

(As published in PVP Gazette, Issue No. 87, March 2000)

STATUTORY INSTRUMENTS

1998 No. 1026

PLANT BREEDERS' RIGHTS

The Plant Breeders' Rights (Farm Saved Seed) (Specified Information) Regulations 1998

<i>Made</i>	<i>8th April 1998</i>
<i>Laid before Parliament</i>	<i>9th April 1998</i>
<i>Coming into force</i>	<i>8th May 1998</i>

The Minister of Agriculture, Fisheries and Food, the Secretary of State for Scotland, the Secretary of State for Wales and the Secretary of State for Northern Ireland, acting jointly, in exercise of the powers conferred on them by sections 9(7) and (8) and 48(1) of the Plant Varieties Act 1997(a), after consultation with such organisations as appear to them to be representative of persons likely to be substantially affected, hereby make the following Regulations:

Title and commencement

1. These Regulations may be cited as the Plant Breeders' Rights (Farm Saved Seed) (Specified Information) Regulations 1998 and shall come into force on 8th May 1998.

Interpretation

2.-(1) In these Regulations-

"the Act" means the Plant Varieties Act 1997;

"farm saved seed" means the product of the harvest obtained in the circumstances described in section 9(1) of the Act;

"relevant activity" means the use of farm saved seed in the circumstances described in section 9(1) of the Act;

"relevant rights holder" means a person who holds plant breeders' rights in a relevant variety;

"relevant variety" means a variety of a specified species or group;

"seed" includes seed potatoes;

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

"specified species or group" means a species or group specified for the purposes of section 9(2) of the Act by order made by the Ministers.

- (2) Unless the context otherwise requires, any reference in these Regulations-

- (a) to a numbered section shall be construed as a reference to the section bearing that number in the Act;
- (b) to a numbered regulation shall be construed as a reference to the regulation bearing that number in these Regulations;
- (a) 1997 c.66; *see* section 49(t) for the definition of "the Ministers".
- (c) in a regulation to a numbered paragraph is to the paragraph in that regulation bearing that number.

Information to be supplied by farmer

3.-(1) On the request of a relevant rights holder, a farmer shall supply the following information-

- (a) the name and address of the farmer;
 - (b) whether the farmer has performed a relevant activity -in respect of seed of the variety in which the relevant rights holder has plant breeders' rights; and
 - (c) the address of the holding on which the farmer has performed such a relevant activity.
- (2) If the farmer has performed such a relevant activity, he shall also supply the following information with the information referred to in paragraph (1)-
- (a) whether section 9(3) (liability to pay equitable remuneration) does not apply to him by virtue of section 9(4) (small farmer exemption), or
 - (b) whether section 9(3) does not apply to him by virtue of section 9(5) (prior use exemption), or
 - (c) whether section 9(3) does apply to him.
- (3) If section 9(3) does not apply to the farmer by virtue of section 9(5) he shall also supply the following information with the information referred to in paragraph (1)-
- (a) the date on which he first performed the relevant activity; and
 - (b) the information referred to in paragraph (5).
- (4) If section 9(3) does apply to the farmer he shall also supply the information referred to in paragraph (5) with the information referred to in paragraph (1).
- (5) The information for the purposes of paragraph (3)(b) and (4) is-
- (a) the amount of farm saved seed used;
 - (b) whether the farm saved seed has been processed for planting; and
 - (c) if the farm saved seed has been processed for planting, the name and address of the person who carried out the processing.

- (6) If the farmer has informed the relevant rights holder that section 9(3) does not apply to him by virtue of section 9(5) or that section 9(3) does apply to him, the farmer shall supply the following information on the request of the relevant rights holder-
- (a) whether the farmer used any seed of the same variety with the authority of the relevant rights holder within the same seed year; and
 - (b) if the farmer used seed of the same variety with the authority of the relevant rights holder within the same seed year-
 - (i) the amount used; and
 - (ii) the name and address of the person who supplied it.

Information to be supplied by seed processor

4.-(1) On the request of a relevant rights holder, a seed processor shall supply the following information-

- (a) the name and address of the seed processor;
 - (b) the address of the seed processor's principal place of business; and
 - (c) whether the seed processor has processed seed of a specified species or group.
- (2) If the seed processor has processed seed of a specified species or group he shall also supply the following information with the information referred to in paragraph (1)-
- (a) the name and address of the person for whom the processing was carried out;
 - (b) the amount of seed resulting from the processing;
 - (c) the date processing commenced;
 - (d) the date processing was completed;
 - (e) the place where processing was carried out; and
 - (f) whether the seed was seed of the variety in which the relevant rights holder has

plant breeders' rights, if the person for whom the processing was carried out informed the seed processor of the variety of the seed.

Information to be supplied by the relevant rights holder

5. On the request of a farmer or a seed processor a relevant rights holder shall supply the following information-

- (a) the name and address of the relevant rights holder; and
- (b) the amount of royalty charged for certified seed of the lowest certification category for that variety.

Period in respect of which inquiry may be made

6. A request may be made under regulations 3, 4 and 5 in respect of the current seed year and the three preceding seed years.

Restriction on movement for processing from the holding

7. No person shall remove or cause to be removed farm saved seed from the holding on which it was obtained to process it unless-
- (a) he has the permission of the relevant rights holder in respect of that variety, or
 - (b) he has taken measures to ensure that the same seed is returned from processing as is sent for processing and the processor has undertaken to him that the processor has taken measures to ensure that the same seed is returned from processing as is sent for processing, or
 - (c) he has the seed processed by a seed processor on the list of processors referred to in the gazette as being permitted to process seed away from a holding.

Confidentiality

- 8.-(1) A person who obtains information pursuant to these Regulations shall owe an obligation of confidence in respect of the information to the person who supplied it.
- (2) Paragraph (1) shall not have effect to restrict disclosure of information-
- (a) for the purposes of, or in connection with, establishing the amount to be paid to the holder of rights pursuant to section 9(3) of the Act and obtaining payment of that amount, or
 - (b) for the purposes of, or in connection with, establishing whether plant breeders' rights have been infringed, or
 - (c) for the purposes of, or in connection with, any proceedings for the infringement of plant breeders' rights.

Formalities

- 9.-(1) All requests for information pursuant to these Regulations shall be in writing.
- (2) All information supplied pursuant to these Regulations shall be in writing.
- (3) The time period within which information must be supplied in response to a request made pursuant to these Regulations shall be whichever is the longer of-
- (a) 28 days; or
 - (b) the time period set out in the request.

Offences and penalties

- IO.-(1) No person shall, in response to a request made pursuant to these Regulations-
- (a) intentionally fail to provide information;
 - (b) refuse to provide information; or
 - (c) knowingly or recklessly provide false information.

- (2) A person shall be guilty of an offence who, without reasonable excuse, contravenes, or fails to comply with regulation 7 or regulation 10(1).
- (3) A person guilty of an offence under paragraph (2) shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.