

Plant Varieties and Seeds Act 1964

1964 CHAPTER 14

An Act to provide for the granting of proprietary rights to persons who breed or discover plant varieties and for the issue of compulsory licences in respect thereof; to establish a tribunal to hear appeals and other proceedings relating to the rights, and to exclude certain agreements relating to the rights from Part I of the Restrictive Trade Practices Act 1956; to confer power to regulate, and to amend in other respects the law relating to, transactions in seeds and seed potatoes, including provision for the testing of seeds and seed potatoes, the establishment of an index of names of varieties and the imposition of restrictions as respects the introduction of new varieties; to control the import of seeds and seed potatoes; to authorise measures to prevent injurious cross-pollination; and for connected purposes. [12th March 1964]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I PLANT BREEDERS' RIGHTS

Grant of plant breeders' rights.

1.—

(1) Rights, to be known as plant breeders' rights, may be granted in accordance with this Part of this Act in respect of plant varieties of such species or groups as may be prescribed by a scheme made by the Ministers under this Part of this Act.

(2) Subject to this Part of this Act, plant breeders' rights shall be granted to an applicant by the Controller of the Plant Variety Rights Office established under this Part of this Act (hereafter in this Act referred to as "the Controller") on being satisfied that the conditions laid down in the next following section are fulfilled.

(3) Schedule 1 to this Act shall have effect for the protection of an applicant pending the decision to allow or refuse his application for the grant of plant breeders' rights.

(4) An appeal shall lie to the Tribunal established under this Part of this Act (hereafter in this Act referred to as "the Tribunal") against the decision of the Controller to allow or refuse an application for the grant of plant breeders' rights.

(5) Before making a scheme under this Part of this Act the Ministers shall consult the Controller and representatives of such interests as appear to the Ministers to be concerned, and any scheme under this Part of this Act—

- (a) may make different provision for different species or groups of plant varieties,
- (b) may contain such supplemental, incidental and transitional provisions as appear to the Ministers to be appropriate, and
- (c) may be varied or revoked by a subsequent scheme,

so, however, that the variation or revocation of a scheme shall not prejudice a grant of plant breeders' rights made before the variation or revocation takes effect.

(6) A scheme under this Part of this Act shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Conditions for grant of rights.

2.—

(1) The conditions laid down in this section must be fulfilled as respects an applicant for plant breeders' rights and the plant variety to which the application relates.

(2) The applicant must be the person who bred or discovered the variety, or his successor in title, and the provisions of Part I of Schedule 2 to this Act shall have effect as respects priorities between two or more persons who have independently bred or discovered a variety.

(3) The variety must conform to the rules in Part II of Schedule 2 to this Act.

(4) References in this section and Schedule 2 to this Act to the discovery of a plant variety are references to the discovery of a plant variety, whether growing in the wild or occurring as a genetic variant, whether artificially induced or not.

Period for which rights are exercisable.

3.—

(1) A scheme under this Part of this Act shall prescribe the period, being a period not exceeding 25 years, for which plant breeders' rights are to be exercisable.

(2) As respects fruit trees and their root-stocks, forest and ornamental trees and grape vines the period so prescribed shall be not less than 18 years, and a statement in a scheme under this Part of this Act to the effect that a species or group of plant varieties falls under this subsection shall be conclusive.

(3) As respects plant varieties not falling under the last foregoing subsection the period so prescribed shall be not less than 15 years.

(4) Subject to the following provisions of this section, the period for which plant breeders' rights are exercisable shall be the relevant period prescribed by a scheme under this Part of this Act, beginning with the date on which the grant of the plant breeders' rights by the Controller takes effect.

(5) If on the application of the holder of any plant breeders' rights the Controller is satisfied that, for reasons beyond the control of the applicant, the holder has not been adequately remunerated by the grant of the rights, the Controller may extend the period for which his plant breeders' rights are exercisable, subject to such restrictions, conditions and other provisions, if any, as may be directed by the Controller so, however,—

(a) that the period as extended shall not exceed 25 years, and

(b) where the period as extended is less than 25 years, no further extension shall be made under this subsection.

An appeal shall lie to the Tribunal against the decision of the Controller to allow or refuse an application under this subsection.

(6) The holder of plant breeders' rights may at any time make an application to the Controller offering to surrender his rights and if, after notice of the application has been given in the manner prescribed by regulations under this Part of this Act, and after the procedure so prescribed for hearing any person on whom the right to object is conferred by such regulations has been followed, the Controller is satisfied that the rights may properly be surrendered, he may accept the offer and terminate the period for which the rights are exercisable.

An appeal shall lie to the Tribunal from any decision of the Controller under this subsection.

(7) The Controller shall terminate the period for which any plant breeders' rights are exercisable if at any time he is satisfied—

- (a) that any information submitted in the application for the grant of the rights, or any information submitted by or on behalf of the applicant in connection with the application, was incorrect and that, if the Controller had known before the grant that it was incorrect, he would have refused the grant, or
- (b) that facts have been discovered which, if known before the grant, would have resulted in the grant being refused on the grounds that rule 1 or rule 2 in Part II of Schedule 2 to this Act was not satisfied in respect of the plant variety.

(8) The Controller shall revoke or, if it has begun, terminate any extension under subsection (5) of this section of the period for which any plant breeders' rights are exercisable if at any time he is satisfied that any information submitted in the application under that subsection, or any information submitted by or on behalf of the applicant in connection with the application, was incorrect and that, if the Controller had known before deciding to allow the application that it was incorrect, he would have refused the application.

(9) An appeal shall lie to the Tribunal against any decision of the Controller to act under subsection (7) or subsection (8) of this section.

The nature of the rights.

4.—

(1) Subject to this Part of this Act, the holder of plant breeders' rights in a plant variety shall have the exclusive right to do, and to authorise others to do, as follows—

- (a) to sell the reproductive material of the plant variety;
- (b) to produce the reproductive material of the plant variety in Great Britain for the purpose of selling it; and
- (c) in the circumstances described in Schedule 3 to this Act, to exercise the other rights there specified,

and, subject to this section, infringements of plant breeders' rights shall be actionable at the suit of the holder of the rights, and in any proceedings for such an infringement all such relief, by way of damages, injunction, interdict, account or otherwise, shall be available as is available in any corresponding proceedings in respect of infringements of other proprietary rights.

(2) Paragraph (a) of the foregoing subsection shall not apply to the sale of reproductive material which is not in Great Britain when it is sold; but if any person purchases the reproductive material of the plant variety which is not in Great Britain when it is sold and uses it in Great Britain as reproductive material, the purchase and subsequent use shall together constitute an infringement of the plant breeders' rights and the purchaser shall be liable to be proceeded against in respect of the infringement.

References in this subsection to using the reproductive material of a plant variety as reproductive material in Great Britain include references to so disposing of that material (otherwise than by way of sale) while it is in Great Britain as to make it available for use in Great Britain as reproductive material.

- (3) There shall be no right to damages in respect of an infringement of plant breeders' rights—
 - (a) if the person infringing the rights was not aware, and had no reasonable grounds for suspecting, that the plant variety in question was the subject of plant breeders' rights, or
 - (b) in a case where the infringement consists of a breach of conditions attached to a licence, if that person had no notice of any of those conditions,

but the person who would, but for the foregoing provisions, be entitled to damages shall be entitled to an account of profits in respect of the infringement (and to payment of any amount found due on the account) whether any other relief is granted under this section or not.

(4) The holder of plant breeders' rights may, in authorising other persons to exercise his exclusive rights, impose any conditions, limitations or restrictions which may be imposed by the holder of any other kind of proprietary rights, and plant breeders' rights shall be assignable like other kinds of proprietary rights.

(5) A sale of the reproductive material of a plant variety which is the subject of plant breeders' rights, being a sale by the holder of the rights (or by any other person authorised to grant a licence in respect of those rights)—

- (a) shall not imply that the seller authorises the purchaser to produce the reproductive material of the plant variety for the purpose of selling it, but
- (b) subject to any terms or conditions imposed by the seller, shall imply that the seller authorises the purchaser to sell the reproductive material sold to him.

(6) In this section and in Schedule 3 to this Act references to selling reproductive material include references to any transaction effected in the course of business—

- (a) under which the property in the reproductive material passes from one person to another, or
- (b) under which the reproductive material is made over by one person to another in pursuance of a contract under which he will use the reproductive material for growing further reproductive material or other crops,

and paragraph (b) of this subsection shall apply irrespective of whether the contract provides that the property in the crop will be in the person to be regarded as the seller, or the person to be regarded as the purchaser, or a third party; and any reference to purchasing or a purchaser shall be construed accordingly.

Naming of protected plant varieties.

5.—

(1) The Ministers may by regulations under this section provide for the selection of names for plant varieties which are the subject of applications for plant breeders' rights and for the keeping of a register of the names so selected.

(2) Notice of all entries made in the register, including alterations, corrections and erasures, shall be published by the Controller in the gazette to be issued under Part IV of this Act, and in such other manner as appears to the Controller to be convenient for the publication of these to all concerned.

(3) After a section of the Index under Part II of this Act has come into force, the part of the register under this section dealing with the class of plant varieties to which that section of the Index relates shall, so far as practicable, be combined with the Index.

(4) Regulations under this section may in particular—

- (a) prescribe the circumstances in which representations may be made regarding any decision as to the name to be registered in respect of any plant variety,
- (b) make provision for the publication or service of notices of decisions which the Controller proposes to take, and
- (c) prescribe the times at which, and the circumstances in which, the register may be inspected by members of the public.

(5) Any regulations under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(6) If, where a name is registered under this section for a plant variety, any person uses that name, or a name so nearly resembling it as to be likely to deceive or cause confusion, in selling or offering or exposing for sale—

- (a) reproductive material of a different plant variety within the same class, or
- (b) where under paragraph 1 of Schedule 3 of this Act plant breeders' rights in the first-mentioned plant variety have been extended to material other than reproductive material, that other material from a different plant variety within the same class,

the use of the name shall be a wrong actionable in proceedings by the holder of the rights; but it shall be a defence to a claim for damages in any such proceedings to prove that the defendant took all reasonable precautions against committing a wrong of the kind alleged and had not when using the name any reason to suspect that it was wrongful.

- (7) In this section the expression “name” includes any designation, and references to plant varieties as being within the same class are references to them as being within the same class being either—
- (a) a class consisting of all plant varieties of the species or groups prescribed by any one scheme under this Part of this Act, or
 - (b) any other class of plant varieties prescribed for the purposes of this subsection by any such scheme.

Maintenance of reproductive material.

6.—

- (1) The provisions of this section shall apply in relation to all plant varieties except such as fall within any species or group which is excluded from this section by a scheme under this Part of this Act.
- (2) Every holder of plant breeders’ rights shall ensure that, throughout the period for which the rights are exercisable, he is in a position to produce to the Controller reproductive material which is capable of producing the variety to which the rights relate with the morphological and physiological and other characteristics taken into account when the rights were granted in respect of the variety.
- (3) It shall also be the duty of every holder of plant breeders’ rights to afford to the Controller all such information and facilities as he may request for the purpose of satisfying himself that the holder of the plant breeders’ rights is fulfilling his duty under subsection (2) of this section, including facilities for the inspection by or on behalf of the Controller of the measures taken for the preservation of the plant variety; and if he is satisfied that the holder of the rights has failed to comply with any request under this subsection he may if he thinks fit at any time terminate the period for which the plant breeders’ rights are exercisable.
- (4) If at any time it appears to the Controller that any holder of plant breeders’ rights is no longer in a position to provide the Controller with the reproductive material mentioned in subsection (2) of this section, he shall terminate the period for which the rights are exercisable.
- (5) An appeal shall lie to the Tribunal against any decision of the Controller under this section to terminate the period for which any rights are exercisable.

Compulsory licences.

7.—

- (1) Subject to the provisions of this section, if any person applies to the Controller and satisfies him that the holder of my plant breeders’ rights has unreasonably refused to grant a licence to the applicant, or, in granting or offering to grant a licence, has imposed or put forward unreasonable terms, the Controller shall, unless it appears to him that there is good reason for refusing the application, grant to the applicant in the form of a compulsory licence any such rights as respect the plant variety as might have been granted to the applicant by the holder of the plant breeders’ rights.
- (2) A scheme under this Part of this Act may, for any specie or group of plant varieties, prescribe for the purposes of this subsection a period of a length specified in the scheme, and a compulsory licence granted as respects a plant variety which falls within the species or group of plant varieties specified in the scheme shall not have effect during a period beginning with the date of grant of the fights and equal in length to the period so prescribed by the scheme.

The prescribed period may be different for different species or groups.

- (3) In entertaining applications and settling the terms of compulsory licences under this section the Controller shall endeavour to secure that the plant variety is available to the public at reasonable prices, that it is widely distributed, that it is maintained in quality and that there is reasonable remuneration for the holder of the plant breeders’ rights.
- (4) A compulsory licence under this section may include terms obliging the holder of the plant breeders’ rights to make reproductive material available to the holder of the compulsory licence.

- (5) Without prejudice to the following provisions of this Part of this Act requiring provision to be made by regulations as to proceedings before the Controller, where—
- (a) the holder of the plant breeders' rights to which an application under subsection (1) of this section relates is, or is represented by, a society or other organisation which has as its main object, or one of its main objects, the negotiation or granting of licences to exercise plant breeders' rights, either as the holder of the rights or as agent for holders, and
 - (b) an organisation (whether claiming to be representative of persons requiring licences or not) or a person (whether requiring a licence or not) applies to the Controller for an opportunity of making representations concerning the application, and the Controller is satisfied that the organisation or person has a substantial interest in the application and that the application involves issues which may affect other applicants for compulsory licences under this section, and
 - (c) if the applicant under paragraph (b) of this subsection is an organisation, the Controller is satisfied that it is reasonably representative of the class of persons which it claims to represent,
- the Controller shall afford to the organisation or person applying under paragraph (b) of this subsection an opportunity of making representations to the Controller and of being heard by the Controller or by a person appointed by the Controller for the purpose.
- (6) The Controller before granting a compulsory licence shall satisfy himself that the applicant is financially and otherwise in a position, and intends, to exploit the rights to be conferred on him in a competent and businesslike manner.
- (7) Without prejudice to the remedies available to the holder of a compulsory licence by the taking of proceedings in any court, the Controller may, if it is represented to him by any applicant that the holder of the plant breeders' rights has failed to meet any obligation imposed on him by a compulsory licence under this section, and he is satisfied that the representations are correct, terminate the period for which the plant breeders' rights are exercisable.
- (8) The Controller may at any time on representations made by any applicant extend, limit or vary in any other respect, or revoke, a compulsory licence.
- (9) A compulsory licence under this section may be granted to an applicant whether or not the holder of the plant breeders' rights has granted licences to the applicant or any other person, and shall not be an exclusive licence.
- (10) If and so far as any agreement purports to bind any person not to apply for a compulsory licence under this section, it shall be void.
- (11) An appeal shall lie to the Tribunal against the decision of the Controller to allow or refuse any application under subsection (1), subsection (7) or subsection (8) of this section.

Exclusion from Restrictive Trade Practices Act 1956.

8. Part I of the Restrictive Trade Practices Act 1956 (registration and judicial investigation of restrictive trading agreements) shall not apply—

- (a) to any licence granted by a holder of plant breeders' rights or by any other person authorised to grant a licence in respect of such rights, or
- (b) to any assignment of plant breeders' rights or of the title to apply for the grant of such rights, or
- (c) to any agreement for such a licence or assignment,

being a licence, assignment or agreement under which no such restrictions as are described in section 6(1) of that Act are accepted except in respect of goods which are plants or parts of plants of the plant variety which is the subject of those plant breeders' rights, or will be the subject of them if granted.

Regulations, as to applications, fees, etc.

9.—

(1) Regulations may be made under this section by the Ministers as respects the manner in which the Controller is to discharge his functions under this Part of this Act, and in particular as respects—

- (a) applications for the grant of plant breeders' rights and other applications to the Controller under this Part of this Act, and
- (b) the charging of fees, including periodical fees payable by persons holding plant breeders' rights,

and regulations concerning fees charged by the Controller shall be separate regulations made with the approval of the Treasury.

(2) Regulations under this section may authorise the Controller—

- (a) in the case of a failure to pay any fees payable in connection with any application to him under this Part of this Act, to refuse the application, and
- (b) in the case of a failure by a holder of plant breeders' rights to pay any fees payable in connection with those rights, to terminate the period for which the rights are exercisable,

with or without, in any case, a right of appeal against the Controller's decision, and may provide for the restoration of the application or the rights if the failure to pay fees is made good.

(3) The regulations shall provide for affording, before the Controller makes a decision to which this subsection applies, both to the person entitled to appeal to the Tribunal against that decision, and to persons of such other descriptions as may be prescribed by the regulations, an opportunity of making representations to the Controller and of being heard by the Controller or by a person appointed by the Controller for the purpose.

This subsection applies to any decision of the Controller against which, under the provisions contained in this Part of this Act, an appeal lies to the Tribunal.

(4) The regulations may, in addition to the rights of appeal conferred by the provisions contained in this Part of this Act, confer a right of appeal to the Tribunal against any decision of the Controller under regulations made under section 5 of this Act or this section.

(5) Regulations under this section may in particular—

- (a) prescribe the information and facilities to be afforded by an applicant and the reproductive material and other plant material to be submitted at the time of the application or subsequently,
- (b) prescribe the tests, trials, examinations and other steps to be taken by the applicant or the Controller before any application is granted, and the time within which any such steps are to be taken,
- (c) restrict the making of repeated applications on the same subject,
- (d) prescribe the circumstances in which representations may be made regarding any decision on any application,
- (e) make provision as to the keeping of registers and records by the Controller and their rectification, and prescribe the circumstances in which they may be inspected by members of the public,
- (f) make provision for the publication or service of notice of applications and of the Controller's decisions,
- (g) prescribe the manner of dealing with objections to applications.

(6) Subject to the provisions of this section requiring the approval of the Treasury for regulations concerning fees, any regulations under this section shall be made by the Ministers by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

The Tribunal.

10.—

(1) There shall be a Plant Variety Rights Tribunal in relation to which the provisions of Schedule 4 to this Act shall apply.

(2) Subject to this section, section 9 of the Tribunals and Inquiries Act 1958 (appeals on questions of law) shall apply as if the Tribunal were included among the tribunals mentioned in subsection (1) of that section and, subject to that section, the decisions of the Tribunal shall be final and conclusive.

(3) The Tribunal shall, in addition to their jurisdiction under this Part of this Act, hear and determine any matters agreed to be referred to the Tribunal by any arbitration agreement relating to the infringement of plant breeders' rights, or to matters which include the infringement of plant breeders' rights, but subsection (2) of this section shall not apply in relation to any jurisdiction conferred on the Tribunal by this subsection.

(4) The fees payable to the Tribunal for acting under any arbitration agreement shall be such as the Tribunal may determine, and nothing in section 4 of the Arbitration (Scotland) Act 1894 (power to name oversman) or in section 9 of the Arbitration Act 1950 (agreements for reference to three arbitrators) shall be taken as applying to the Tribunal.

(5) Regulations may be made by the Ministers under this section as respects any appeal to the Tribunal under this Act, or under regulations made under this Act for all or any of the following purposes, that is—

- (a) to provide for determining in which part of Great Britain any appeal is to be heard;
- (b) to authorise persons other than the appellant and the Controller or other authority whose decision is appealed against to appear and be heard as parties to any appeal;
- (c) to provide for suspending, or authorising or requiring the suspension of, the operation of a decision pending final determination of an appeal against a decision, and
- (d) to provide for the publication of notices or the taking of other steps for securing that the persons affected by the suspension of the operation of a decision appealed against will be informed of its suspension.

Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(6) In the application of this section to England and Wales "arbitration agreement" has the meaning given by section 32 of the Arbitration Act 1950.

The Plant Variety Rights Office.

11.—

(1) For the purposes of this Part of this Act there shall be an office to be known as the Plant Variety Rights Office which shall be under the immediate control of an officer appointed by the Ministers, to be known as the Controller of Plant Variety Rights.

(2) The Controller shall in the exercise of his functions, other than the taking of any decision from which an appeal lies to the Tribunal, act under the general direction of the Ministers.

(3) The Ministers may, in addition to the Controller, appoint a deputy controller and such other officers and servants to act in the Plant Variety Rights Office as the Ministers may with the consent of the Treasury determine, and there shall be paid to the Controller and any other officers and servants appointed under this section such remuneration and allowances as the Treasury may determine.

(4) Without prejudice to the Controller's general discretion as to the manner in which he performs his duties under this Act, and subject to subsection (2) of this section, the Controller—

- (a) in carrying out the tests and trials which he considers expedient for the purposes of this Part of this Act, and in assessing the results of any tests and trials (whether carried out by him or not) which he considers relevant for those purposes, may use the services of persons who are not officers or servants appointed under this section and may pay to such persons in respect of their

services fees in accordance with such a scale as he may with the approval of the Treasury determine, and

- (b) may establish and maintain reference collections of plant material, and
- (c) may by means of grants of such amounts as he may with the approval of the Treasury determine defray or contribute towards the expenses incurred by any other person in maintaining any reference collection of plant material.

(5) Any act or thing directed to be done by or to the Controller may be done by or to any officer authorised by the Ministers, and prima facie evidence, or in Scotland sufficient evidence, of any document issued by the Controller may be given in all legal proceedings by the production of a copy or extract certified to be a true copy or extract by an officer appointed under this section and authorised to give a certificate under this subsection.

(6) There shall be an official seal for the Plant Variety Rights Office, which shall be officially and judicially noticed, and shall be authenticated by the signature of the Controller or of an officer appointed under this section and authorised to authenticate the seal.

(7) Any document purporting to be certified or sealed in accordance with subsection (5) or subsection (6) of this section shall, unless the contrary is proved, be deemed to have been duly certified or sealed without proof of the official character or handwriting of the person appearing to have certified the document or authenticated the seal.

Application of Tribunals and Inquiries Act 1958.

12.—

(1) Subject to this section, Part I of Schedule 1 to the Tribunals and Inquiries Act 1958 shall have effect as if—

- (a) the Controller and any officer authorised to exercise the functions of the Controller under section 11(5) of this Act, and
- (b) the Tribunal

were specified therein.

(2) Notwithstanding the foregoing subsection, section 5 of that Act (which makes it necessary to obtain the concurrence of the Lord Chancellor and of certain judicial officers in Scotland and Northern Ireland to dismissals in certain cases) shall not apply to the Controller or any such officer as is mentioned in paragraph (a) of the foregoing subsection.

(3) References in that Act, as applied by this section, to the working or a decision of, or procedural rules for, the Controller shall not include references to his working, decisions or procedure in the exercise of executive functions.

False representation as to rights and false information.

13.—

(1) If a person falsely represents that he is entitled to exercise any plant breeders' rights, or rights derived from plant breeders' rights, whether or not the variety as respects which the representation is made is the subject of plant breeders' rights, and he knows that the representation is false or makes the representation recklessly, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding three months, or to both.

(2) If—

- (a) any information submitted in an application to the Controller for a decision against which an appeal lies to the Tribunal, or any information submitted by or on behalf of the applicant in connection with such an application, or
- (b) any information given in pursuance of a request under section 6(3) of this Act,

is false in a material particular and the person giving the information or making the statement knows that it is false or gives the information or makes the statement recklessly, he shall be guilty of an offence and liable

on summary conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding three months, or to both.

Application of Part I to the Crown.

14.—

(1) If any servant or agent of the Crown infringes any plant breeder's rights or makes himself liable to civil proceedings under section 5 of this Act, and the infringement or wrong is committed with the authority of the Crown, then civil proceedings in respect of the infringement or wrong shall lie against the Crown.

(2) Subject to the foregoing subsection, no proceedings shall lie against the Crown by virtue of the Crown Proceedings Act 1947 in respect of the infringement of plant breeder's rights or of any such wrong.

(3) This section shall have effect as if contained in Part I of the Crown Proceedings Act 1947.

Interpretation of Part I.

15.—

(1) References in this Part of this Act to reproductive material are references to reproductive material of plant varieties, and include references—

- (a) to seeds for sowing,
- (b) to seed potatoes and other vegetative propagating material,
- (c) to whole plants, as well as parts of plants, where whole plants may be used as reproductive material, and
- (d) to ornamental plants and parts of ornamental plants when used commercially as propagating material in the production of ornamental plants and cut flowers.

(2) References in this Part of this Act to an applicant for plant breeders' rights, or to the holder of plant breeders' rights, include, where the context allows, references to his predecessors in title or his successors in title.

PART II SEEDS AND SEED POTATOES

Regulation of sales

Seeds regulations.

16.—

(1) The Minister, after consultation with representatives of such interests as appear to him to be concerned, may by statutory instrument make such regulations as appear to him to be necessary or expedient for the purpose—

- (a) of ensuring that reliable and adequate information is afforded as to the nature, condition and quality of seeds which are sold or are for sale,
- (b) of preventing the sale of seeds which are deleterious, and of preventing the sale of seeds which have not been tested for purity and germination, or which are of a variety the performance of which has not been subjected to trials,
- (c) of preventing the spread of plant disease by the sale of seeds,
- (d) of regulating the descriptions under which seeds are sold, and
- (e) of prescribing anything which, under this Part of this Act, is authorised or required to be prescribed,

and regulations under this section shall be known as seeds regulations.

- (2) Seeds regulations may include provisions as to the packets, bags, trays or other containers in which seeds may be sold or delivered to purchasers, and requirements as to the marking of such containers.
- (3) Seeds regulations may in particular—
- (a) require information to be given in the prescribed manner (which may include the giving of it on any label, container or package) as regards seeds which are sold or offered or exposed for sale and, in particular, require the seller of any seeds to deliver a statement containing the prescribed particulars to the purchaser within the time limited by the regulations,
- (b) require any of the particulars contained in a statement to be delivered to a purchaser or other person under seeds regulations to be particulars ascertained on a test of the seeds,
- (c) prohibit the selling, or the offering or exposing for sale, of seeds which contain more than a prescribed proportion of weed seeds, or of weed seeds of a prescribed kind,
- (d) prohibit persons from using, in relation to seeds which are sold, or are offered or exposed for sale, a prescribed name or designation or description except where the seeds have been grown or selected under the prescribed conditions,
- (e) require persons who deal in seeds to supply the Minister with information as to, and to keep records of,—
- (i) transactions in seeds,
- (ii) statutory statements given or received by them, and other statements or invoices given or received by them in connection with the sale of seeds,
- (iii) processes or treatments applied to seeds, and
- (iv) the results of tests of seeds,
- and authorise officers of the Minister and other persons to call for production of the records,
- (f) where persons who deal in seeds also grow seeds, require those persons to supply the Minister with information as to, and to keep records of—
- (i) acreages sown, and
- (ii) the yields of the crops,
- and authorise officers of the Minister and other persons to call for production of the records,
- (g) regulate the procedure to be observed at, and the conduct of, official testing stations and other establishments at which tests may be carried out for the purposes of the regulations,
- (h) regulate the manner in which any tests are to be made for the purposes of this Part of this Act,
- (i) provide for the licensing by the Minister of establishments for the testing of seeds, other than official testing stations, and authorise the Minister to charge a fee for, and to attach conditions to, any such licence, and to make the conditions enforceable by withdrawal of the licence or by making a breach of any of the conditions an offence against seeds regulations.
- (4) In prescribing the manner in which samples are to be taken for the purposes of any provision in this Part of this Act or for the purposes of seeds regulations, the regulations—
- (a) may impose conditions as to the persons authorised to take samples and the places where they may be taken,
- (b) may require the person taking a sample to give part of it to the owner of the seeds or to some other person, may prescribe the manner in which the sample is to be divided into parts and may impose duties as respects the marking or labelling and the preservation of the parts of the sample, and
- (c) may provide for the identification, by the labelling or marking of their container or by some other method, of seeds from which a sample has been taken.
- (5) Seeds regulations—
- (a) may exempt, or authorise the Minister to exempt, any person or class of persons, or persons generally, from compliance with any of the provisions of the regulations, and may provide that the exemptions are to be, or may be made, subject to conditions, and
- (b) may contain such transitional provisions consequent on the repeal of the Seeds Act 1920 by this Act as may appear to the Minister to be expedient.

(6) A statutory instrument containing regulations under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(7) If any person—

- (a) in a statutory statement includes anything which is false in a material particular, or
- (b) contravenes any provision contained in seeds regulations which concerns the use of a name or designation or description in relation to any seeds,

he shall be liable on summary conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding three months, or to both.

(8) If a person contravenes any provision contained in seeds regulations, and the contravention does not fall under subsection (7) of this section, he shall be liable on summary conviction—

- (a) in the case of a first offence under this subsection, to a fine not exceeding twenty pounds, and
- (b) in the case of a second or subsequent offence under this subsection, to a fine not exceeding fifty pounds.

Civil liabilities of sellers of seeds.

17.—

(1) If and so far as seeds regulations provide that a statutory statement shall constitute a statutory warranty for the purposes of this section, the statutory statement, when received by the purchaser, shall, notwithstanding any contract or notice to the contrary, have effect as a written warranty by the seller that the particulars contained in the statutory statement are correct.

(2) If and so far as seeds regulations apply this subsection to the particulars in a statutory statement and prescribe limits of variation in relation to those particulars, those particulars shall, for the purposes of any legal proceedings on a contract for the sale of the seeds to which the statutory statement relates, be deemed to be true except so far as there is a mis-statement in the statutory particulars which exceeds the limits of variation so prescribed.

(3) If and so far as seeds regulations apply this subsection to the particulars in a statutory statement, the particulars in the statutory statement shall, for the purposes of any legal proceedings on a contract for the sale of the seeds to which the statutory statement relates, be deemed to be true unless it is made to appear on a test carried out at an official testing station, and made on a sample taken in the manner, and within the period, prescribed by seeds regulations, that the particulars were untrue.

(4) Where a purchaser intends to obtain a test of seeds for the purposes of subsection (3) of this section, the seller of the seeds shall be given written notice of the purchaser's intention not more than the prescribed period after delivery to the purchaser of the seeds under the sale, and seeds regulations shall prescribe a procedure for taking a sample of seeds to be tested for the purposes of that subsection which will afford to the seller of the seeds or his agent an opportunity of being present when the sample is taken, and of obtaining part of the sample.

(5) A contravention of seeds regulations shall not affect the validity of a contract for the sale of seeds, or the right to enforce such a contract.

(6) In Scotland a contract for the sale of seeds may not be treated as repudiated by reason only of a breach of a written warranty having effect by virtue of subsection (1) of this section.

Defences in proceedings for offences against seeds regulations.

18.—

(1) If and so far as seeds regulations for the purposes of this section prescribe limits of variation in relation to the particulars in a statutory statement, it shall be a defence to proceedings under this Act for including in a statutory statement any false particulars to prove that the mis-statements in the particulars alleged to be false do not exceed the limits of variation so prescribed.

(2) Subject to the provisions of this section, it shall be a defence—

- (a) to proceedings under this Part of this Act for including false particulars in a statutory statement,

- (b) to proceedings under this Part of this Act for an offence against seeds regulations relating to the nature, condition or quality of any seeds, and
- (c) to proceedings under this Part of this Act for an offence against seeds regulations relating to a prescribed name or designation or description,

to prove—

- (i) that the accused took all reasonable precautions against committing an offence of the kind alleged and had not at the time of the alleged offence any reason to suspect that an offence was being committed by him, and
- (ii) where the accused obtained the seeds to which the alleged offence relates from some other person, that on demand by or on behalf of the prosecutor the accused gave all the information in his power with respect to the name and address of that other person, and with respect to any statutory statement or other document in his possession or power relating to the seeds, and the contract of sale.

(3) If in any such proceedings as are mentioned in subsection (2)(a) of this section any of the particulars alleged to be false are particulars which, by seeds regulations, are to be particulars ascertained by means of a test made in accordance with the regulations, the defence under subsection (2) of this section shall not be available unless it is proved—

- (a) that those particulars were ascertained on such a test and that the test was made not earlier than the date, if any, prescribed by seeds regulations for the purpose, or
- (b) that—
 - (i) the accused purchased the seeds from another person who, in connection with the sale, duly delivered to the accused a statutory statement giving particulars of the seeds which were the same as the particulars alleged to be false, and
 - (ii) the accused had no reason to believe that paragraph (a) of this subsection did not apply in relation to those particulars.

Presumption as respects statutory statements under seeds regulations.

19. For the purposes of this Part of this Act and of any seeds regulations, any statutory statement made as respects seeds which are in distinct portions shall be presumed to be made both as respects the seeds as a whole and also as respects each portion taken separately.

The Index

Index of names of plant varieties.

20.—

(1) The Ministers may in accordance with this section prepare an index of names of plant varieties for use in connection with the sale of seeds of those varieties (in this Part of this Act referred to as “the Index”).

(2) The Index shall be compiled in sections, and each section shall define the class of plant varieties to which it relates in such terms as to make it possible to determine whether any plant variety belongs to the class or not, irrespective of whether that variety is for the time being in the Index.

(3) Different sections of the Index may be prepared, and may come into force, at different times.

(4) Notice of the coming into force of a section of the Index, and of all additions, corrections and erasures in a section of the Index after it has come into force, shall be published by the Ministers in the gazette to be issued under Part IV of this Act, and in such other manner as appears to the Ministers to be appropriate for ensuring that persons particularly concerned with the Index, or with the class of plant varieties to which the section of the Index relates, have their attention drawn to it.

(5) After a section of the Index has come into force any person who in selling seed of a plant variety for which a name is given in that section of the Index, or in offering or exposing for sale any such seed, uses some name not given in the Index for that plant variety, being a name which serves or is intended by him to serve to distinguish the seed from seed of other plant varieties within the class to which the section relates, shall be guilty of an offence under this section.

(6) The Ministers may for the purposes of this section establish, or arrange for the establishment of, a reference collection of plant material.

(7) Schedule 5 to this Act shall have effect as to the procedure for compiling the Index and the other matters there mentioned.

(8) In this and the three next following sections, and in Schedule 5 to this Act—

“class” means a class of plant varieties to which a section of the Index relates;

“name” includes any designation.

and for the purposes of those provisions a plant variety shall not be regarded as distinct from another plant variety unless it is clearly distinguishable by one or more important morphological, physiological or other characteristics.

Restrictions on sales of seeds of unindexed plant varieties.

21.—

(1) Subject to this section, after a section of the Index has come into force it shall be an offence under this section for any person in selling seed of a plant variety which is within the class to which the section of the Index relates, but which is not in the Index, or in offering or exposing for sale any such seed, to use a name which serves or is intended by him to serve to distinguish the seed from seed of other plant varieties within that class.

(2) Subsection (1) of this section shall not apply—

(a) to a person who reasonably believes that the seed is to be used for scientific purposes or for the purposes of research, or

(b) to a person who reasonably believes that the seed will be used outside Great Britain.

(3) Where any person makes, or proposes to make, arrangements under which some other person uses seed under the control of the first-mentioned person for the purpose of increasing the first-mentioned person's stock, or of carrying out tests or trials, and under which the whole of the material produced, directly or indirectly, from the seed, and any unused seed, becomes or remains the property of the first-mentioned person, subsection (1) of this section shall not apply—

(a) to a sale, or offer for sale, of the seed by the first-mentioned person to the other person as part of the arrangements, or

(b) to a sale by that other person to the first-mentioned person of seed produced, directly or indirectly, from that seed.

(4) Except as provided by paragraph 3(3) of Schedule 5 to this Act, the Ministers shall not refuse an application for the inclusion of a plant variety in the appropriate section of the Index after it has come into force on any ground other than that in their opinion the plant variety is not distinct from a plant variety which is for the time being in the Index.

(5) If at any time it appears to the Ministers that they will not be able to give a decision on such an application within two years from the time when the applicant has complied with the conditions prescribed under Schedule 5 to this Act for making the application, they shall make an entry in the Index giving to the plant variety such provisional name as appears to them appropriate; and when the decision has been given the, shall make such corrections as may be required to give effect to the decision.

(6) The applicant may appeal to the Tribunal against the refusal by the Ministers of such an application, and the Tribunal may at any time before the final determination of the appeal require the Ministers to make an entry in the Index giving a provisional name for the plant variety to which the application relates pending the determination of the appeal.

Performance trials and reports for new varieties within a section of the Index.

22.—

(1) If the Ministers by order bring this section into force for any class of plant varieties in the Index, this section shall apply to any new plant variety within the class.

An order under this subsection may be revoked by a subsequent order, but without prejudice to liability for any offence before the revocation takes effect; and any order under the subsection shall be made by statutory instrument after consultation with representatives of such interests as appear to the Ministers to be concerned and any such statutory instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(2) For the purposes of this section a plant variety shall be a new variety if it was not in the Index when the order under the foregoing subsection came into force unless it has been exempted under the next following subsection.

(3) The Ministers may on an application from any person, and on being satisfied that seed of a plant variety, although unindexed, was in commercial use in Great Britain before the order under subsection (1) of this section took effect, exempt that plant variety from the provisions of this section.

An appeal shall lie to the Tribunal against the refusal of an application under this subsection.

(4) Subject to this section, it shall be an offence under this section—

- (a) to sell seed of a new plant variety to which this section applies, or
- (b) to offer or expose for sale any such seed, or
- (c) to advertise for use any such seed,

until seed of that plant variety has been submitted for the Purpose of performance trials of that plant variety in accordance with this section, and until a report on the result of the performance trials has been published in the manner prescribed by regulations under this section, and paragraphs (b) and (c) of this subsection shall apply whether or not the offer for sale or advertisement relates only to sales after the performance trials and report.

(5) Paragraphs (a) and (b) of the last foregoing subsection shall not apply to a sale or offer for sale of seed which is not in Great Britain when the sale or offer for sale is made; but, subject to this section, where a person has acquired seed of a new plant variety to which this section applies, being seed which was not in Great Britain when he acquired it, it shall be an offence under this section for him in the course of business—

- (a) to use any of that seed in Great Britain as reproductive material at any time when under the last foregoing subsection it is unlawful to sell seed of that plant variety there; or
- (b) at any such time so to dispose of any of that seed (otherwise than by way of sale) while it is in Great Britain as to make it available for use there as reproductive material.

(6) Subsection (4) of this section shall not apply to any sale or offer for sale of the kind described in subsection (3) of the last foregoing section, and subsection (5) of this section shall not apply to the use of seed for the purpose of carrying out tests or trials.

(7) If it appears to the Ministers that a new variety to which this section applies has undergone performance trials and that an adequate report of the result of those performance trials is generally available, or that there is any other sufficient reason for dispensing with the requirements of subsections (4) and (5) of this section, they may direct that those subsections shall cease to apply to seed of that plant variety, but without prejudice to liability for any offence previously committed.

(8) For all new plant varieties to which this section applies there shall be a time limit by which (so far as practicable) the report on the result of the performance trials is to be published in accordance with this section; and if the report on the result of the performance trials of a new plant variety to which this section applies is not published within the time limit, subsection (4) and (5) of this section shall cease to apply to seed of that plant variety, but without prejudice to liability for any offence committed before the time limit ran out.

Except so far as regulations under this section otherwise provide for a class or part of a class, the time limit shall be two years from the date on which the performance trials begin.

- (9) The Ministers shall in making entries in a section of the Index after an order under subsection (1) of this section has taken effect—
- (a) employ a method which will distinguish those entries from the earlier entries and indicate which of the later entries relate to plant varieties exempted under subsection (3) of this section, and
 - (b) make additional entries showing when subsections (4) and (5) of this section have ceased to apply to seeds of a new plant variety.
- (10) The Ministers may by statutory instrument make regulations for the purposes of this section and, in particular, may by those regulations provide—
- (a) for the manner of making applications under subsection (3) of this section, and applications for sub: milting plant varieties for performance trials,
 - (b) for the information to be afforded by an applicant and the materials to be submitted at the time of application or subsequently,
 - (c) for the manner in which the reports are to be published and brought to the attention of those concerned,
 - (d) for the compiling of a register of applications for the submission of seeds for performance trials, of the reports of the results of those trials, and of the dates of publications of the reports, and for including entries which will show the date when the time limit under subsection (8) of this section will fall,
 - (e) for requiring the Ministers to publish notice of any direction under subsection (7) of this section, and of any case where a report is not published within the time limit under subsection (8) of this section,

and regulations under this subsection made with the approval of the Treasury may authorise the charging of fees to applicants for the submission of seeds for performance trials.

A statutory instrument under this subsection shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(11) References in this section to advertising are references to advertising in any medium, including sound and television broadcasting; but for the purposes of this section the communication of information in any publication for scientific purposes or purposes research shall not be regarded as advertising.

Punishment for offences in connection with the Index.

23.—

(1) A person guilty of an offence under any of the three last foregoing sections shall be liable on summary conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding three months, or to both.

(2) Notwithstanding anything in section 104 of the Magistrates' Courts Act 1952 or section 23 of the Summary Jurisdiction (Scotland) Act 1954 (time limit for proceedings), proceedings for an offence under any of the three last foregoing actions may be brought at any time not more than two years from the time when the offence was committed.

(3) It shall be a defence to proceedings for an offence under any of the three last foregoing sections to prove—

- (a) that the accused took all reasonable precautions against committing an offence of the kind alleged and had not at the time of the alleged offence any reason to suspect that an offence was being committed by him, and
- (b) where the accused obtained the seeds to which the alleged offence relates from some other person, that on demand by or on behalf of the prosecutor the accused gave all the information in his power with respect to the name and address of that other person, and with respect to any statutory statement or other document in his possession or power relating to the seeds, and the contract of sale.

- (4) If any information submitted to the Ministers by or on behalf of—
 - (a) a person making an application or representations as respects any matter connected with the compilation or alteration of the Index, or
 - (b) an applicant under subsection (3) of the last foregoing section,

is false in a material particular and the person giving the information knows that it is false or gives the information recklessly, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding three months, or to both.

Official testing stations

Official testing stations and certificates of test.

24.—

(1) Subject to this section, the Minister of Agriculture, Fisheries and Food and the Secretary of State shall respectively continue to maintain the official seed testing stations established for England and Wales and for Scotland under the Seeds Act 1920.

(2) The Ministers may unite in establishing and maintaining, on such terms as may be agreed between them, a common official seed testing station for the whole of Great Britain.

(3) Either or both of the Ministers may at any time alter the arrangements made by them for official seed testing stations for England and Wales and for Scotland respectively, and any official seed testing station established by either or both of them may be established in conjunction with any other bodies or persons.

(4) The Minister or Ministers concerned may, subject to the approval of the Treasury, authorize the charging of fees for the services given at an official seed testing station.

(5) A certificate of the result of a test at an official seed testing station of a sample taken by an authorised officer for the purposes of this Part of this Act shall be in the form prescribed by seeds regulations.

(6) A certificate of the result of a test at an official seed testing station of a sample taken for the purposes of this Act, and purporting to be issued by an officer of an official seed testing station,—

- (a) if the sample was taken by an authorized officer, shall, if a copy of the certificate has been served on the accused with the summons or complaint, be sufficient evidence of the facts stated in the certificate in any proceedings for an offence under this Part of this Act, and
- (b) if the sample was taken by a person other than an authorised officer in order to obtain the test for the purposes of section 17(3) of this Act, shall be sufficient evidence of the facts stated in the certificate in any such legal proceedings as are mentioned in that section,

unless, in either case, either party to the proceedings requires that the person under whose direction the test was made be called as a witness; and in that event, in the case of proceedings in Scotland, the evidence of that person shall be sufficient evidence of the facts stated in the certificate.

(7) In any proceedings for an offence under this Part of this Act in which a copy of a certificate of the result of a test has been served with the summons or complaint in pursuance of paragraph (a) of the last foregoing subsection, the accused, unless the court otherwise directs, shall not be entitled to require that the person under whose direction the test was made be called as a witness unless he has, at least three clear days before the day on which the summons is returnable or, in Scotland, the case proceeds to trial, given notice to the prosecutor that he intends to do so.

Supplemental

Powers of entry.

25.—

(1) The powers of entry conferred by subsections (3) and (4) of this section may be exercised for the purpose of exercising—

- (a) the further powers conferred by subsections (5) and (6) of this section, or
- (b) any powers of calling for, inspecting or taking copies of records or other documents conferred by seeds he regulations,

or for the purpose of ascertaining whether there is, or has been, on or in connection with the premises (including any vehicle or vessel) any contravention of any provision contained in this Part of this Act or in seeds regulations.

(2) This section shall not authorise entry into any premises which are used exclusively as a private dwelling.

(3) Any person duly authorised by the Minister in that behalf may, on production if so required of his authority, at all reasonable hours enter any premises which he has reasonable cause to believe to be used for any purpose of a business in the course of which seeds are sold, whether the sale is by wholesale or retail, and whether the person conducting it acts as principal or agent.

(4) Any person duly authorised by the Minister in that behalf may, on production if so required of his authority, at all reasonable hours enter any premises on which he has reasonable cause to believe that there are any seed potatoes which have been sold and which are to be delivered, or are in the course of delivery, to the purchaser, and the power of entry under this subsection may be exercised when the seed potatoes are in transit in the course of delivery to the purchaser, and in particular when they are in any vehicle or vessel in the course of delivery.

(5) A person may, on any premises (including any vehicle or vessel) which he has power under this section to enter for the purpose of exercising the powers conferred by this subsection, examine any seeds which he finds there and may without payment take samples of any seeds so found.

(6) The owner of any seeds which are offered or exposed for sale, or are stored for purposes of sale, or any person authorised to sell those seeds, may be required by a person duly authorized by the Minister in that behalf to deliver to him such a statement, if any, as the person selling them would by seeds regulations be obliged to deliver to a purchaser of those seeds, and to deliver it within the time prescribed for such a statement.

(7) If any person fails to comply with a requirement under subsection (6) of this section he shall be liable on summary conviction—

- (a) in the case of a first offence under this subsection, to a fine not exceeding twenty pounds, and
- (b) in the case of a second or subsequent offence under this subsection, to a fine not exceeding fifty pounds,

and references in this Part of this Act to a statutory statement shall include references to a statement delivered under subsection (6) of this section.

(8) This section shall apply as respects—

- (a) all kinds of seeds in respect of which an offence may under any circumstances be committed under seeds regulations as for the time being in force, and
- (b) seeds of all plant varieties which are within any class to which a section of the Index which has come into force relates.

(9) A person who obstructs or impedes any person acting in the exercise of the powers conferred by this section shall be liable on summary conviction to a fine not exceeding twenty pounds.

Use of samples in criminal proceedings.

26.—

(1) Evidence shall not be adduced in proceedings for an offence under this Part of this Act respecting a sample taken by an authorised officer unless the sample was taken in the manner prescribed by seeds regulations.

(2) Seeds regulations shall provide for the sample being divided into at least two parts, and for one of the parts being given to the owner of the seeds or to such other person as may be prescribed by seeds regulations, and shall provide for a thirds part of the sample to be retained for production in all cases where use of it may be made by the court under this section.

(3) A certificate in the form prescribed regulations purporting to be issued by an authorised officer and stating that a sample was taken in the prescribed manner shall be sufficient evidence of the facts stated in the certificate.

(4) If part of a sample taken by an authors officer is sent to the chief officer of an official testing station, it shall be so sent as soon as practicable after the sample is taken, and the person to whom any other part of the sample is given shall be informed before the first-mentioned part is sent.

(5) A copy of a certificate issued by an official testing station stating the result of a test of part of a sample taken by an authorised officer shall be sent to the person to whom any other part of the sample is given.

(6) In any proceedings for an offense under this Part of this Act in respect of seeds which have been sampled by an authorised officer, the summons shall not be made returnable, and, in Scotland, the case shall not proceed to trial, less than fourteen days from the day on which the summons or complaint is served, and a copy of any certificate of an official testing station which the prosecutor intends to adduce as evidence shall be served with the summons or complaint.

(7) In proceedings for including in a statutory statement false particulars concerning matters which are under seeds regulations to be ascertained, for the purpose of the statement, by a test of the seeds, if any sample of the seeds has been taken by an authorised officer, the third part of that sample required by seeds regulations to be retained as mentioned in subsection (2) of this section shall be produced at the hearing.

(8) The court may, if it thinks fit, on the request of either park, cause the part so produced to be sent to the chief officer of an official testing station, who shall transmit to the court a certificate of the result of a test of that part of the sample.

(9) If, in a case where an appeal is brought, no action has been taken under the last foregoing subsection the provisions of that subsection shall apply also to the court by which the appeal is heard.

(10) A sample taken before the coming into force of this Part of this Act in accordance with section 4 of the Seeds Act 1920 shall be regarded as taken in the prescribed manner for he purposes of subsection (1) of this section.

Tampering with samples.

27.—

(1) If any person—

(a) tampers with any seeds so as to procure that a sample taken in the manner prescribed by seeds regulations for any purpose does not correctly represent the bulk of the seeds, or

(b) tampers with any sample so taken, or

(c) with intent to deceive sends, or causes or allows to be sent to any official testing station or licensed testing establishment, to be tested for any purpose, a sample of seeds which to his knowledge does not correctly represent the bulk of the seeds,

he shall be liable on summary conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding three months, or to both.

(2) In this section “licensed testing establishment” means an establishment licensed under seeds regulations for the testing of seeds.

Institution of criminal proceedings.

28.—

(1) Notwithstanding anything in section 104 of the Magistrates' Courts Act 1952 or section 23 of the Summary Jurisdiction (Scotland) Act 1954 (time limit for proceedings), where a part of a sample has been tested at an official testing station proceedings for including in a statutory statement false particulars concerning the matters which are under seeds regulations to be ascertained, for the purposes of the statement, by a test of the seeds, being proceedings relating to the seeds from which the sample was taken, may be brought at any time not more than six months from the time when the sample was taken.

(2) If at any time before a test is begun at an official testing station to ascertain whether a part of a sample of seeds is of a specified variety or type, and not more than six months after the sample was taken, the person to whom any other part of the sample was given, or any other person, is notified in writing by an authorised officer that it is intended so to test the seeds and that, after the test, proceedings may be brought against that person for including in a statutory statement a false statement that seeds were of a specified variety or type, then notwithstanding anything in the said section 104 or 23, any such proceedings relating to the seeds from which the sample was taken may be brought against the person so notified at any time not more than two years from the time when the sample was taken.

A certificate purporting to be issued by an authorised officer and stating that a person was so notified shall be sufficient evidence of that fact.

(3) Proceedings for an offence under this Part of this Act relating to a statutory statement which has been delivered to a purchaser of seeds, or relating to seeds which have been sold and delivered to the purchaser, may be brought before a court having jurisdiction at the place of delivery of the statement or seeds.

Application of Part II to seed potatoes.

29. This Part of this Act applies to seed potatoes as it applies to seeds, and accordingly, except where the context otherwise requires, references in this Part of this Act to seeds include references to seed potatoes.

Interpretation of Part II.

30.—

(1) In this Part of this Act, unless the context otherwise requires,—

“authorised officer” means an officer of the Minister or a person authorised by the Minister to execute this Part of this Act;

“official testing station” means an official seed testing station maintained by the Minister or Ministers under this Part of this Act;

“seeds” includes agricultural and horticultural seeds, vegetable seeds, flower seeds, seeds of grasses, whether used for agricultural purposes or other purposes, and seeds of trees;

“statutory statement” means a statement given in pursuance of seeds regulations, whether the statement be in the form of a notice or other document, or in the form of particulars given on any label or container or package, or in any other form, and includes a statement delivered under section 25(6) of this Act.

(2) In this Part of this Act references to a contravention of any provision contained in this Act or in seeds regulations include references to a failure to comply with such a provision, and references to a contravention of any provision contained in seeds regulations include references to anything which, by the regulations, is expressed to be an offence against a provision contained in the regulations and also include references to any failure to comply with a condition subject to which an exemption is granted by or under seeds regulations.

(3) In this Part of this Act any reference to an offence under this Part of this Act includes, unless the context otherwise requires, a reference to a contravention of any provision contained in seeds regulations.

Repeals and consequential amendment.

31.—

(1) The enactments mentioned in Schedule 6 to this Act (which include certain enactments which were obsolete before the passing of this Act) shall, except for the purposes of proceedings for offences thereunder committed before the coming into force of this Part of this Act, be repealed to the extent specified in the third column of that Schedule.

(2) In section 2(1)(a) of the Merchandise Marks Act 1953 (exception for statutory descriptions of agricultural produce) for the words from “the Seeds Act 1920” to the end of the paragraph there shall be substituted the words “seeds regulations; or”.

PART III CONTROL OF IMPORTS AND PREVENTION OF CROSS-POLLINATION

Control of imports of potentially deleterious seeds.

32.—

(1) If it appears to the Ministers that it is necessary or expedient that they should be able to exercise the powers conferred by this section for the purpose of preventing the importation into the United Kingdom—

- (a) of seeds which, if used as reproductive material in the United Kingdom, will or may cause deterioration of domestic types or varieties of plants by cross-pollination, physical admixture or other means, or
- (b) of seeds which are unsuitable for use in the United Kingdom because they are of a type or variety which has been developed in countries with different climates, different hours of daylight or other different conditions,

they may by order apply this section to seeds of any type or variety specified in the order.

(2) An order under this section may provide for excepting from a type or variety so specified any description of seeds defined in any manner and, in particular, any description of seeds defined by reference to the country or territory where they were grown or from which they have been consigned to the United Kingdom.

(3) Without prejudice to the powers of exemption conferred by the last foregoing subsection, where it is shown to the satisfaction of the Commissioners of Customs and Excise that any seeds are being imported into the United Kingdom solely with a view to their re-exportation after transit through any part of the United Kingdom, or by way of trans-shipment, the Commissioners may, subject to such conditions as they think fit to impose for securing the re-exportation of the seeds, allow those seeds to be imported as if this section did not apply to them.

(4) Subject to any exceptions prescribed under subsection (2) of this section and to the last foregoing subsection, all seeds to which this section applies are prohibited to be imported into the United Kingdom except under the authority, and in accordance with the terms, of a licence granted by the Minister of Agriculture, Fisheries and Food.

(5) A licence under this section may be, to any degree, general or specific and may be modified or revoked by the Minister of Agriculture, Fisheries and Food at any time.

(6) An officer of Customs and Excise may require any person possessing or having control of any seeds to which this section applies which are being or have been imported to furnish proof that the importation of the seeds is or was not unlawful by virtue of this section; and if such proof is not furnished to the satisfaction of the Commissioners of Customs and Excise, then, unless the contrary is proved, the goods shall be deemed to be prohibited goods and shall be liable to forfeiture under the Customs and Excise Act 1952.

(7) An order under this section—

- (a) may include provision as to the methods by which importers may be required to prove whether consignments of seeds fall within any exception specified in such an order,
- (b) may prescribe the form and manner in which applications are to be made for licences and the form of licences,
- (c) may contain such other transitional, supplemental and incidental provisions as appear to the Ministers to be expedient, and
- (d) may be varied or revoked by a subsequent order under this section;

and any order under this section shall be made by statutory instrument after consultation with representatives of such interests as appear to the Ministers to be concerned, and any such statutory instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(8) In this section “the Ministers” means the Minister of Agriculture, Fisheries and Food, the Secretary of State for Scotland and the Secretary of State concerned with agriculture in Northern Ireland, acting jointly.

(9) This section shall extend to Northern Ireland and be construed as one with the Customs and Excise Act 1952.

Measures to prevent injurious cross-pollination affecting crops of seeds.

33.—

(1) This section shall have effect for the purpose of maintaining the purity of seed of any types and varieties of plants of any species of the genus *Allium*, *Beta* or *Brassica*.

(2) The Minister may by order bring this section into force in an area in any part of Great Britain in which persons are engaged in growing crops of seeds of any type or variety of plant mentioned in subsection (1) of this section if he is satisfied that in that area satisfactory arrangements (whether legally enforceable or not) have been made for locating such crops so as to isolate them from crops or plants which might cause injurious cross-pollination.

(3) An order under this section—

- (a) shall be made after consultation with the persons responsible for the arrangements mentioned in subsection (2) of this section, and with persons representative of such other interests as appear to the Minister to be concerned, and
- (b) shall be made by statutory instrument and may be varied or revoked by a subsequent order so made.

(4) An order under this section—

- (a) shall state which of the types and varieties of plants mentioned in subsection (1) of this section are protected by the order, and
- (b) shall specify the kinds of crops and plants which are to be controlled in the area to which the order relates, and
- (c) may relate to more than one area and, if so, may make different provision under paragraphs (a) and (b) of this subsection in respect of the different areas to which it relates;

and in this section, in relation to an area to which an order under this section relates—

- (i) “protected crop” means a crop of a type or variety of plant which is protected by the order in that area, being a crop grown for the purpose of producing seeds, and
- (ii) “controlled crops or plants” means crops, grown for any purpose, of the types or varieties of plants which are protected by the order in that area, and such additional kinds of crops or

plants, whether grown or self-sown and whether of those or any other types or varieties, as may be specified in the order for the purposes of this definition in that area.

(5) If in an area where this section is in force controlled crops or plants are growing and, on an application made in accordance with Schedule 7 to this Act, the Minister is satisfied—

- (a) that they are causing or may cause injurious cross-pollination in a protected crop which is being grown in the area, and
- (b) in the case of controlled crops or plants which are not self-sown, that the person growing them did not give to the persons responsible for the arrangements mentioned in subsection (2) of this section such notice of his intention to grow those crops or plants to the flowering stage as would have enabled them to take any appropriate steps for altering the arrangements,

the Minister may serve a notice on the occupier of the land where the controlled crops or plants are growing requiring him to take such steps as may be specified in the notice for the purpose of preventing any of the controlled crops or plants from causing or continuing to cause injurious cross-pollination in the protected crop.

(6) If the person served with a notice under this section does not comply with any requirement in the notice, the Minister may enter and do what that person has failed to do or, if in the opinion of the Minister that would no longer serve the purpose for which the notice was served, may take such other action as appears to the Minister appropriate for that purpose; and where, when the default occurs, further obligations remain under the notice, the Minister may also take such action as appears to him appropriate to meet the purposes for which those further obligations were imposed.

The Minister may recover from the person on whom the notice was served a sum equal to the reasonable cost incurred by the Minister in taking any action under this subsection.

(7) Without prejudice to the power of proceeding under the last foregoing subsection, a person who unreasonably fails to comply with any requirement in a notice under this section shall be liable on summary conviction—

- (a) in the case of a first offence under this subsection, to a fine not exceeding twenty pounds, and
- (b) in the case of a second or subsequent offence under this subsection, to a fine not exceeding fifty pounds.

(8) A person duly authorised by the Minister may, on production if so required of his authority, at all reasonable hours enter on any land (but not into any dwellinghouse) in an area where this section is in force for the purpose of ascertaining whether controlled crops or plants are growing on the land or of inspecting and taking samples of any controlled crops or plants growing on land.

(9) A notice under this section or Schedule 7 to this Act may be served by leaving it at, or sending it by post addressed to, last known address of the person on whom it is to be served and if it is not practicable after reasonable inquiry to his name and address, the notice may be served by affixing it to him as “the occupier” of the land and affixing a copy of it to some conspicuous object on the land.

(10) A person who obstructs or impedes a person acting in the exercise of the powers conferred by subsection (6) or subsection (8) of this section shall be liable on summary conviction to a fine not exceeding twenty pounds.

(11) In this section, and in the said Schedule—

- “the occupier” means, in the case of unoccupied land, the person entitled to occupy the land;
- “protected crop” and “controlled crops or plants” have the meanings respectively assigned by subsection (4) of this section.

PART IV
GENERAL

The gazette.

34.—

(1) The Ministers shall from time to time publish a gazette (in this Act referred to as “the gazette”), and shall use the gazette as one of the means of publishing notice of matters to be published under this Act.

(2) It shall be no defence in civil or criminal proceedings to show that at any time a person did not know of an entry in the register under section 5 of this Act, or in the Index under Part II, or did not know that a section of the Index had come into force, if before that time notice of that entry or fact had been published in the gazette.

General provisions as to offences.

35.—

(1) Where an offence punishable under this Act committed by a body corporate 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 who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Proceedings for any offence punishable under this Act may (without prejudice to any jurisdiction exercisable apart from this subsection) be taken against a person before the appropriate court in Great Britain having jurisdiction in the place where that person is for the time being.

Supplemental provisions as to regulations.

36. Regulations under this Act—

- (a) may make different provision for different types or classes of plant varieties, for different seasons of the year and for other different circumstances, and
- (b) may contain such supplemental, incidental and transitional provisions as may appear to the Minister or Ministers making the regulations to be expedient.

Departmental expenses and payments into Exchequer.

37.—

(1) There shall be paid out of moneys provided by Parliament—

- (a) the remuneration and allowances of the Controller and other officers and servants appointed under section 11 of this Act,
- (b) the remuneration and allowances of members of the Tribunal and of the officers and servants of the Tribunal appointed by the Ministers, and such other expenses of the Tribunal as the Treasury may determine,
- (c) to such extent as the Treasury may approve, any expenses incurred by the Controller in the discharge of his functions under this Act (including any sums paid by way of fees or grants under section 11(4) of this Act), and any other expenses incurred in the operation of the Plant Variety Rights Office,
- (d) (so far as not falling under the foregoing paragraphs) any expenses incurred by a Minister in the execution of this Act, and
- (e) any increase attributable to this Act in the sums payable out of money so provided under the Superannuation Acts 1834 to 1960.

(2) Any fees received by virtue of this Act by a Minister or the Controller or the Tribunal shall be paid into the Exchequer.

Interpretation.

38.—

(1) In this Act—

“the Controller” means the Controller of Plant Variety Rights;

“the Minister” means, as respects England and Wales, the Minister of Agriculture, Fisheries and Food and, as respects Scotland, the Secretary of State; and “the Ministers” means, except as otherwise expressly provided, the said two Ministers acting jointly;

“plant variety” means any clone, line, hybrid or genetic variant;

“the Tribunal” means the Tribunal established under Part I of this Act;

“variety”, unless the context otherwise requires, means a plant variety.

(2) References in this Act to seeds are references to seeds for sowing.

(3) Any reference in this Act to any other enactment shall, except so far as the context otherwise requires, be construed as a reference to that enactment as amended or applied by or under any other enactment, including this Act.

Extension of Act to Northern Ireland.

39.—

(1) This Act, so far as not expressly extended to Northern Ireland by any provision contained in this Act or by any Order in Council under the next following subsection, shall not extend to Northern Ireland; but no limitation on the powers of the Parliament of Northern Ireland imposed by the Government of Ireland Act 1920 shall apply in relation to legislation for purposes similar to the purposes of Part II or this Part of this Act so as to preclude that Parliament from enacting a provision similar to some provision in those Parts of this Act.

(2) Her Majesty may, by an Order in Council made under this subsection in pursuance of resolutions passed by the two Houses of the Parliament of Northern Ireland, direct that—

(a) the provisions of Part I of this Act, and

(b) any of the provisions of Part II or this Part of this Act specified in the Order,

shall (whether as originally enacted or as they have effect by virtue of any Order in Council under the next following section) extend to Northern Ireland; and any such Order in Council may be varied or revoked by a subsequent Order in Council made under this subsection in pursuance of such resolutions as aforesaid.

(3) While any of the provisions of this Act extend to Northern Ireland by virtue of an Order in Council under subsection (2) of this section, they shall (without prejudice to the validity of anything previously done under this Act)—

(a) have effect as if—

(i) any reference to Great Britain were a reference to the United Kingdom; and

(ii) any reference to “the Ministers” included the Secretary of State concerned with agriculture in Northern Ireland; and

(b) in their application to Northern Ireland, have effect as if—

(i) references to sections 9 and 32 of the Arbitration Act 1950 were respectively references to sections 12 and 30 of the Arbitration Act (Northern Ireland) 1937;

(ii) references to section 104 of the Magistrates’ Courts Act 1952 were references to any corresponding provision of the law of Northern Ireland;

(iii) in section 10(6), for the reference to England and Wales there were substituted a reference to Northern Ireland;

(iv) after paragraph 3 of Schedule 4 there were inserted the following paragraph—

“3A. In relation to proceedings before the Tribunal in Northern Ireland—

- (a) paragraphs 1 and 2 of this Schedule shall have effect as if for the references to the Lord Chancellor there were substituted references to the Lord Chief Justice of Northern Ireland, and
- (b) references in paragraphs 5 and 8 of this Schedule to the chairman or deputy chairman shall, be construed respectively as references to the chairman or deputy chairman appointed for such proceedings”;

and

(v) In paragraph 9(1) of Schedule 4, for the words from “in the county court” to the end of that sub-paragraph there were substituted the words “by the taxing master of the Supreme Court of Judicature of Northern Ireland according to such of the scales provided for equity suits or proceedings in the county courts under the County Courts Act (Northern Ireland) 1959 as may be directed by file order or, if the order gives no direction, by the taxing master”.

(4) While any provisions of this Act extend to Northern Ireland by virtue of an Order in Council under subsection (2) of this section, they shall have effect subject to such exceptions, adaptations and modifications as may be specified in the Order; and in the application of those provisions to Northern Ireland any reference to any enactment of the Parliament of Northern Ireland shall be construed as a reference to that enactment as amended by any Act of that Parliament, whether passed before or after this Act, and to any enactment of that Parliament passed after this Act and re-enacting the said enactment with or without modification.

(5) If the Parliament of Northern Ireland pass legislation amending or repealing the Seeds Act 1920, Her Majesty may by Order in Council made under this subsection direct that that legislation (and any related enactments forming part of the law of Northern Ireland), and any provisions in Part II or this Part of this Act, shall have effect subject to such exceptions, adaptations and modifications as may appear to Her Majesty to be expedient for the purpose of securing that the two systems of legislation operate, to such extent as may be specified, as a single system; and any such Order in Council may be varied or revoked by a subsequent Order in Council under this subsection.

(6) An Order in Council under subsection (2) or subsection (5) of this section may contain such transitional and other consequential provisions as appear to Her Majesty to be expedient.

Extension of Act to Isle of Man and Channel Islands.

40. Her Majesty may by Order in Council direct that any of the provisions of this Act specified in the Order shall (whether as originally enacted or as they have effect by virtue of any Order in Council under the last foregoing section) extend, subject to such exceptions, adaptations and modifications as may be specified in the Order, to the Isle of Man or any of the Channel Islands; and any such Order in Council may contain such transitional and other consequential provisions as appear to Her Majesty to be expedient, and may be varied or revoked by a subsequent Order in Council.

Short title and commencement.

41.—

(1) This Act may be cited as the Plant Varieties and Seeds Act 1964.

(2) Parts II and III of this Act shall come into force on such day as the Minister of Agriculture, Fisheries and Food and the Secretary of State may by order contained in a statutory instrument appoint, and orders under this subsection may appoint different dates for different provisions or different purposes.

SCHEDULES

Section 1.

SCHEDULE 1

PROTECTION OF APPLICANT FOR RIGHTS WHILE APPLICATION IS PENDING

1.—

(1) An applicant for the grant of plant breeders' rights shall in his application state whether he is also applying for a direction by the Controller under this Schedule (in this Schedule referred to as "a protective direction") as respects the plant variety to which the application relates.

(2) An applicant applying for a protective direction shall include in the application an undertaking to the effect that, subject to the exceptions in the next following sub-paragraph, in the period between the making of the application and the time when the question whether the application is to be allowed or refused is finally determined (or, if the undertaking is discharged under this Schedule at an earlier time, until that earlier time) no plants of the plant variety, and no material forming part of, or derived from, plants of that variety, will be offered or exposed for sale or sold in the United Kingdom by the applicant or with his consent.

(3) An undertaking under this paragraph shall not prevent the applicant from making any offer for sale or sale which in the period before the application would be permitted by sub-paragraphs (3), (4) or (5) of paragraph 2 of Part II of Schedule 2 to this Act, or the exposure for sale of material where an offer for sale of that material would be so permitted.

(4) If the Controller is satisfied that the applicant has duly given the undertaking, and that he has furnished to the Controller all such information, facilities and material as the Controller may require for the purposes of the application for the grant of plant breeders' rights, the Controller may, if he thinks fit, give a protective direction.

(5) The Controller shall not give a protective direction if there is any evidence before him which tends to show that the applicant, or the person whose successor in title the applicant claims to be, is not the person who bred or discovered the plant variety to which the application relates.

(6) An appeal shall lie to the Tribunal against a decision to give or refuse a protective direction.

2.—

(1) While a protective direction is in force, anything which if the plant breeders' rights to which the application in question relates had been granted, would have constituted an infringement of those rights, or would under section 5(6) of this Act have been actionable in proceedings by the holder of those rights, may be the subject of proceedings under this paragraph.

(2) Proceedings may be brought under this paragraph by the applicant in whose favour the protective direction is made against any person for an injunction or interdict requiring that person, while the protective direction is in force, not to do any of the things will may be the subject of proceedings under this paragraph, and the court may if it thinks fit grant an injunction or interdict accordingly on such terms as appear to the court to be just.

(3) An undertaking not to institute or prosecute proceedings under this paragraph, whether or not any consideration is given for the undertaking, shall be void, and if the Controller is satisfied that an applicant in whose favour a protective direction is made has siren such all undertaking, whether or not the undertaking be enforceable at law, he shah withdraw the protective direction.

(4) A protective direction shah cease to be in force when the question whether the application for the grant of plant breeders rights is to be allowed or refused is finally determined, or at such earlier time as is provided under the following provisions of this Schedule.

3.—

(1) The Controller may at any time, if in all the circumstances it appears to him to be just, withdraw a protective direction, and shall withdraw a protective direction if he is satisfied that there has been a breach of the undertaking given under paragraph 1 of this Schedule by the applicant.

(2) An appeal shall lie to the Tribunal against a decision to withdraw a protective direction.

(3) The undertaking given by the applicant under paragraph 1 of this Schedule shall cease to be binding when the protective direction is withdrawn.

4.—

(1) If at any time the Controller is satisfied that there has been a breach of the undertaking given under paragraph 1 of this Schedule, he may refuse the application for the grant of plant breeders' rights or, as the case may be, may terminate the period for which plant breeders' rights are exercisable.

(2) If there is a breach of an undertaking under paragraph 1 of this Schedule given by an applicant, the applicant shall be guilty of an offence and shall be liable on summary conviction—

(a) in the case of a first offence under this sub-paragraph, to a fine not exceeding fifty pounds, and

(b) in the case of a second or subsequent offence under this sub-paragraph, to a fine not exceeding one hundred pounds.

SCHEDULE 2

Section 2.

Part I

Priorities between Applicants for Rights

1.—

(1) If the variety was independently bred or discovered by two more persons, the first of those persons who makes an application in respect of the variety in the form prescribed for the purposes of this Schedule by regulations under section 9 of this Act shall be the person entitled to a grant of plant breeders' rights.

(2) As between two persons making applications on the same date, the one who was first in a position to make a valid application for the grant of plant breeders' rights (or would have been first in the position if Part I of this Act and the relevant scheme had always been in force) shall be the person entitled to a grant of plant breeders' rights.

2.—

(1) For the purposes of the foregoing paragraph an application duly made in a country to which this paragraph applies when the application is made shall be treated as if duly made under this Act if the conditions in this paragraph are satisfied.

(2) No account shall be taken under this paragraph of an application made in a country outside the United Kingdom at a time when the plant variety to which the application relates was not one falling within a species or group prescribed by a scheme under this Act as a species or group in respect of which plant breeders' rights may be granted.

(3) Not more than 12 months after the application duly made in that country the applicant must make his application under this Act in the form prescribed for the purposes of this Schedule by regulations under section 9 of this Act, being a form which includes a claim in respect of the priority of the application in the said country.

(4) Within 3 months of the application under this Act a copy of the documents constituting the application in the said country, certified as correct by the authority in that country to whom application is made, must be submitted to the Controller.

(5) If applications have been made in more than one country to which this paragraph applies, and have been so made at different dates, the period of 12 months mentioned in sub-paragraph (3) of this paragraph shall be taken from the earlier or earliest of those applications, and sub-paragraph (4) of this paragraph shall be construed accordingly.

(6) If priority is established for an application by virtue of this paragraph after a grant of plant breeders' rights has been made in pursuance of an application against which priority is established, the Controller shall terminate the period for which the rights under the grant are exercisable.

An appeal shall lie to the Tribunal against a decision of the Controller to act under this sub-paragraph.

(7) The Ministers may by order contained in a statutory instrument from time to time designate any country or territory outside the United Kingdom as a country to which this paragraph applies and from time to time vary or revoke any such order, but not as to prejudice applications already made in the United Kingdom or elsewhere.

3. Regulations under section 9 of this Act may provide for the forfeiture of any priority obtained under the foregoing provisions of this Schedule if the person making the application does not within a period prescribed by the regulations satisfy all the requirements which are to be satisfied by an applicant before a grant of plant breeders' rights can be made.

Part II Rules for Grant of Rights

Distinctness

1.—

(1) The variety must be clearly distinguishable by one or more important morphological, physiological or other characteristics from any other variety whose existence is a matter of common knowledge at the time of the application.

(2) For the purposes of the foregoing sub-paragraph common knowledge may be established by reference to plant varieties already in cultivation or exploited for commercial purposes, or those included in a recognised commercial or botanical reference collection, or those of which there are precise descriptions in any publication.

Previous commercialisation

2.—

(1) Subject to this Schedule, in the period before the scheme by virtue of which the application is made came into force, no plants of the variety, and no material forming part of, or derived from, plants of the variety may have been offered for sale or sold by any person in the United Kingdom or elsewhere.

(2) Subject to this Schedule, in the period beginning with the date when the said scheme came into force and ending with the date of the application no plants of the variety, and no material forming part of, or derived from, plants of the variety, may have been offered for sale or sold by or with the consent of the applicant in the United Kingdom or elsewhere:

Provided that the restriction imposed by this sub-paragraph shall not apply to sales or offers made outside the United Kingdom during period of four years ending with the date of the application.

(3) Sub-paragraphs (1) and (2) of this paragraph shall not apply—

- (a) to an offer for sale of a stock of material of any plant variety in connection with an offer for sale of the title to apply for the grant of plant breeders' rights in respect of that plant variety, or
- (b) to any sale of material of any plant variety if at the time of the sale or subsequently the purchaser becomes the person entitled to make an application for the grant of plant breeders' rights in respect of that plant variety.

(4) Where an applicant makes, or proposes to make, arrangements under which some other person uses reproductive material of the plant variety under the control of the applicant for the purpose of

increasing the applicant's stock, or of carrying out tests or trials, and under which the whole of the material produced, directly or indirectly, from that reproductive material, and any unused reproductive material, becomes or remains the property of the applicant. The said sub-paragraphs (1) and (2) shall not apply—

- (a) to a sale or offer for sale of the reproductive material by the applicant to any such other person as part of such arrangements, or
 - (b) to a sale by the other person to the applicant of the material produced, directly or indirectly, from that reproductive material.
- (5) The said sub-paragraphs (1) and (2) shall not apply to an offer for sale or sale of material, not being reproductive material, which, having been produced in the course of—
- (a) the breeding of the plant variety, or
 - (b) increasing the applicant's stock of material of the plant variety, or carrying out tests or trials of the plant variety,

has been found to be in excess of what was required for those purposes.

3.—

(1) Where an application in the form prescribed for the purposes of this Schedule by regulations under section 9 of this Act is made at a time not later than 11th May 1965, and the applicant does not ask for a protective direction, sub-paragraphs (1) and (2) of the last foregoing paragraph shall not apply to any offer for sale or sale in the period beginning with 12th November 1963 and ending with that time if the Controller is satisfied that the applicant took all steps reasonably open to him to ensure that any person to whom material of the plant variety has been offered or sold during the said period has been informed in writing that an application for a grant of plant breeders' rights may be made in respect of the variety.

(2) Where an application is allowed by virtue of this paragraph, section 7(2) of this Act shall not apply to any compulsory licence granted as respects the plant variety to which the application relates.

Uniformity

4. The variety must be sufficiently uniform or homogeneous having regard to the particular features of its sexual reproduction or vegetative propagation.

Stability

5. The variety must be stable in its essential characteristics, that is to say, it must remain true to its description after repeated reproduction or propagation or, where the application prescribes a particular cycle of reproduction or multiplication, at the end of each cycle.

Section 4.

SCHEDULE 3

Plant Breeders' Rights in Special Cases

Sale of cut blooms, fruit, etc.

1.—

(1) If it appears to the Ministers that, in the case of any species or group of plant varieties, plant breeders will not receive adequate remuneration unless they have control over the production or propagation of the plant variety in Great Britain for the purpose of sales of cut blooms, fruit or some other part or product of plants of the variety, and that the control will be of substantial benefit to the plant breeders, they may by a scheme under Part I of this Act provide that, as respects any plant variety of the species or group prescribed by the scheme, plant breeders' rights shall include the exclusive right to do, and to authorise others to do as follows, that is to produce or propagate the variety for the purpose of selling such parts or products of the variety as may be prescribed by the scheme.

(2) A scheme conferring any such rights may also provide that plant breeders' rights shall include the exclusive right to do, and to authorise others to do, as follows, that is to sell the parts or products of the variety in relation to which the rights are extended in so far as they are obtained by the seller from plants of the variety which the seller has himself produced or propagated.

(3) References in this paragraph to parts or products of a plant variety include references to whole plants of that plant variety.

*Use of reproductive material for production of
certain other plant varieties*

2. Plant breeders' rights shall include the exclusive right to do, and to authorise others to do, as follows, that is to use the reproductive material of the plant variety to which the rights relate for the purpose of producing, in order to sell it, the reproductive material of another plant variety if (but only if) the nature of that other variety is such that repeated production of the reproductive material of that other variety is not possible without the repeated use of reproductive material of the plant variety to which the rights relate.

Section 10.

SCHEDULE 4

The Plant Variety Rights Tribunal

The Chairman

1.—

(1) The Lord Chancellor shall appoint a chairman for the Tribunal, who shall be a barrister or solicitor of not less than seven years' standing.

(2) The appointment of the chairman shall be for such term as may be determined by the Lord Chancellor before his appointment, and a person who ceases to hold office as chairman of the Tribunal shall be eligible for re-appointment.

(3) The chairman may resign his office by notice in writing to the Lord Chancellor.

(4) If the Lord Chancellor is satisfied that the chairman is unfit to continue in office or incapable of discharging his duties, he may revoke the appointment of the chairman.

2. In the case of the temporary absence or inability to act of the chairman, the Lord Chancellor may appoint any other person who is a barrister or solicitor of not less than seven years' standing to act as deputy for the chairman, and the person so appointed shall, when so acting, have all the functions of the chairman.

3. In relation to proceedings before the Tribunal in Scotland

(a) paragraphs 1 and 2 of this Schedule shall have effect as if for the references to the Lord Chancellor and to a barrister there were substituted respectively references to the Lord President of the Court of Session and to an advocate; and

(b) references in paragraphs 5 and 8 of this Schedule to the chairman or deputy chairman shall be construed respectively as references to the chairman or deputy chairman appointed for such proceedings.

4.—

(1) Part III of Schedule 1 to the House of Commons Disqualification Act 1957 (which specifies offices the holders of which are disqualified under that Act) shall have effect as if the words “Any Chairman of the Plant Variety Rights Tribunal” were inserted—

- (a) in the said Part III as it applies to the House of Commons of the Parliament of the United Kingdom, after the entry “Chairman or Deputy Chairman of the National Parks Commission”; and
 - (b) in the said Part III as it applies to the Senate and the House of Commons of Northern Ireland, before the entry “Clerk of Assize”.
- (2) This paragraph shall extend to Northern Ireland.

The two panels

5.—

(1) The Ministers shall draw up and from time to time revise—

- (a) a panel of persons who have wide general knowledge in the field of agriculture, of horticulture or of forestry; and
- (b) a panel of persons who have specialised knowledge of particular species or groups of plants,

and the members of the Tribunal (other than the chairman and deputy chairman) shall be selected from those panels in accordance with this Schedule.

(2) The power to revise the said panels shall include power to terminate a person’s membership of either of them, and accordingly to that extent be subject to section 5 of the Tribunals and Inquiries Act 1958 (which makes it necessary to obtain the concurrence of the Lord Chancellor and of certain judicial officers in Scotland and Northern Ireland to dismissals in certain cases).

Remuneration of members of Tribunal

6. The Ministers may pay to members of the Tribunal such remuneration and such allowances as the Ministers may with the approval of the Treasury determine.

Officers and servants

7.—

(1) The Ministers may appoint such officers and servants of the Tribunal as the Ministers may with the approval of the Treasury determine.

?? under this paragraph such remuneration and allowances as the Treasury may determine.

Procedure

8.—

(1) The jurisdiction of the Tribunal shall be exercised by three members consisting of the chairman and a member selected from each of the two panels; and references in this Act to the Tribunal shall be construed accordingly.

(2) The member from the panel of those with specialised knowledge shall be selected for his knowledge of the subject matter of a particular case or class or group of cases.

(3) The members of the panels who are to deal with any case shall be selected as follows—

- (a) the Ministers may select a member or members to deal with that particular case or class or group of cases, or
- (b) the Ministers may select for a class or group of cases members from amongst whom members to deal with any particular case shall be selected, and the selection from amongst those

members of a member or members to deal with the particular case shall then be made either by the Ministers, or, if they so direct, by the chairman.

(4) Any decision of the Tribunal in exercise of their jurisdiction shall be taken, in the event of a difference between members dealing with the case, by the votes of the majority.

(5) If, after the commencement of the hearing of any proceedings before the Tribunal, one of the three members of the Tribunal becomes incapable of continuing to hear the proceedings on account of sickness or for any other reason, the proceedings may, with the consent of all parties to the proceedings, be continued before the remaining two members of the Tribunal and heard and determined accordingly, but if the two members differ in opinion the case shall, on the application of any party to the proceedings, be re-argued and determined by the Tribunal as ordinarily constituted.

(6) A decision of the Tribunal shall not be questioned on the ground that a member was not validly appointed or selected.

(7) The Tribunal may sit to hear any proceedings in any place in Great Britain.

9.—

(1) The Tribunal in exercising their statutory jurisdiction may order any party to the proceedings to pay to any other party to the proceedings either a specified sum in respect of the costs incurred by the second-mentioned party in the proceedings, or the taxed amount of those costs; and any costs required by an order under this sub-paragraph to be taxed may be taxed in the county court according to such of the scales prescribed by county court rules for proceedings in the county court as may be directed by the order or, if the order gives no direction, by the county court.

(2) The Lord Chancellor may by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament, make rules as to the procedure in connection with proceedings brought before the Tribunal in exercise of their statutory jurisdiction and, subject to the approval of the Treasury, as to the fees chargeable in respect of those proceedings, and the rules may in particular make provision—

- (a) as to the circumstances in which the Tribunal need not sit, or is not to sit, in public,
- (b) as to the form of any decision of the Tribunal,
- (c) as to the time within which any proceedings are to be instituted,
- (d) as to the evidence which may be required or admitted in any proceedings,
- (e) as to the examination of the parties, and of witnesses, on oath or affirmation in any proceedings,
- (f) as to the procedure for securing the attendance of witnesses and the production of documents in any proceedings.

(3) In this paragraph “statutory jurisdiction” means any jurisdiction of the Tribunal exercisable by or under this Act, except for their jurisdiction in any reference under an arbitration agreement.

(4) In relation to proceedings in Scotland this paragraph shall have effect as if for sub-paragraph (1) there were substituted the following—

“(1) The Tribunal in exercising their statutory jurisdiction may order that the expenses of any proceedings before it incurred by any party shall be paid by any other party, and may tax or settle the amount of any expenses to be paid under any such order or direct in what manner they are to be taxed.”

Section 20.

SCHEDULE 5

Procedure for Compiling and Amending Index

1.—

(1) As a first step in compiling a section of the Index, the Ministers shall, after consultation with representatives of such interests as appear to them to be concerned, prepare a provisional list of plant varieties which are within the class of plant varieties to which the section of the Index will relate, and the seeds of which are in commercial use as reproductive material in Great Britain.

(2) The Ministers shall publish the list in the gazette to be issued under this Act and in such other manner as appears to them appropriate for ensuring that the persons particularly concerned have their attention drawn to the list, and shall publish with the list a notice giving the necessary information as to the manner in which and time within which applications seeking additions, corrections or erasures in the list may be made to the Ministers.

(3) The Ministers may bring a section of the Index into force notwithstanding that the section is incomplete because the Ministers have not come to a determination as respects any particular plant varieties.

?? seeking additions, corrections or erasures in a section of the Index, and may make such additions, corrections or erasures as appear to them to be called for of their own initiative, and without receiving representations.

3.—

(1) If at the time when a name, or more than one name, is being selected for a plant variety for the purposes of the Index, there are one or more names which are for the time being in use for that plant variety, that name, or names from among those names, shall be preferred unless the Ministers are satisfied that there are special circumstances calling for the choice of a name or names not in use as aforesaid.

(2) The Ministers may require a person making an application for the inclusion of a plant variety in a provisional list, or in a section of the Index after the section has come into force, to submit a name for the plant variety.

(3) If it appears to the Ministers that no name in use or submitted to them is suitable, they may refuse to include the plant variety in the Index until a name has been submitted to them which is in their opinion suitable.

4. The Ministers may require persons making applications which involve the question whether two or more plant varieties are distinct to supply the Ministers with information, and with material for carrying out examinations, trials and tests.

5.—

(1) The Ministers, after consultation with representatives of such interests as appear to them to be concerned, may by statutory instrument make regulations—

- (a) governing the form and manner in which applications may be made under this Schedule,
- (b) prescribing the period within which a person making applications under this Schedule is to supply material or information in support of the representations.
- (c) prescribing the quantity and kind of material to be supplied in support of an application under this Schedule, and
- (d) providing for the manner of making applications as respects any matter connected with the alteration of the Index and for the information to be afforded, and the materials to be submitted, by the applicant in connection with any such application.

(2) Regulations under this paragraph made with the approval of the Treasury may prescribe the fees to be charged by the Ministers or carrying out examinations, tests and trials and the fees to be charged by the Ministers to persons making searches in the Index.

SCHEDULE 6

Repeals of Seeds Enactments

Chapter	Short Title	Extent of Repeal
32 & 33 Vict. c. 112	The Adulteration of Seeds Act 1869	The whole Act.
41 & 42 Vict. c. 17	The Adulteration of Seeds Act 1878	The whole Act.
10 & 11 Geo. 5 c. 54	The Seeds Act 1920.	The whole Act.
15 & 16 Geo. 5	The Seeds (Amendment) Act 1925.	The whole Act.

Chapter	Short Title	Extent of Repeal
c. 66 2 & 3 Eliz. 2 c. 39	The Agriculture (Miscellaneous Provisions) Act 1954.	Section 12.
1963 c. 11	The Agriculture (Miscellaneous Provisions) Act 1963.	Section 24.

SCHEDULE 7

Cross-Pollination Injuring Protected Crops

1. An application under section 33 of this Act seeking the issue of a notice under that section shall be in writing.

2. Before deciding whether to issue a notice in accordance with the application the Minister shall serve a notice on the occupier of the land giving him particulars of the application, and of his right to make representations in accordance with the next following paragraph.

3. The Minister shall, if requested within such time as may be specified in the notice under paragraph 2 above, afford to the applicant, and to the occupier of the land, an opportunity of appearing before and making representations to a person appointed by the Minister for the purpose.

4. In deciding whether to issue a notice in accordance with the application, and in deciding the terms of any such notice, the Minister shall have regard—

- (a) to the need to maintain, in the interests of the public, the purity of the seed in question,
- (b) to the degree to which the injurious cross-pollination will or may diminish the value of the protected crop or disturb arrangements made for the purpose of maintaining the purity of the seed in question, and
- (c) to the value, if any, of the controlled crops or plants and the inconvenience or disturbance involved in complying with a notice.

Table of Statutes referred to in this Act

Short Title	Session and Chapter
Arbitration (Scotland) Act 1894	57 & 58 Vict. c. 13.
Seeds Act 1920	10 & 11 Geo. 5. c. 54.
Government of Ireland Act 1920	10 & 11 Geo. 5. c. 67.
Crown Proceedings Act 1947	10 & 11 Geo. 6. c. 44.
Arbitration Act 1950	14 Geo. 6. c. 27.
Customs and Excise Act 1952	15 & 16 Geo. 6. & 1 Eliz. 2. c. 44.
Magistrates' Courts Act 1952	15 & 16 Geo. 6. & 1 Eliz. 2. c. 55.
Merchandise Marks Act 1953	1 & 2 Eliz. 2. c. 48.
Summary Jurisdiction (Scotland) Act 1954	2 & 3 Eliz. 2. c. 48.
Restrictive Trade Practices Act 1956	4 & 5 Eliz. 2. c. 68.
House of Commons Disqualification Act 1957	5 & 6 Eliz. 2. c. 20.
Tribunals and Inquiries Act 1958	6 & 7 Eliz. 2. c. 66.