STATUTORY INSTRUMENTS

1967 No. 1530

PLANT BREEDERS' RIGHTS

The Plant Breeders' Rights (Amendment) Regulations 1967

Made - - - -	17*th October* 1967
Laid before Parliament	25*th October* 1967
Coming into Operation	26*th October* 1967

The Minister of Agriculture, Fisheries and Food, the Secretary of State for Scotland and the Secretary of State for the Home Department (being the Secretary of State concerned with agriculture in Northern Ireland), acting jointly, in exercise of the powers vested in them by sections 9 and 36 of the Plant Varieties and Seeds Act 1964(a), as extended to Northern Ireland by the Plant Varieties and Seeds (Northern Ireland) Order 1964(b) and of all other powers enabling them in that behalf, after consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1958(c), as applied to the Controller of Plant Variety Rights and any officer authorised to exercise the functions of the said Controller under section 11(5) of the Plant Varieties and Seeds Act 1964 by section 12 of the last mentioned Act, hereby make the following Regulations:

Citation and Commencement

1.—(1) These Regulations may be cited as the Plant Breeders' Rights (Amendment) Regulations 1967 and shall come into operation on the 26th October 1967.

(2) These Regulations shall be read as one with the Plant Breeders' Rights Regulations 1965(d) (hereinafter referred to as " the principal Regulations ") and the principal Regulations and these Regulations may be cited together as the Plant Breeders' Rights Regulations 1965 and 1967.

Amendment of Principal Regulations

2. The principal Regulations are hereby amended as follows:

(*a*) In paragraph (1) of Regulation 3 for the words " the Schedule " there shall be substituted the word and figure " Schedule 1 ".

(*b*) In paragraph (3) of Regulation 3 the words " satisfies the Controller that he " and the words " that he " where they follow the words " such application or " shall be omitted.

(*c*) In paragraph (3) of Regulation 4 the words " satisfies the Controller that he " and the words " that he " where they follow the words " in question or " shall be omitted.

(*d*) In each of paragraphs (2) and (4) of Regulation 5 the words " satisfies the Controller that he " shall be omitted.

(*e*) In paragraph (2) of Regulation 7 the words " satisfies the Controller that he " shall be omitted and for the words " who satisfies the Controller that his " there shall be substituted the word " whose ".

(a) 1964 c. 14.
(b) S.I. 1964/1574 (1964 III, p. 3543).
(c) 1958 c. 66.
(d) S.I. 1965/65 (1965 I, p. 96).

(*f*) In paragraph (2) of Regulation 8 the words " satisfies the Controller that he " shall be omitted and for the words " who satisfies the Controller that his " there shall be substituted the word " whose ".

(*g*) In paragraph (1) of Regulation 9 the words " A person or organisation claiming to be entitled to participate in any proceedings by virtue of these Regulations or " shall be omitted and for the words " relevant in the particular case, as specified in these Regulations or in the Act " there shall be substituted the words " specified in the said section 7(5) ".

(*h*) In paragraph (4) of Regulation 9 the words " any such person or organisation as aforesaid to participate in any proceedings and of " shall be omitted.

(*i*) For Regulation 10 there shall be substituted the following Regulation:

" *Advertisement of Applications for Compulsory Licences*

10. The Controller shall publish in the gazette notice of an application for a compulsory licence, together with a reference to the matters upon which the Controller is to be satisfied before affording to an organisation or a person an opportunity of making representations to him concerning the application and of being heard by him or by a person appointed by him for the purpose.".

(*j*) For sub-paragraph (ii) of paragraph (1) of Regulation 11 there shall be substituted the following sub-paragraphs:

" (ii) where the application is for a grant of plant breeders' rights, deliver to the Controller the reproductive and other plant material of the plant variety to which the application relates in the quantity and of the description and quality specified, and packed and in the condition also specified, in the Part of Schedule 2 to these Regulations appropriate to the plant variety, and also such further reproductive and other plant material in such quantity and of such description and quality as shall appear to the Controller to be required to replace any such material already delivered as may have been damaged in transit or damaged or lost in the course of tests and trials or which is, or has in the course of tests and trials been shown to be, unhealthy or otherwise unsuitable,

(iii) where the application is other than one for a grant of plant breeders' rights, deliver to the Controller such reproductive and other plant material in such quantity and of such description and quality as he may require, and "

and sub-paragraph (iii) of paragraph (1) of Regulation 11 shall be re-numbered " (iv) ".

(*k*) In paragraph (1) of Regulation 12 immediately after the words " provisions of " there shall be inserted the words " Part I of ".

(*l*) Immediately after paragraph (2) of Regulation 12 there shall be inserted the following paragraph:

" (2A) Except in a case of a proposal to withdraw a protective direction the Controller shall publish in the gazette a notice indicating the nature of the proceedings together with a statement of the descriptions of persons entitled by virtue of these Regulations to participate in the proceedings and of the manner in which and the time within which representations may be made to him in writing and an application made for an opportunity to be heard by him or by a person appointed by him for the purpose.".

(*m*) In paragraph (3) of Regulation 12 immediately after the words "persons concerned" there shall be inserted the words "of whom he is aware".

(*n*) For paragraph (15) of Regulation 12 there shall be substituted the following paragraph:

"(15) Subject to Regulation 13(3) of these Regulations the decision of the Controller shall take effect at such time as he shall direct. Provided that, except where his decision is one to grant an application in a case where no person concerned has made any representations to him in writing or has been heard by him or by a person appointed by him for the purpose in opposition to the granting of the application, the decision shall not be directed to take effect before the expiration of the time limited for the bringing of an appeal.".

(*o*) In paragraph (1) of Regulation 13, immediately after the word "Tribunal" where it first appears, there shall be inserted the words "under the provisions of Part I of the Act or of these Regulations".

(*p*) In the Schedule to the Regulations, immediately after the word "Schedule" there shall be inserted the figure "1".

(*q*) Immediately after the Schedule to the Regulations there shall be inserted the following Schedule:

"

SCHEDULE 2 Regulation 11

REPRODUCTIVE AND OTHER PLANT MATERIAL TO BE DELIVERED TO THE CONTROLLER

PART I

Wheat, Barley and Oats

1. *Quantity*

(1) During the year beginning with the making of the application 500 ears and 14 lb. of seed shall be delivered. Attached to each ear there shall be approximately 1 foot of straw in the case of wheat and 6 inches of straw in the case of barley and oats.

(2) During each of the immediately succeeding years until the completion of the tests and trials there shall be delivered such reproductive and other plant material in such quantity and of such description and quality as shall appear to the Controller to be necessary or desirable for the proper completion of the tests and trials.

2. *Packing*

The ears shall be packed in a stiff-sided container, in bundles of 100 each. The seed shall be packed in a suitable container of sufficient strength to withstand mechanical damage during transit.

3. *Quality*

(1) *Health*

No ears or seed shall be taken from a crop having more than 1 ear in 5,000 affected with loose smut.

(2) *Purity and germination*

The seed shall be accompanied by a report of a test made at an official seed testing station established under the Seeds Act 1920(a) or a seed testing station licensed under that Act, and made within the 3 months immediately preceding the delivery of the seed stating that in a sample of 8 oz.—

(*a*) there were no seeds of injurious weeds and not more than 1% by weight of other impurities, and

(*b*) that the percentage of germination was not less than 85.

4. *Dressings and Treatments*

The seed shall not have been subjected to any fungicidal or insecticidal treatment.

PART II

Potatoes

1. *Quantity*

(1) During the year beginning with the making of the application 250 seed tubers shall be delivered. The applicant shall arrange for the growing of not less than one-tenth of an acre of the potato variety on land which if in England and Wales is not deemed for the purposes of the Wart Disease of Potatoes Order 1958(b) to be land on which wart disease is present or which if in Scotland is not, or does not form part of, a holding within the meaning of the Wart Disease of Potatoes (Scotland) Order of 1941(c) to which the provisions of Article 3 of that Order as amended by the Wart Disease of Potatoes (General Licence) (Scotland) Order 1954(d) apply or which if in Northern Ireland is land in respect of which no notice has been served under Article 4 of The Black Scab in Potatoes (Northern Ireland) Order 1959(e).

(2) During each of the immediately succeeding years until the completion of the tests and trials there shall be delivered such reproductive and other plant material in such quantity and of such description and quality as shall appear to the Controller to be necessary or desirable for the proper completion of the tests and trials.

2. *Packing*

The seed tubers shall be securely packed in new sacks or other new containers which are capable of withstanding the hazards that may be encountered by perishable produce during transit. The packing material shall be adequate in quantity and quality to protect the tubers from low temperatures which may cause chilling or frosting and from mechanical damage. Where the seed tubers are consigned by rail they shall be sent by passenger train.

3. *Health*

(*a*) The seed tubers shall be the produce of a seed crop which did not contain more than—

(i) 0·05% of rogues, undesirable variations, wildings and bolters ;

(ii) 0·02% with leaf roll or severe mosaic ;

(a) 1920 c. 54.
(b) S.I. 1958/308 (1958 II, p. 1883). (c) S.R. & O. 1941/1587 (Rev. V, p. 807: 1941 I, p. 223).
(d) S.I. 1954/235 (1954 II, p. 1772). (e) S.R. & O. (N.I.) 1959/174.

(iii) 0·25% with mild mosaic; or

(iv) 2% with blackleg.

(*b*) The seed crop from which the seed tubers were produced shall not have been so affected with any other disease or pest as to render it unsuitable for seed purposes.

(*c*) The seed tubers shall be accompanied by a Health Certificate issued by the Ministry of Agriculture, Fisheries and Food, the Secretary of State for Scotland or the Minister of Agriculture for Northern Ireland stating:—

(i) that on visual examination they were found to be free from signs of wart disease and that they were grown on land on which this disease has not occurred at any time; and

(ii) that the soil in which they were grown has been tested and found on laboratory examination to be free from Potato Root Eelworm.

(*d*) The seed tubers shall include sufficient virus-free tubers to provide a virus-free nucleus for a reference collection.

4. *Grading and Condition*

The seed tubers shall be graded so as to be capable of being retained by meshes of a riddle each measuring 1½ inches square and passed by meshes of a riddle each measuring 2 inches square. The seed tubers shall be in sound condition and not be visibly unfit for planting through mechanical damage or attack by any insect, pest or disease or any other condition which would impair subsequent growth. The seed tubers shall be reasonably free from soil.

5. *Dressings and Treatments*

The seed tubers shall not have been treated with a fungicide, pesticide or sprout depressant.

PART III

Dahlias

Quantity

4 plants of each disbudded variety and 7 plants of each dwarf bedding variety shall be delivered. The plants shall be typical of the variety and young, visually healthy, green plants ex 3 in. pots.

PART IV

Perennial Delphiniums

Quantity

4 visually healthy, well-rooted cuttings, typical of the variety, shall be delivered.

PART V

Rhubarb

Quantity

12 single bud roots shall be delivered. They shall be taken from not less than 4 visually healthy stock plants typical of the variety.

PART VI

Apples

1. *Quantity*

3 trees on M.VII or MM.106 rootstocks shall be delivered. The trees shall be not less than 2 and not more than 3 years old. Alternatively, if the Controller shall so allow, scion or bud wood sufficient to produce 4 trees may be delivered instead of the 3 trees as mentioned above.

2. *Health*

(1) *Complete trees*

(*a*) The trees shall not show symptoms of any virus disease.

(*b*) The trees shall be healthy. They shall not be lacking in vigour, or affected by scab, mildew, woolly aphis, or other pests or diseases.

(2) *Scion or bud wood*

Scion or bud wood shall be the produce either of a tree of the variety growing on its own roots or of a tree of the variety which satisfies the requirements set out in paragraph 2(1)(*a*) and (*b*) above.

PART VII

Apple Rootstocks

1. *Quantity*

25 well-rooted rootstocks of not less than 7 mm. in diameter selected from the stool or layer bed shall be delivered.

2. *Health*

(*a*) The rootstocks shall not show symptoms of any virus disease.

(*b*) The rootstocks shall be healthy. They shall not be lacking in vigour, or affected by scab, mildew, woolly aphis or other pests or diseases.

PART VIII

Pears

1. *Quantity*

3 trees on Quince A rootstock, double-worked where necessary, shall be delivered. The trees shall be not less than 2 and not more than 3 years old. Alternatively, if the Controller shall so allow, scion or bud wood sufficient to produce 4 trees may be delivered instead of the 3 trees as mentioned above.

2. *Health*

(1) *Complete trees*

(*a*) The trees shall not show symptoms of any virus disease.

(*b*) The trees shall be healthy. They shall not be lacking in vigour, or affected by any pest or disease.

(2) *Scion or bud wood*

Scion or bud wood shall be the produce either of a tree of the variety growing on its own roots or of a tree of the variety which satisfies the requirements set out in paragraph 2(1)(*a*) and (*b*) above.

PART IX

Strawberries

Quantity

50 visually healthy runners shall be delivered.

PART X

Roses

Quantity

In the case of a bush variety 6 trees, in the case of a shrub variety 4 trees and in the case of a climbing variety 2 trees shall be delivered. The trees shall be first quality visually healthy maiden trees typical of the variety. If the Controller is satisfied that maiden trees cannot be supplied, 2-year old trees may instead be delivered.

PART XI

Peas

1. *Quantity*

(1) During the year beginning with the making of the application 6 lb. of seed shall be delivered.

(2) During each of the immediately succeeding years until the completion of the tests and trials there shall be delivered such reproductive and other plant material in such quantity and of such description and quality as shall appear to the Controller to be necessary or desirable for the proper completion of the tests and trials.

2. *Packing*

The seed shall be packed in a suitable container of sufficient strength to withstand mechanical damage during transit.

3. *Quality*

(1) *Health*

The seed shall be free from serious seed-borne diseases.

(2) *Purity and germination*

The seed shall be accompanied by a report of a test made at an official seed testing station established under the Seeds Act 1920 or a seed testing station licensed under that Act and made within the 3 months immediately preceding the delivery of the seed stating that in a sample of 8 oz.:—

(*a*) the percentage of purity was not less than 99, and

(*b*) the percentage of germination was not less than 70.

4. *Dressings and Treatments*

The seed shall not have been subjected to any fungicidal or insecticidal treatment.

PART XII

French Beans

1. *Quantity*

(1) During the year beginning with the making of the application 8 lb. of seed shall be delivered.

(2) During each of the immediately succeeding years until the completion of the tests and trials there shall be delivered such reproductive and other plant material in such quantity and of such description and quality as shall appear to the Controller to be necessary or desirable for the proper completion of the tests and trials.

2. *Packing*

The seed shall be packed in a suitable container of sufficient strength to withstand mechanical damage during transit.

3. *Quality*

(1) *Health*

The seed shall be free from serious seed-borne diseases.

(2) *Purity and germination*

The seed shall be accompanied by a report of a test made at an official seed testing station established under the Seeds Act 1920 or a seed testing station licensed under that Act and made within the 3 months immediately preceding the delivery of the seed stating that in a sample of 1 lb.:—

(*a*) the percentage of purity was not less than 99, and

(*b*) the percentage of germination was not less than 60.

4. *Dressings and Treatments*

The seed shall not have been subjected to any fungicidal treatment. If the seed has been treated with streptomycin this shall be declared when it is delivered."

In Witness whereof the official seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on 29th September 1967.

(L.S.) *Frederick Peart,*

Minister of Agriculture, Fisheries and Food.

Given under the seal of the Secretary of State for Scotland on 9th October 1967.

(L.S.) *William Ross,*

Secretary of State for Scotland.

Given under the hand of the Secretary of State for the Home Department on 17th October 1967.

Roy Jenkins,

Secretary of State for the Home Department.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations amend the Plant Breeders' Rights Regulations 1965.

A requirement that a decision of the Controller of Plant Variety Rights shall not take effect for at least 28 days, to allow for notification of an appeal, is removed as regards successful unopposed applications. Persons who are given by the Regulations a right to participate in proceedings under consideration by the Controller will no longer be required, as a first step, to satisfy him as to their interest in the proceedings. A schedule is added to the Regulations, giving particulars of the reproductive material to be submitted when applying for a grant of plant breeders' rights. There are also a number of minor amendments of the principal Regulations.