

2006 No. 648

PLANT BREEDERS' RIGHTS

The Plant Breeders' Rights (Naming and Fees) Regulations 2006

Made - - - - *7th March 2006*

Laid before Parliament *10th March 2006*

Coming into force - - *31st March 2006*

The Secretary of State for Environment, Food and Rural Affairs and the National Assembly for Wales, acting jointly, make the following Regulations in exercise of the powers conferred by sections 18(1) and (2), 28, 29 and 48(1)(b) of the Plant Varieties Act 1997(a) and now vested in them(b), with the consent of the Scottish Ministers(c) and the Department of Agriculture and Rural Development(d).

In accordance with section 48(5) of that Act they have consulted with such organisations as appear to them to be representative of persons likely to be substantially affected by the following Regulations.

Title and commencement

1. These Regulations may be cited as the Plant Breeders' Rights (Naming and Fees) Regulations 2006 and come into force on 31st March 2006.

Interpretation

2. In these Regulations—

“the 1997 Act” means the Plant Varieties Act 1997;

“the 1978 Regulations” means the Plant Breeders' Rights Regulations 1978(e);

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

(b) By virtue of articles 2 and 4 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) the functions of the Secretary of State for Wales under, *inter alia*, sections 18, 28 and 29 of the Plant Varieties Act 1997 and the functions of the Ministers under, *inter alia*, section 48 of that Act, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales and by virtue of article 2(1) of, and the Schedule to, the Transfer of Functions (Agriculture and Food) Order 1999 (S.I. 1999/3141) the remaining functions of the Secretary of State for Wales under the Plant Varieties Act 1997 were transferred to the Minister of Agriculture, Fisheries and Food. By virtue of article 2(5) of the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794) those functions of the Minister of Agriculture, Fisheries and Food under the Plant Varieties Act 1997 exercisable jointly with one or more named Secretaries of State were transferred to the Secretary of State for Environment, Food and Rural Affairs.

(c) By virtue of article 3 of, and paragraph 3 of Schedule 8 to, the Scotland Act 1998 (Cross-Border Public Authorities)(Adaptation of Functions etc.) Order 1999 (S.I. 1999/1747), the Secretary of State for Scotland ceased to be among the “Ministers” who, acting jointly, may exercise any function under, *inter alia*, sections 18, 28, 29 and 48 of the Plant Varieties Act 1997 and such functions became exercisable only with the consent of the Scottish Ministers.

(d) By virtue of article 8(4) of the Northern Ireland Act 1998 (Modification of Enactments) Order 2002 (S.I. 2002/2843), the Secretary of State for Northern Ireland ceased to be among the “Ministers” who, acting jointly, may exercise any function under, *inter alia*, sections 18, 28, 29 and 48 of the Plant Varieties Act 1997 and such functions became exercisable only with the consent of the Department of Agriculture and Rural Development.

(e) S.I. 1978/294, amended by S.I. 1998/1027; there are other amending instruments but none is relevant.

“the 1998 Regulations” means the Plant Breeders’ Rights Regulations 1998(a); and
“plant breeders’ rights” means rights which may be granted in accordance with Part I of the 1997 Act.

Selection of names for plant varieties

3.—(1) An applicant for a grant of plant breeders’ rights shall, when so required by the Controller and within such time as he may direct, propose a name for the plant variety in respect of which his application is made.

(2) The Controller shall not accept a name proposed in pursuance of paragraph (1) or (3) unless he is satisfied that the name is suitable, having regard to the criteria for determining the suitability of a variety denomination in—

- (a) paragraphs 2, 3 and 4 of Article 63 of Council Regulation (EC) No. 2100/94 of 27 July 1994 on Community plant variety rights(b) as last amended by Council Regulation (EC) No. 873/2004 of 29 April 2004(c); and
- (b) the detailed rules for the application of certain of those criteria in Articles 2 to 6 of Commission Regulation (EC) No. 930/2000 of 4 May 2000 establishing implementing rules as to the suitability of the denomination of varieties of agricultural plant species and vegetable species(d) as amended by Commission Regulation (EC) No. 1831/2004 of 21 October 2004(e).

(3) If the Controller does not accept a name proposed for a plant variety in accordance with paragraph (2) he shall inform the applicant of the reason for its rejection and require that the applicant propose within such time as the Controller may specify another name for the plant variety.

(4) Any person may object to the name proposed for a plant variety as being unsuitable, on the basis of the Community provisions referred to in paragraph (2), and may make representations to the Controller within such time as the Controller shall specify in the notice of his proposed decision to allow an application for the grant of plant breeders’ rights published by him in accordance with regulation 5(1) of the 1998 Regulations.

(5) Before accepting a name for a plant variety the Controller shall consider any representations which are made to him in accordance with paragraph (4).

(6) If an applicant for a grant of plant breeders’ rights fails to propose a name in accordance with the requirements of this regulation the Controller shall not be obliged to take any further steps in relation to the application until those requirements (except as regards the time allowed for compliance) have been complied with.

(7) If, after the service by the Controller on the applicant of a notice informing him of the consequences of a continued failure to comply with any requirement of this regulation, the applicant has not complied with such requirement, within such time, not being less than 14 days, specified in the notice, the application shall be deemed to have been abandoned.

(8) An applicant for a grant of plant breeders’ rights or a holder of plant breeders’ rights may at any time propose to the Controller a name for the plant variety in respect of which the application is made or plant breeders’ rights have been granted in substitution for the name already proposed or accepted for that plant variety and, if the Controller is satisfied that the name proposed is suitable having regard to the Community provisions referred to in paragraph (2)—

- (a) he shall publish in the gazette and in such manner as appears to him to be necessary or desirable a notice of that proposed name;
- (b) any person may object to the name as being unsuitable, having regard to the Community provisions referred to in paragraph (2), and may make representations to the Controller

(a) S.I. 1998/1027.

(b) OJ No. L227, 1.9.1994, p.1.

(c) OJ No. L162, 30.4.2004, p.38.

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

(e) OJ No. L321, 22.10.2004, p. 29.

within such time as the Controller shall specify in the notice published under subparagraph (a); and

(c) before accepting the name, the Controller shall consider any representations which are made to him.

(9) In this regulation—

(a) “name” includes any designation; and

(b) “the gazette” means the gazette published under section 34 of the Plant Varieties and Seeds Act 1964(a).

Payment of fees

4.—(1) The Controller may charge any person a fee in respects of costs the Controller reasonably incurs in—

(a) carrying out tests on or examination of a plant variety which is the subject of an application for a grant of plant breeders’ rights or having such tests or examinations carried out on his behalf; or

(b) purchasing a report of a test or examination for such a plant variety from an authority in another country whose functions include the testing of plant varieties.

(2) The Controller may charge any person a fee in respect of costs the Controller reasonably incurs in the administration of plant breeders’ rights for a plant variety including in relation to—

(a) an application for the grant of plant breeders’ rights;

(b) an application for a compulsory licence;

(c) an application to extend, limit, vary or revoke a compulsory licence;

(d) making representations to the Controller as provided for in the 1997 Act or in the 1998 Regulations;

(e) attending to be heard by the Controller or by a person appointed by him; and

(f) the examination or inspection of any documents, records or material.

(3) The Controller shall specify the date on which a fee shall be due.

(4) If a fee has not been paid by the date specified under paragraph (3), the Controller is not obliged to take any further steps in relation to the matter in respect of which the fee is payable until the fee has been paid.

(5) If a fee payable under regulation 4(1)(a) or 4(2)(a) remains unpaid after the expiry of 28 days beginning with the date of service by the Controller on the applicant of a notice informing him that continued failure to pay the fee may result in his application being refused, the Controller may refuse the application.

Revocation, supplemental and transitional provisions about names

5.—(1) The following regulations are revoked—

(a) the 1978 Regulations;

(b) the Plant Breeders’ Rights (Fees) Regulations 1998(b); and

(c) the Plant Breeders’ Rights (Fees) (Amendment) Regulations 2002(c).

(2) In the 1998 Regulations, for paragraph (c) of the definition of “relevant legislation” substitute—

“(c) regulation 3 of the Plant Breeders’ Rights (Naming and Fees) Regulations 2006”.

(a) 1964 c. 14.

(b) S.I. 1998/1021 as amended by S.I. 2002/1677.

(c) S.I. 2002/1677.

(3) In sections 19 and 20 of the 1997 Act, references to names registered under section 18 of that Act shall include names accepted pursuant to these Regulations.

(4) All proceedings relating to naming which have been commenced under the 1978 Regulations and which have not been concluded at the date these Regulations come into force shall be treated as having been commenced under these Regulations.

2nd March 2006

Bach
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

Signed on behalf of the National Assembly for Wales

7th March 2006

D. Elis-Thomas
Presiding Officer

We consent.

2nd March 2006

Ross Finnie
A member of the Scottish Executive

The Department of Agriculture and Rural Development hereby consents to the foregoing Order.

Sealed with the Official Seal of the Department of Agriculture and Rural Development on
14th February 2006



D. Small
Senior Officer of the Department of Agriculture and Rural Development

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Regulations revoke the Plant Breeders' Rights Regulations 1978 (S.I. 1978/294) ("the 1978 Regulations") (*regulation 5(1)*). They replace regulation 18 of the 1978 Regulations with revised provisions for the selection of names for plant varieties which are the subject of applications for plant breeders' rights under Part I of the Plant Varieties Act 1997 (c. 66). In particular they—

- (a) introduce a requirement for the Controller of Plant Variety Rights, in deciding whether to accept a proposed name, to have regard to the suitability criteria set out in Article 63 of Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (O.J. L 227, 1.9.1994, p.1) as last amended by Council Regulation (EC) No 873/2004 of 29 April 2004 (O.J. L 162, 30.4.2004, p. 38) and Commission Regulation (EC) No 930/2000 of 4 May 2000 which establishes implementing rules on the suitability of the denominations of varieties of agricultural plant species and vegetable species (O.J. L 108, 5.5.2000, p.3) as amended by Commission Regulation (EC) No 1831/2004 of 21 October 2004 (O.J. L 321, 22.10.2004, p.29) (*regulation 3(2)*); and
- (b) update the procedural provisions in the 1978 Regulations for approving the name (*regulations 3(1) and 3(3)-(9)*).

The Regulations enable the Controller to charge a fee for costs reasonably incurred in respect of specified matters relating to plant breeders' rights arising under the Plant Varieties Act 1997 (*regulation 4*).

They also:

- (a) revoke the Plant Breeders' Rights (Fees) Regulations 1998 (S.I. 1998/1021) and the Plant Breeders' Rights (Fees) (Amendment) Regulations 2002 (S.I. 2002/1677) (*regulation 5(1)*);
- (b) amend the Plant Breeders' Rights Regulations 1998 (S.I. 1998/1027) (*regulation 5(2)*); and
- (c) make transitional and supplemental provisions for naming (*regulations 5(3) and 5(4)*).

A regulatory impact assessment has not been prepared for this instrument, as it has no impact on the costs of businesses, charities or voluntary bodies.

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