registration of a limitation,

he shall serve notice in writing of the decision on the applicant in accordance with the provisions of section 10.

Certificate and date of registration.

7. (1) The Registrar shall, on registration of a person as the proprietor of plant breeders' rights in the Register of Plant Breeders' Rights, issue a certificate of registration.

(2) The Registrar may -

- (a) if satisfied that the certificate of registration has been lost or destroyed, and in any other case in which he thinks it expedient, and

(b) on payment of the appropriate fee,

furnish copies of the certificate.

(3) The registration of a person as the proprietor of plant breeders' rights in the Register of Plant Breeders' Rights has effect on and from the date of registration.

Revocation or suspension of registration.

8. (1) The Registrar shall revoke or suspend the registration of a person as the proprietor of plant breeders' rights in the Register of Plant Breeders' Rights -

(a) if, subject to the provisions of subsections (2) and (3), it appears to the Registrar that -

(i) the grant, or registration, of the rights in the designated country concerned has been declared to be invalid or null and void, cancelled, or suspended under the laws relating to the grant, or registration, of plant breeders' rights in force there, or

(ii) the oversea plant breeders' rights have expired in that country by reason of a failure to extend the duration of the rights under those laws,

(b) if it appears to the Registrar that, otherwise than as mentioned in paragraph (a) -

- (i) the rights are not, or are no longer, overseas plant breeders' rights, or
 - (ii) the person is not, or is no longer, the overseas registered proprietor of those rights, or
- (c) if that person applies to the Registrar for his registration to be revoked or suspended (and the provisions of section 5 apply to an application under this paragraph as they apply to an application for registration).

(2) If in the designated country concerned an appeal is instituted against -

- (a) a declaration that the grant, or registration, of plant breeders' rights is invalid or null and void,
- (b) the cancellation of the grant, or registration, of plant breeders' rights, or
- (c) the suspension of the grant, or registration, of plant breeders' rights,

the Registrar shall not under subsection (1)(a)(i) revoke or suspend the registration of a person as the proprietor of those rights before the appeal is finally determined.

(3) If, in the designated country concerned, an application is made under the laws relating to the grant, or registration, of plant breeders' rights in force

there for -

- (a) the extension of oversea plant breeders' rights, or
- (b) an order for the restoration of oversea plant breeders' rights,

the Registrar shall not under subsection (1)(a)(ii) revoke or suspend the registration of a person as the proprietor of those rights unless and until the application is refused (and, if proceedings are instituted against the refusal, before the proceedings are finally disposed of).

(4) A decision of the Registrar to revoke or suspend a registration, other than on the application of the person registered as proprietor, shall not have effect until the end of the period within which, under section 13, an appeal can be brought against the revocation or suspension or, if an appeal is brought within that period, and unless the Royal Court orders otherwise, until the appeal is finally disposed of.

(5) Where the Registrar decides, other than on the application of the person registered as proprietor, to revoke or suspend a registration, the Registrar shall serve notice in writing of the decision on that person in accordance with the provisions of section 10.

(6) A registration which is revoked shall be treated as being invalid ab initio or from such later date as the Registrar may direct.

(7) For the duration of any suspension under this section, the person who is the proprietor of the plant breeders' rights concerned shall not enjoy the rights under sections 15 and 16.

(8) The Registrar shall terminate a suspension under this section if it appears to the Registrar that the suspension of the rights in the designated country concerned has been terminated under the laws relating to the grant, or registration, of plant breeders' rights in force there.

Registration of assignments, etc.

9. (1) Where a person becomes entitled -

- (a) to plant breeders' rights registered in the Register of Plant Breeders' Rights or to a share in such rights by assignment, transmission or operation of law, or
- (b) to any other interest in such rights as mortgagee, licensee or otherwise,

he may apply to the Registrar for registration in the Register of Plant Breeders' Rights of -

- (i) his title as proprietor or co-proprietor or, as the case may be, or
- (ii) notice of his interest.

(2) The provisions of section 5 apply to an application under subsection (1) as they apply to an application for registration.

(3) An application under subsection (1) for registration of the title or interest of a person becoming entitled to plant breeders' rights, or a share or other interest in such rights, by or by virtue of an assignment, mortgage, licence or

other instrument, may be made by the assignor, mortgagor, licensor or other party to that instrument, as the case may be.

(4) Where an application is made under subsection (1) for registration of the title or interest of any person, the Registrar shall -

(a) where the applicant has become entitled to the rights or a share therein by assignment, transmission or operation of law, and if the Registrar is satisfied that that person's title is registered in respect of the rights in the designated country concerned under the laws relating to the grant, or registration, of plant breeders rights in force there -

(i) register him in the Register of Plant Breeders' Rights as proprietor or co-proprietor of the rights, and

(ii) enter in the Register particulars of the instrument or event by which he derives title, or

(b) in any other case, enter in the Register -

(i) notice of his entitlement or interest, and

(ii) particulars of the instrument or event by which he derives title or, as the case may be, by which the interest is created.

(5) Except for the purposes of an application for rectification of

the Register of Plant Breeders' Rights under section 12, a document in respect of which no entry is made in the Register of Plant Breeders' Rights under subsection (4) shall not be admitted in any court as evidence of the title of any person to plant breeders' rights registered in the Register of Plant Breeders' Rights, or to any share or other interest in such rights, unless the court directs otherwise.

(6) Where the Registrar decides, other than on the application of the person registered as proprietor in the Register of Plant Breeders' Rights, to enter any right, title or interest in the Register of Plant Breeders' Rights under this section, the Registrar shall serve notice in writing of the decision on that person in accordance with the provisions of section 10.

Notice of Registrar's decision to refuse registration, etc.

10. Notice of a decision of the Registrar -

- (a) to refuse an application for registration in the Register of Plant Breeders' Rights,
- (b) other than with the consent of the applicant, to include an entry in a registration of a limitation, or
- (c) other than on the application of the person registered as proprietor in the Register of Plant Breeders' Rights -
 - (i) to revoke, suspend or modify a registration, or
 - (ii) to enter any right, title or interest in the Register under section 9,

shall state the grounds of the Registrar's decision and give particulars of the right of

appeal conferred by section 13.

PART III
MODIFICATION & CORRECTION BY REGISTRAR

Modification of registration.

11. (1) The Registrar may, on the application of a person registered as the proprietor of plant breeders' rights in the Register of Plant Breeders' Rights or of his own motion, modify the registration in order to replicate -

- (a) the grant, or registration, of the rights in the designated country concerned, or
- (b) any modification, correction or rectification made to the grant, or registration, of the rights in that country,

under the laws relating to the grant, or registration, of plant breeders' rights in force there.

(2) The provisions of section 5 apply to an application under this section as they apply to an application for registration.

(3) Unless the Registrar directs otherwise, a modification of a registration made under this section has effect on and from the date of the original grant, or registration.

(4) The modifications of a registration which may be made under this section include (without prejudice to the generality of the Registrar's powers) the entry on the Register of Plant Breeders' Rights of a limitation in order to replicate any limitation which attaches to the grant, or registration, of the rights in

the designated country concerned and which has been made under the laws relating to the grant, or registration, of plant breeders' rights in force in that country.

(5) Where the Registrar decides, other than on the application of the person registered as proprietor, to modify a registration, the Registrar shall serve notice in writing of the decision on that person in accordance with the provisions of section 10.

Power to correct clerical errors.

12. (1) The Registrar may correct any error in the Register of Plant Breeders' Rights or in an application for registration.

(2) A correction may be made under this section -

(a) on a request in writing, and on payment of the appropriate fee, by the person registered as proprietor or by the applicant for registration (as the case may be), or

(b) of the Registrar's own motion.

(3) Where the Registrar proposes to make a correction otherwise than on a request under subsection (2), he shall -

(a) give notice of the proposal to the person registered as proprietor or to the applicant for registration (as the case may be), and

(b) give them an opportunity to be heard before making the correction.

PART IV
APPEALS AND RECTIFICATION

Right of appeal to Royal Court.

13. (1) If the Registrar decides -
- (a) to refuse an application for registration in the Register of Plant Breeders' Rights,
 - (b) other than with the consent of the applicant, to include an entry in a registration of a limitation, or
 - (c) other than on the application of the person registered as proprietor -
 - (i) to revoke, suspend or modify a registration, or
 - (ii) to enter any right, title or interest in the Register of Plant Breeders' Rights,

then the applicant for registration or, as the case may be, the person registered as proprietor may appeal against the decision to the Royal Court; and, for the purposes of this Ordinance -

- (A) "**the Royal Court**" means the Royal Court sitting as an Ordinary Court,
- (B) the Royal Court is constituted by the Bailiff sitting unaccompanied by the Jurats,

(C) the Royal Court may appoint one or more assessors to assist it in the determination of the proceedings or any matter relevant thereto, and

(D) the Royal Court has, in relation to functions conferred on it by this Ordinance, jurisdiction throughout the Bailiwick.

(2) The grounds of an appeal under this section are that the Registrar's decision was ultra vires, unreasonable in law or wrong.

(3) An appeal under this section shall be instituted -

(a) within a period of 28 days immediately following the date of the notice of the Registrar's decision, and

(b) by summons served on the Registrar stating the grounds and material facts on which the appellant relies.

(4) The Registrar may, where an appeal under this section has been instituted, apply to the Royal Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution; and on hearing the application the Royal Court may -

(a) dismiss the appeal or dismiss the Registrar's application (in either case on such terms and conditions as the Royal Court may direct), or

- (b) make such other order as the Royal Court considers just,

and the provisions of this subsection are without prejudice to the inherent powers of the Royal Court or to the provisions of rule 36(2) of the Royal Court Civil Rules, 1989^d.

- (5) On an appeal under this section the Royal Court may -

- (a) set the decision of the Registrar aside and, if the Royal Court considers it appropriate to do so, remit the matter to him with such directions as the Royal Court thinks fit, or

- (b) confirm the decision of the Registrar, in whole or in part.

(6) An appeal from a decision of the Royal Court made on an appeal under this section lies, with leave of the Royal Court or Court of Appeal, to the Court of Appeal on a question of law.

(7) Section 21 of the Court of Appeal (Guernsey) Law, 1961^e ("powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under subsection (6) as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

- (8) This section does not confer a right of appeal on a question

^d O.R.C. No. VII of 1989.

^e Ordres en Conseil Vol. XVIII, p. 315.

which has been determined by the Royal Court on an application by the Registrar for directions, or for a determination of a question of fact, law or procedure, under section 6 of the Intellectual Property (Office of Registrar) (Bailiwick of Guernsey) Ordinance, 2005^f.

Rectification of Register by order of Royal Court.

14. (1) The Royal Court may, subject to subsection (3), on the application of any person aggrieved, order the Registrar to rectify the Register of Plant Breeders' Rights by making, revoking, suspending or modifying any entry therein in accordance with the provisions of section 6, 8, 9 or 11.

(2) In proceedings under this section the Royal Court may determine any question which it is necessary or expedient to decide in connection with the rectification of the Register of Plant Breeders' Rights.

(3) A copy of an application for an order under this section shall be served on the Registrar not less than 7 days (or such other period as the Royal Court may, in its absolute discretion, direct) before the day of the hearing, and the Registrar is entitled to appear and be heard on the application and shall appear if so ordered by the Royal Court.

(4) A copy of an order of the Royal Court under this section shall be served on the Registrar who shall, on receipt thereof, rectify the Register of Plant Breeders' Rights accordingly.

(5) A rectification of the Register of Plant Breeders' Rights under this section has effect as follows -

^f Ordinance No. XXIX of 2005.

- (a) an entry made has effect on and from the date on which it should have been made,
- (b) an entry modified has effect as if originally made in its modified form,
- (c) an entry revoked shall be deemed never to have had effect, and
- (d) an entry suspended shall be suspended from the date of the order of the Royal Court under this section,

unless the Royal Court directs otherwise in any particular case.

(6) The orders which may be made by the Royal Court under this section include (without prejudice to the generality of the Royal Court's powers) an order for the entry on the Register of Plant Breeders' Rights of a limitation in order to replicate any limitation which attaches to the grant, or registration, of the rights in the designated country concerned and which has been made under the laws relating to the grant, or registration, of plant breeders' rights in force in that country.

PART V

RIGHTS ETC., OF PROPRIETOR OF PLANT BREEDERS' RIGHTS

Rights given by registration in respect of protected varieties.

15. (1) Subject to subsection (6), the registration of a person as the proprietor of plant breeders' rights in the Register of Plant Breeders' Rights entitles

him to prevent anyone doing any of the following acts as respects the propagating material of the protected variety without his authority, namely -

- (a) production or reproduction (multiplication),
- (b) conditioning for the purpose of propagation,
- (c) offering for sale,
- (d) selling or other marketing,
- (e) exporting,
- (f) importing,
- (g) stocking for any of the purposes mentioned in paragraphs (a) to (f), and
- (h) any other act prescribed for the purposes of this provision.

(2) The person who is registered as the proprietor of plant breeders' rights in the Register of Plant Breeders' Rights may give authority for the purposes of subsection (1) with or without conditions.

(3) The rights conferred on a person, who is registered as the proprietor of plant breeders' rights by subsections (1) and (2), shall also apply as respects harvested material obtained through the unauthorised use of propagating material of the protected variety, unless he has had a reasonable opportunity before

the harvested material is obtained to exercise his rights in relation to the unauthorised use of the propagating material.

(4) In the case of a variety of a prescribed description, the rights conferred on a person who is registered as the proprietor of plant breeders' rights by subsections (1) and (2), shall also apply as respects any product which -

(a) is made directly from harvested material in relation to which subsection (3) applies, and

(b) is of a prescribed description,

unless subsection (5) applies.

(5) This subsection applies if, before the product was made, any act mentioned in subsection (1) was done as respects the harvested material from which the product was made and either -

(a) the act was done with the authority of the person who is registered as the proprietor of the plant breeders' rights in the Register of Plant Breeders' Rights, or

(b) the person who is registered as the proprietor of the plant breeders' rights had a reasonable opportunity to exercise them in relation to the doing of the act.

(6) The right conferred by subsection (1) is subject to any limitation attaching to the registration in question.

(7) In this section references to "**harvested material**" include entire plants and parts of plants.

Rights given by registration in respect of dependent varieties.

16. (1) A person who is registered as the proprietor of plant breeders' rights in the Register of Plant Breeders' Rights shall have, in relation to any variety which is dependent on the protected variety, the same rights as he has under section 15 in relation to the protected variety.

(2) For the purposes of this section, one variety is dependent on another if -

- (a) its nature is such that repeated production of the variety is not possible without repeated use of the other variety, or
- (b) it is essentially derived from the other variety and the other variety is not itself essentially derived from a third variety.

(3) For the purposes of subsection (2), a variety shall be deemed to be essentially derived from another variety ("**the initial variety**") if -

- (a) it is predominantly derived from -
 - (i) the initial variety, or
 - (ii) a variety that is itself predominantly derived from the initial variety,

while retaining the expression of the essential characteristics resulting from the genotype or combination of genotypes of the initial variety,

- (b) it is clearly distinguishable from the initial variety by one or more characteristics which are capable of a precise description, and
- (c) except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics the genotype or combination of genotypes of the initial variety.

(4) For the purposes of subsection (3), derivation may, for example, be by -

- (a) the selection of -
 - (i) a natural or induced mutant,
 - (ii) a somaclonal variant, or
 - (iii) a variant individual from plants of the initial variety,
- (b) backcrossing,
- (c) transformation by genetic engineering.

(5) Subsection (1) shall not apply where the existence of the dependent variety was common knowledge immediately before the coming into force of this Ordinance.

General exceptions to rights.

17. The rights of a person who is registered as the proprietor of plant breeders' rights in the Register of Plant Breeders' Rights shall not extend to any act done -

- (a) for private and non-commercial purposes,
- (b) for experimental purposes, or
- (c) for the purpose of breeding another variety.

Exceptions for farm saved seed.

18. (1) Subject to subsection (2), the rights of a person who is registered as the proprietor of plant breeders' rights in the Register of Plant Breeders' Rights shall not extend to the use by a farmer for propagating purposes in the field, on his own holding, of the product of the harvest which he has obtained by planting on his own holding propagating material of -

- (a) the protected variety, or
- (b) a variety which is essentially derived from the protected variety.

(2) Subsection (1) only applies if the material is of a variety which is of a species or group prescribed for the purposes of this subsection.

(3) If a farmer's use of material is excepted from the rights of a person who is registered as the proprietor of plant breeders' rights in the Register of Plant Breeders' Rights by subsection (1), he shall, at the time of the use, become liable to pay the proprietor of the rights equitable remuneration, which shall be sensibly lower than the amount charged for the production of propagating material of the same variety in the same area with the proprietor's authority.

(4) Subsection (3) shall not apply to a farmer who is a small farmer.

(5) Subsection (3) shall not apply if -

(a) before the day on which this Part of this Ordinance comes into force, the farmer has, in relation to the variety concerned, engaged in use of the kind to which subsection (1) applies, and

(b) no remuneration was payable in respect of that use.

(6) The Department may by order provide that, on such date as may be specified in the order, subsection (5) shall cease to have effect in relation to a variety so specified, or varieties of a species or group so specified.

(7) The Department may by regulations -

(a) make provision enabling -

(i) persons who are registered as proprietors of plant breeders' rights in the Register of Plant

Breeders' Rights to require farmers or seed processors, and

- (ii) farmers or seed processors to require persons who are registered as proprietors of plant breeders' rights in the Register of Plant Breeders' Rights,

to supply such information as may be prescribed, being information the supply of which the Department considers necessary for the purposes of this section,

- (b) make provision restricting the circumstances in which the product of a harvest of a variety which is subject to plant breeders' rights may be moved, for the purpose of being processed for planting, from the holding on which it was obtained, and
- (c) make provision for the purpose of enabling the Department to monitor the operation of any provision of this section or regulations under this section.

(8) Regulations under subsection (7)(a) may include provision imposing obligations of confidence in relation to information supplied by virtue of the regulations.

(9) Sections 16(3) and (4) shall apply for the purposes of subsection (1)(b) as they apply for the purposes of section 16(2).

(10) For the purposes of subsection (3), remuneration shall 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.

(11) In this section, references to a farmer's own holding are to any land which he actually exploits for plant growing, whether as his property or otherwise managed under his own responsibility and on his own account.

(12) The Department may by order amend this section as it thinks fit for the purpose of securing that it corresponds with the provisions for the time being of the law relating to Community plant variety rights about farm saved seed.

(13) For the purposes of this section -

"in the field" includes in a glasshouse, and

"small farmer" means such class, or description, of farmer as may be prescribed.

Exhaustion of rights.

19. (1) The rights of a person who is registered as the proprietor of plant breeders' rights in the Register of Plant Breeders' Rights shall not extend to any act concerning material of a variety if the material -

- (a) has been sold or otherwise marketed in the Bailiwick by, or with the consent of, the proprietor of the rights, or
- (b) is derived from material which has been so sold or otherwise marketed.

- (2) Subsection (1) shall not apply where the act involves -
- (a) further propagation of the variety, or
 - (b) the export of material which enables propagation of the variety to a non-qualifying country, otherwise than for the purposes of final consumption.

(3) For the purposes of subsection (2)(b), a "**non-qualifying country**" is one which does not provide for the protection of varieties of the genus or species to which the variety belongs.

- (4) In this section, "**material**", in relation to a variety, means -
- (a) any kind of propagating material of the variety,
 - (b) harvested material of the variety, including entire plants and parts of plants, and
 - (c) any product made directly from material falling within paragraph (b).

Duration and nature of rights.

20. (1) The rights of a person registered as the proprietor of plant breeders' rights in the Register of Plant Breeders' Rights subsist as long as the registration subsists.

(2) The rights in plant breeders' rights registered in the Register of Plant Breeders' Rights are personal or movable property.

(3) The rights in plant breeders' rights registered in the Register of Plant Breeders' Rights are transferable by assignment, testamentary disposition or operation of law as personal or movable property.

Remedies for infringement.

21. (1) The person who is registered as the proprietor of plant breeders' rights in the Register of Plant Breeders' Rights may commence proceedings in the Royal Court for any infringement of those rights.

(2) In any proceedings for the infringement of plant breeders' rights which are registered in the Register of Plant Breeders' Rights, all such relief by way of damages, injunction, account or otherwise shall be available as is available in any corresponding proceedings in respect of infringements of other proprietary rights.

Presumptions in proceedings related to harvested material.

22. (1) This section applies to any proceedings for the infringement of plant breeders' rights which are registered in the Register of Plant Breeders' Rights, as respects harvested material.

(2) If, in any proceedings to which this section applies, the proprietor of the plant breeders' rights proves, in relation to any of the material to which the proceedings relate -

(a) that it has been the subject of an information notice given to the defendant by or on behalf of the proprietor, and

(b) that the defendant has not, within the prescribed time

after the service of the notice, supplied the proprietor with the information about it requested in the notice,

then, as regards the material in relation to which the proprietor proves that to be the case, the presumptions mentioned in subsection (3) shall apply, unless the contrary is proved or the defendant shows that he had a reasonable excuse for not supplying the information.

(3) The presumptions are -

- (a) that the material was obtained through unauthorised use of the propagating material, and
- (b) that the proprietor did not have a reasonable opportunity before the material was obtained to exercise his rights in relation to the unauthorised use of the propagating material.

(4) The reference in subsection (2) to an information notice is to a notice which -

- (a) is in the prescribed form,
- (b) specifies the material to which it relates,
- (c) contains, in relation to that material, a request for the supply of the prescribed information, but no other, information, and
- (d) contains such other particulars as may be prescribed.

Presumptions in proceedings related to products made from harvested material.

23. (1) This section applies to any proceedings for the infringement of plant breeders' rights which are registered in the Register of Plant Breeders' Rights, as respects any product made directly from harvested material.

(2) If, in any proceedings to which this section applies, the proprietor of the plant breeders' rights proves, in relation to any product to which the proceedings relate -

- (a) that it has been the subject of an information notice given to the defendant by or on behalf of the proprietor, and
- (b) that the defendant has not, within the prescribed time after the service of the notice, supplied the proprietor with the information about it requested in the notice,

then, as regards the product in relation to which the proprietor proves that to be the case, the presumptions mentioned in subsection (3) below shall apply, unless the contrary is proved or the defendant shows that he had a reasonable excuse for not supplying the information.

(3) The presumptions are -

- (a) that the harvested material from which the product was made was obtained through unauthorised use of propagating material,
- (b) that the proprietor did not have a reasonable

opportunity before the harvested material was obtained to exercise his rights in relation to the unauthorised use of the propagating material, and

- (c) that no relevant act was done, before the product was made, as respects the harvested material from which it was made.

(4) An act is relevant for the purposes of subsection (3)(c) if it is mentioned in section 15(1) and is -

- (a) done with the authority of the proprietor, or
- (b) one in relation to the doing of which he has a reasonable opportunity to exercise his rights.

(5) The reference in subsection (2) to an information notice is to a notice which -

- (a) is in the prescribed form,
- (b) specifies the product to which it relates,
- (c) contains, in relation to that product, a request for the supply of the prescribed information, but no other, information, and
- (d) contains such other particulars as may be prescribed.

Disclosure of information obtained under section 22 or 23.

24. (1) If a person who is registered as the proprietor of plant breeders' rights in the Register of Plant Breeders' Rights obtains information pursuant to a notice given for the purposes of section 22 or 23, he shall owe an obligation of confidence in respect of the information to the person who supplied it.

(2) Subsection (1) shall not have effect to restrict disclosure of information -

(a) for the purposes of, or in connection with, establishing whether plant breeders' rights registered in the Register of Plant Breeders' Rights have been infringed, or

(b) for the purposes of, or in connection with, any proceedings for the infringement of plant breeders' rights so registered.

Maintenance of protected variety.

25. (1) The person who is registered as the proprietor of any plant breeders' rights in the Register of Plant Breeders' Rights shall ensure that, throughout the period for which the registration of the rights has effect, he is in a position to produce to the Registrar propagating material which is capable of producing the protected variety.

(2) The person who is registered as the proprietor of any plant breeders' rights in the Register of Plant Breeders' Rights shall give to the Registrar, within such time as he may specify, all such information and facilities as he may request for the purpose of satisfying himself that the proprietor is fulfilling his duty under subsection (1) above.

(3) The facilities to be given under subsection (2) above include facilities for the inspection by or on behalf of the Registrar of the measures taken for the preservation of the protected variety.

Compulsory licences.

26. (1) Subject to subsection (2) and (3) below, if the Royal Court is satisfied on application that the person who is registered as the proprietor of any plant breeders' rights in the Register of Plant Breeders' Rights -

- (a) has unreasonably refused to grant a licence to the applicant, or
- (b) has imposed or put forward unreasonable terms in granting, or offering to grant, a licence to the applicant,

it may grant to the applicant in the form of a licence under this section any such rights as might have been granted by the proprietor.

(2) The Royal Court shall not grant an application for a licence under this section unless it is satisfied -

- (a) that it is necessary to do so for the purpose of securing that the variety to which the application relates-
 - (i) is available to the public at reasonable prices,
 - (ii) is widely distributed, or

(iii) is maintained in quality,

(b) that the applicant is financially and otherwise in a position to exploit in a competent and businesslike manner the rights to be conferred on him, and

(c) that the applicant intends so to exploit those rights.

(3) A licence under this section shall not be an exclusive licence.

(4) A licence under this section shall be on such terms as the Royal Court thinks fit and, in particular, may include -

(a) terms as to the remuneration payable to the proprietor of the plant breeders' rights, and

(b) terms obliging the proprietor of the plant breeders' rights to make propagating material available to the holder of the licence.

(5) In deciding on what terms to grant an application for a licence under this section, the Royal Court shall have regard to the desirability of securing -

(a) that the variety to which the application relates -

(i) is available to the public at reasonable prices,

(ii) is widely distributed, and

(iii) is maintained in quality, and

(b) that there is reasonable remuneration for the proprietor of the plant breeders' rights to which the application relates.

(6) An application for a licence under this section may be granted whether or not the proprietor of the plant breeders' rights to which the application relates has granted licences to the applicant or any other person.

(7) If and so far as any agreement purports to bind any person not to apply for a licence under this section, it shall be void.

(8) If -

(a) a licence under this section is granted as respects a variety of a species or group in relation to which a period is specified for the purposes of this provision by regulations made by the Department, and

(b) the grant takes place before a period of that length has passed since the date of grant of the application for registration of plant breeders' rights to which the licence relates in the Register of Plant Breeders' Rights,

the licence shall not have effect until a period of that length has passed since that date.

(9) The Royal Court may, at any time, on the application of any person, extend, limit or in any other respect vary a licence under this section, or

revoke it.

Duty to use registered name.

27. (1) Where a name is registered on the Register of Plant Breeders' Rights in respect of a variety, a person may not use any other name in selling, offering for sale or otherwise marketing propagating material therefrom.

(2) Subsection (1) shall have effect in relation to any variety from the date on which an application under section 5 is granted in respect of that variety and shall continue to apply after the period for which the grant has effect.

(3) Subsection (1) shall not preclude the use of any trade mark or trade name (whether registered under the Trade Marks (Bailiwick of Guernsey) Ordinance, 2006^g or not) if -

(a) that mark or name and the registered name are juxtaposed, and

(b) the registered name is easily recognisable.

(4) A person who contravenes subsection (1) above shall be liable on summary conviction to a fine not exceeding level 3 on the uniform scale.

(5) In any proceedings for an offence under subsection (4), it shall be a defence to prove that the accused took all reasonable precautions against committing the offence and had not at the time of the offence any reason to suspect that he was committing an offence.

^g Ordinance No. I of 2006.

Improper use of registered name.

28. (1) If any person uses the registered name of a protected variety in offering for sale, selling or otherwise marketing material of a different variety within the same class, the use of the name shall be a wrong actionable in proceedings by the proprietor of the plant breeders' rights.

(2) Subsection (1) shall also apply to the use of a name so nearly resembling the registered name as to be likely to deceive or cause confusion.

(3) In any proceedings under this section, it shall be a defence to a claim for damages to prove that the defendant took all reasonable precautions against committing the wrong and had not, when using the name, any reason to suspect that it was wrongful.

(4) In this section "class" means any prescribed class.

Assignments, etc.

29. Subject to any rights vested in any other person of which notice is entered in the Register of Plant Breeders' Rights, the person registered as proprietor of plant breeders' rights in the Register of Plant Breeders' Rights may -

- (a) assign, grant licences under or otherwise deal with the rights, and
- (b) give effectual receipts for any consideration for any such assignment, licence or dealing.

PART VI

CROWN OR STATES USE OF PLANT BREEDERS' RIGHTS

Crown or States use of plant breeders' rights.

30. (1) The States or any department thereof, any government department of the United Kingdom and any person authorised in writing by any department of the States or any such government department may, without the licence of the person registered as proprietor of plant breeders' rights in the Register of Plant Breeders' Rights and without infringing the plant breeder's rights -

- (a) do anything for the purpose of supplying products for the services of the Crown or the States, or
- (b) dispose of products no longer required for the services of the Crown or the States.

(2) In this section "**the States**" includes the States of Guernsey, the States of Alderney and the Chief Pleas of Sark.

(3) References in this Ordinance to "**the services of the Crown or the States**" are to -

- (a) the defence of the British Islands,
- (b) foreign defence purposes, and
- (c) health service purposes.

(4) The reference to the supply of products for "**foreign defence purposes**" is to their supply for -

- (a) the defence of a country outside the British Islands in

pursuance of an agreement or arrangement to which the government of that country and Her Majesty's Government in the United Kingdom are parties, or

(b) use by armed forces operating in pursuance of a resolution of the United Nations or one of its organs.

(5) The reference to the supply of products for "**health service purposes**" are to their supply for the purpose of providing medical, pharmaceutical, physiotherapy and other services in respect of which benefit is for the time being provided under the Health Service (Benefit) (Guernsey) Law, 1990^h.

(6) In this Ordinance -

"**Crown or States use**", in relation to plant breeders' rights registered in the Register of Plant Breeders' Rights, means the doing of anything by virtue of this section which would otherwise be an infringement of those rights, and

"**the department concerned**", in relation to that use, means the department of the States, or the government department of the United Kingdom, by whom or on whose authority the act was done.

(7) The authority of a department of the States, or a government department of the United Kingdom, in respect of Crown or States use of plant breeders' rights registered in the Register of Plant Breeders' Rights may be given to a person either before or after the use and whether or not he is authorised, directly

^h Ordres en Conseil Vol. XXXII, p. 192.

or indirectly, by the proprietor of the rights to do anything in relation to the rights.

(8) A person acquiring anything sold in the exercise of powers conferred by this section, and any person claiming under him, may deal with it in the same manner as if the plant breeders' right were held on behalf of the Crown or (as the case may be) the States.

Settlement of terms for Crown or States use.

31. (1) Where Crown or States use is made of plant breeders' rights registered in the Register of Plant Breeders' Rights, the department concerned shall

-

(a) notify the proprietor of the rights as soon as practicable, and

(b) give him such information as to the extent of the use as he may from time to time require,

unless it appears to the department that it would be contrary to the public interest to do so or the identity of the proprietor cannot be ascertained on reasonable inquiry.

(2) Crown or States use of plant breeders' rights registered in the Register of Plant Breeders' Rights shall be on such terms as, either before or after the use, may be agreed between the department concerned and the proprietor of the rights or, in default of agreement, determined by the Royal Court.

(3) Where the identity of the proprietor of plant breeders' rights registered in the Register of Plant Breeders' Rights cannot be ascertained on reasonable inquiry, the department concerned may apply to the Royal Court which may order that no royalty or other sum shall be payable in respect of Crown or

States use of the rights until the owner agrees terms with the department concerned or refers the matter to the Royal Court for determination.

Rights of third parties in case of Crown or States use.

32. (1) The provisions of any licence, assignment or agreement made between the proprietor of plant breeders' rights registered in the Register of Plant Breeders' Rights (or anyone deriving title from him or from whom he derives title) and any person other than a department of the States or a government department of the United Kingdom are of no effect in relation to Crown or States use of any plant breeders' rights registered in the Register of Plant Breeders' Rights, or any act incidental to Crown or States use, so far as they -

- (a) restrict or regulate anything done in relation to the rights, the use of any protected variety or the use of any variety which is dependent on a protected variety, or
- (b) provide for the making of payments in respect of, or calculated by reference to, that use,

and the doing of any of the acts as respects the propagating material of the protected variety described in section 15(1), shall be deemed not to be an infringement of the rights.

(2) Where an exclusive licence is in force in respect of plant breeders' rights registered in the Register of Plant Breeders' Rights -

- (a) if the licence was granted for royalties -
 - (i) any agreement between the proprietor of the

rights and a department of the States or government department of the United Kingdom under section 31 ("Settlement of terms for Crown or States use") requires the consent of the licensee, and

(ii) the licensee is entitled to recover from the proprietor such part of the payment for Crown or States use as may be agreed between them or, in default of agreement, determined by the Royal Court,

(b) if the licence was granted otherwise than for royalties -

(i) section 31 applies in relation to anything done which but for section 30 ("Crown or States use of plant breeders' rights") and subsection (1) would be an infringement of the rights of the licensee with the substitution for references to the proprietor of the rights of references to the licensee, and

(ii) section 31 does not apply in relation to anything done by the licensee by virtue of an authority given under section 30.

(3) Where plant breeders' rights registered in the Register of Plant Breeders' Rights have been assigned to the proprietor of those rights in consideration of royalties -

- (a) section 31 applies in relation to Crown or States use of the rights as if the references to the proprietor included the assignor, and any payment for Crown or States use shall be divided between them in such proportion as may be agreed or, in default of agreement, determined by the Royal Court, and
- (b) section 31 applies in relation to any act incidental to Crown or States use as it applies in relation to Crown or States use of the rights.

(4) In this section -

"act incidental to Crown or States use" means anything done for the services of the Crown or the States to the order of a department of the States or a government department of the United Kingdom by the proprietor in respect of plant breeders' rights registered in the Register of Plant Breeders' Rights,

"payment for Crown or States use" means the amount payable by the department concerned by virtue of section 31, and

"royalties" includes any benefit determined by reference to the use of the rights.

Crown or States use: compensation for loss of profit.

33. (1) Where Crown or States use is made of plant breeders' rights registered in the Register of Plant Breeders' Rights, the department concerned shall pay -

- (a) to the proprietor of the rights, or
- (b) if there is an exclusive licence in force in respect of the rights, to the exclusive licensee,

compensation for any loss resulting from his not being awarded a contract to supply the products on the basis of the exercise by the proprietor or licensee of the rights.

(2) Compensation is payable only to the extent that any contract could have been fulfilled from the proprietor's, or licensee's, as the case may be, existing manufacturing capacity, but is payable notwithstanding the existence of circumstances rendering him ineligible for the award of such a contract.

(3) In determining the loss, regard shall be had to the profit which would have been made on such a contract and to the extent to which any manufacturing capacity was under-used.

(4) No compensation is payable in respect of any failure to secure contracts for the supply of products made in exercise of plant breeders' rights registered in the Register of Plant Breeders' Rights otherwise than for the services of the Crown or the States.

(5) The amount payable shall, if not agreed between the proprietor or licensee and the department concerned, be determined by the Royal Court on a reference under section 35, and is in addition to any amount payable under section 31 or 32.

Special provisions for Crown or States use during emergency.

34. (1) During a period of emergency the powers exercisable in relation to plant breeders' rights registered in the Register of Plant Breeders' Rights

by virtue of section 30 ("Crown or States use of plant breeders' rights") include power to do any act which would otherwise be an infringement of the rights for any purpose which appears to the department concerned necessary or expedient -

- (a) for the efficient prosecution of any war in which Her Majesty may be engaged,
- (b) for the maintenance of supplies and services essential to the life of the community,
- (c) for securing a sufficiency of supplies and services essential to the well-being of the community,
- (d) for promoting the productivity of industry, commerce, agriculture and fisheries,
- (e) for fostering and directing exports and reducing imports, or imports of any classes, from all or any countries and for redressing the balance of trade,
- (f) generally for ensuring that the whole resources of the community are available for use, and are used, in a manner best calculated to serve the interests of the community, or
- (g) for assisting the relief of suffering and the restoration and distribution of essential supplies and services in any country outside the Bailiwick which is in grave distress as the result of war.

(2) References in this Ordinance to the services of the Crown or the States include, as respects a period of emergency, those purposes, and references to "**Crown or States use**" include any act which would apart from this section be an infringement of plant breeders' rights registered in the Register of Plant Breeders' Rights.

(3) In this section "**period of emergency**" means a period during which an order made by the Emergency Powers Authority under the Emergency Powers (Bailiwick of Guernsey) Law, 1965ⁱ declaring a state of emergency to exist remains in force.

References of disputes relating to Crown or States use.

35. (1) A dispute as to any matter which falls to be determined by the Royal Court in default of agreement under -

- (a) section 31 ("Settlement of terms for Crown or States use"),
- (b) section 32 ("Rights of third parties in cases of Crown or States use"), or
- (c) section 33 ("Crown or States use: compensation for loss of profit"),

may be referred to the Royal Court by any party to the dispute.

ⁱ Ordres en Conseil Vol. XX, p. 6; amended by Vol. XXXI, p. 154; No. XIV of 2001; No. VII of 2005; and by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003).

(2) In determining a dispute between a department of the States or a government department of the United Kingdom and any person as to the terms for Crown and States use of plant breeders' rights registered in the Register of Plant Breeders' Rights, the Royal Court shall have regard to -

- (a) any sums which that person or a person from whom he derives title has received or is entitled to receive, directly or indirectly, from a department of the States or government department of the United Kingdom in respect of the use of the rights, and
- (b) whether that person or a person from whom he derives title has in the Royal Court's opinion without reasonable cause failed to comply with a request of the department of the States or government department of the United Kingdom for the use of the rights on reasonable terms.

(3) One of two or more co-proprietors of plant breeders' rights registered in the Register of Plant Breeders' Rights may, without the concurrence of the others, refer a dispute to the Royal Court under this section, but shall not do so unless the others are made parties, and none of those others is liable for any costs unless he takes part in the proceedings.

(4) Where the consent of an exclusive licensee is required by section 32(2)(a)(i) to the settlement by agreement of the terms for Crown or States use of plant breeders' rights registered in the Register of Plant Breeders' Rights, a determination by the Royal Court of the amount of any payment to be made for that use is of no effect unless the licensee has been notified of the reference and given an opportunity to be heard.

(5) On the reference of a dispute as to the amount recoverable as mentioned in section 32(2)(a)(ii) (right of exclusive licensee to recover part of amount payable to proprietor of plant breeders' rights registered in the Register of Plant Breeders' Rights) the Royal Court shall determine what is just having regard to any expenditure incurred by the licensee -

- (a) in developing the protected variety, or
- (b) in making payments to the proprietor in consideration of the licence (other than royalties or other payments determined by reference to the use of the rights).

PART VII OFFENCES

False representations as to rights.

36. (1) If, in relation to any variety, a person falsely represents that -

- (a) he is entitled to exercise plant breeders' rights which are registered in the Register of Plant Breeders' Rights, or
- (b) any rights derived from such rights,

and he knows that the representation is false, or makes it recklessly, he is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the uniform scale.

(2) It is immaterial for the purposes of subsection (1) whether or

not the variety to which the representation relates is the subject of plant breeders' rights which are registered in the Register of Plant Breeders' Rights.

(3) If a person, when the rights in plant breeders' rights registered in the Register of Plant Breeders' Rights have ceased to subsist, represents (expressly or by implication) that a variety is still subject to those rights, he is guilty of an offence and liable on summary conviction to a fine not exceeding level 1 on the uniform scale.

Falsification of Register, etc.

37. (1) If a person makes, or causes or permits to be made, a false entry in the Register of Plant Breeders' Rights, knowing or having reason to believe that it is false, he is guilty of an offence.

(2) If a person -

- (a) makes or causes or permits to be made anything falsely purporting to be a copy of or extract from an entry in the Register of Plant Breeders' Rights, or
- (b) produces or tenders or causes or permits to be produced or tendered in evidence any such thing,

knowing or having reason to believe that it is false, he is guilty of an offence.

(3) A person guilty of an offence under this section is liable -

- (a) on summary conviction, to imprisonment for a term not exceeding 3 months, or a fine not exceeding level 5 on the uniform scale, or both,

- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or both.

Offences committed by bodies corporate and partnerships, etc.

38. (1) Where an offence under this Ordinance is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies to a member in connection with his functions of management as if he were a director.

(3) Proceedings for an offence under this Ordinance alleged to have been committed by a partnership shall be brought against the partnership in the name of the firm and not in that of the partners, but without prejudice to any liability of the partners under subsection (5).

(4) A fine imposed on a partnership on its conviction in such proceedings shall be paid out of the partnership assets.

(5) Where an offence under this Ordinance is committed by a partnership and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any partner or any person purporting to act in that capacity, he as well as the partnership is guilty of the offence and may be proceeded against and punished accordingly.

PART VIII
GENERAL PROVISIONS

Reference collections of plant material.

39. (1) The Registrar may establish and maintain reference collections of plant material.

(2) For the avoidance of doubt, the Registrar may by means of grants of such amounts as he may determine defray or contribute towards the expenses incurred by any other person in maintaining any reference collection of plant material.

Inspection of plant material.

40. (1) Subject to the following provisions of this section, when plant breeders' rights are registered in the Register of Plant Breeders' Rights, any specimen of plant material provided to the Registrar under section 3(2)(c) shall, on and from the day of registration, be open to public inspection at the office of the Registrar (or such other place as the Registrar may determine).

(2) Where an application for the registration of plant breeders' rights in the Register of Plant Breeders' Rights is abandoned or refused, no specimen filed in support of the application shall be open to public inspection.

(3) Where it appears to the Registrar that any specimen provided to the Registrar under this Ordinance is one in respect of which, in the designated country concerned, public inspection is prohibited or restricted under the laws relating to the registration of plant breeders' rights in force there, the Registrar may impose an equivalent prohibition or restriction on the public inspection of that specimen.

Information as to existence of plant breeders' rights.

41. On the request of a person furnishing such information as may enable the Registrar to identify the plant breeders' rights, and on payment of the appropriate fee, the Registrar shall -

- (a) inform him whether the rights are registered in the Register of Plant Breeders' Rights, and
- (b) state the date of registration and the name and address of the person registered as proprietor in the Register of Plant Breeders' Rights.

Interpretation.

42. (1) In this Ordinance, unless the context requires otherwise, the following words and expressions shall be construed in accordance with this subsection or the other provisions of this Ordinance referred to against them in this subsection -

"**appropriate fee**" means the fee determined by the Registrar after consultation with the Department,

"**Bailiff**" means the Bailiff, Deputy Bailiff, Lieutenant-Bailiff and Juge Délégué,

"**Bailiwick**" means the Bailiwick of Guernsey, including the territorial waters adjacent thereto,

"**certified**", in relation to a copy or extract of an entry in the Register of Plant Breeders' Rights, means a copy or extract signed by the Registrar and sealed with his official seal,

"**copy**" or "**extract**", in relation to an entry in the Register of Plant Breeders' Rights which is not in documentary form, means a copy or extract in a visible and legible form in which it can be taken away,

"**Community instrument**" has the meaning given by section 1(1) of the European Communities (Bailiwick of Guernsey) Law, 1973^j,

"**Council Regulation**" means Council Regulation (EC) No 2100/94 of 27th July 1994 on Community plant variety rights, and references to particular provisions of the Council Regulation shall be construed as references to those provisions, or provisions of any Community instrument replacing them, as amended from time to time,

"**Court of Appeal**" means the court established by the Court of Appeal (Guernsey) Law, 1961,

"**country**" includes any territory,

"**customs Laws**" and "**excise Laws**" mean those provisions of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972^k, and any other enactment for the time being in force, relating to customs or, as the case may be, excise,

"**a department**" of the States means any department, council or

^j Ordres en Conseil Vol. XXIV, p. 87; Vol. XXVII, p. 242; Vol. XXIX, pp. 127 and 419 and No. XXV of 2002; Ordinance No. XIX of 1994; No. XVII of 1998; No. XLVII of 2001, and No. XVIII of 2003.

^k Order in Council Vol. XXIII, p. 573.

committee of the States of Guernsey, the States of Alderney or the Chief Pleas of Sark, however called,

"the Department" means the States of Guernsey Commerce and Employment Department,

"designated country" : see sections 4(1)(c) and 4(2),

"designated country concerned" means, in relation to plant breeders' rights registered in the Register of Plant Breeders' Rights, the designated country in which the relevant overseas plant breeders' rights are registered under the laws relating to the grant, or registration, of plant breeders' rights in force there,

"government department" of the United Kingdom includes any Northern Ireland department, any part of the Scottish Administration and any committee of the National Assembly for Wales,

"holding" : see section 18(11),

"in the field" : see section 18(13),

"laws" include rules, practice and procedures,

"limitation" in relation to the registration of plant breeders' rights, means any limitation, restriction, term or condition subject to which the rights are granted, or registered, in the Register of Plant Breeders' Rights or, as the context may require, in the designated country concerned,

"name" includes any designation,

"**office**" includes any authority or body responsible for the grant, or registration, of plant breeders' rights,

"**oversea plant breeders' rights**" : see section 4(1)(a),

"**oversea registered proprietor**" : see section 4(1)(b),

"**plant breeders' rights**" : see section 1,

"**prescribed**" means prescribed by regulations,

"**proprietor**" means the person who is registered as the proprietor of plant breeders' rights registered in the Register of Plant Breeders' Rights,

"**protected variety**" means, in relation to any plant breeders' rights registered in the Register of Plant Breeders' Rights, the variety in relation to which the rights subsist,

"**qualifying variety**" : see section 6(2) and the schedule to this Ordinance,

"**registered name**" means the name of any variety registered in the Register of Plant Breeders' Rights,

"**Register of Plant Breeders' Rights**" means the Register established under section 2 in which persons are registered as proprietors of plant breeders' rights,

"**Registrar**" means the Registrar of Intellectual Property appointed

under the Intellectual Property (Office of Registrar) (Bailiwick of Guernsey) Ordinance, 2005,

"**regulations**" means regulations made by the Department under this Ordinance,

"**Royal Court**" means the Royal Court sitting as an Ordinary Court, constituted in accordance with section 13(1),

"**the services of the Crown or the States**" : see section 30(3),

"**small farmer**" : see section 18(13)

"**States**" means the States of Guernsey,

"**uniform scale**" means the uniform scale of fines from time to time specified under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989¹,

"**variety**" means a plant grouping within a single botanical taxon of the lowest known rank, which grouping can be -

- (a) defined by the expression of the characteristics resulting from a given genotype or combination of genotypes,
- (b) distinguished from any other plant grouping by the expression of at least one of those characteristics, and

¹ Ordres en Conseil Vol. XXXI, p. 278.

- (c) considered as a unit with regard to its suitability for being propagated unchanged,

and other words or expressions which are defined in the Intellectual Property (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004^m have the same meanings as in that Law.

(2) The Interpretation (Guernsey) Law, 1948ⁿ applies to the interpretation of this Ordinance throughout the Bailiwick.

(3) Any reference in this Ordinance to an enactment, statutory instrument, rule of court or Community instrument is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

General provisions as to subordinate legislation.

43. (1) Regulations under this Ordinance -

- (a) may be amended or repealed by subsequent regulations hereunder,
- (b) may contain such transitional, consequential, incidental, supplementary and savings provisions as may appear to be necessary or expedient, and
- (c) may contain provision making consequential

^m Order in Council No. XIV of 2004.

ⁿ Ordres en Conseil Vol. XIII, p. 355.

amendments to this Ordinance.

(2) Any power conferred by this Ordinance to make regulations may be exercised -

(a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,

(b) so as to make, as respects the cases in relation to which it is exercised -

(i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),

(ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,

(iii) any such provision either unconditionally or subject to any prescribed conditions.

(3) Regulations under this Ordinance shall be laid before a meeting of the States of Deliberation as soon as possible after being made; and, if at that or the next meeting the States of Deliberation resolve to annul the regulations, then they shall cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

Saving for forfeited goods.

44. Nothing in this Ordinance affects the right of the States or any person deriving title directly or indirectly from the States to sell or use products forfeited under the customs Laws or excise Laws.

Territorial waters.

45. For the purposes of this Ordinance the territorial waters adjacent to the Bailiwick shall be treated as part of the Bailiwick.

Guernsey ships.

46. (1) This Ordinance applies to things done on a Guernsey ship as it applies to things done in the Bailiwick.

(2) In this section "**Guernsey ship**" means a ship registered in Guernsey under the Merchant Shipping Act 1894^o.

Citation.

47. This Ordinance may be cited as the Registered Plant Breeders' Rights (Bailiwick of Guernsey) Ordinance, 2007.

Extent.

48. This Ordinance has effect throughout the Bailiwick.

Commencement.

49. This Ordinance shall come into force on the 28th March 2007.

^o An Act of Parliament (57 & 58 Vict. c. 60).

SCHEDULE

Section 6

QUALIFYING VARIETY

Criteria for establishing whether a variety is a qualifying variety.

1. A variety is a qualifying variety if it is -

- (a) distinct,
- (b) uniform,
- (c) stable, and
- (d) new,

and the following provisions of this Schedule have effect for the purpose of determining whether these criteria are met; provided that the criteria relating to novelty -

- (i) do not apply in relation to any variety in relation to which overseas plant variety rights have been registered in a designated country before the commencement of this Ordinance, and
- (ii) in relation to any other variety, shall apply at the discretion of the Registrar.

Distinctness.

2. The variety shall be deemed to be distinct if it is clearly distinguishable by one or more characteristics which are capable of a precise description from any other variety whose existence is a matter of common knowledge at the time of the application.

Uniformity.

3. The variety shall be deemed to be uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in those characteristics which are included in the examination for distinctness.

Stability.

4. The variety shall be deemed to be stable if those characteristics which are included in the examination for distinctness, as well as any others used for the variety description, remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

Novelty.

5. (1) The following provisions of this paragraph are subject to the proviso in paragraph 1.

(2) The variety shall be deemed to be new if no sale or other disposal of propagating or harvested material of the variety for the purposes of exploiting the variety has, with the consent of the applicant, taken place -

(a) in the Bailiwick, earlier than one year, and

(b) elsewhere than in the Bailiwick, earlier than -

(i) 4 years, or

(ii) in the case of trees or vines, 6 years,

before the date of the application.

(3) For the purposes of sub-paragraph (2), there shall be disregarded any sale or other disposal to which subparagraph (4), (5), (7) or (8) applies.

(4) This sub-paragraph applies to any sale or other disposal of a stock of material of the variety to a person who at the time of the sale or other disposal is, or who subsequently becomes, entitled to be registered as the proprietor of plant breeders' rights in the Register of Plant Breeders' Rights in respect of the variety.

(5) This subparagraph applies to -

- (a) any sale or other disposal of propagating material of the variety to a person as part of qualifying arrangements, and
- (b) any sale or other disposal to the applicant, by a person who uses the propagating material of the variety under any such arrangements, of the material produced directly or indirectly from the use.

(6) For the purposes of subparagraph (5), "**qualifying arrangements**" are arrangements under which -

- (a) a person uses propagating material of the variety under

the applicant's control for the purpose of increasing the applicant's stock, or of carrying out tests or trials, and

- (b) the whole of the material produced, directly or indirectly, from the material becomes or remains the property of the applicant.

(7) This subparagraph applies to any sale or other disposal of material of the variety, other than propagating material, produced in the course of -

- (a) the breeding of the variety,
- (b) increasing the applicant's stock of material of the variety, or
- (c) carrying out tests or trials of the variety.

(8) This subparagraph applies to any disposal of material of the variety, otherwise than by way of sale, at an exhibition or for the purposes of display at an exhibition.

(9) For the purposes of subparagraph (2), any sale or other disposal of propagating or harvested material of a variety for the purposes of exploiting the variety shall, if the variety is related to another variety, be treated as being also a sale or other disposal of propagating or harvested material of the other variety for the purposes of exploiting that variety.

(10) For the purposes of subparagraph (9), a variety is related to another if its nature is such that repeated production of the variety is not possible without repeated use of the other variety.

