



The Food and Environment  
Research Agency

Guide to

# Plant Breeders' Rights Handbook



**Please note this guide is for general information only and you should always refer to the appropriate Regulations (Links in Appendix III of this guide) to ensure compliance with Plant Breeders' Rights procedures.**

Plant Variety Rights Office  
Food and Environment Research Agency  
Eastbrook  
Shaftesbury Road  
Cambridge  
CB2 8DR

Telephone 0300 060 0740  
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# Foreword

Plant Breeders' Rights are a form of intellectual property designed specifically to protect new varieties of plants, providing incentives for plant breeding. The International Convention for the Protection of New Varieties of Plants (the UPOV Convention), first signed in Geneva in 1961, is the basis for plant variety protection at international level. The Convention was ratified in the UK through the Plant Varieties and Seeds Act 1964. This Act established the Plant Variety Rights Office, to administer UK Plant Breeders' Rights.

The UPOV Convention was substantially revised in 1991, to strengthen the breeder's right, to reflect changes in plant breeding technology and to clarify the earlier UPOV Convention. The Plant Varieties Act 1997 gives effect to the 1991 Convention in the UK. This booklet gives plant breeders and others who are interested, a short explanation of the main administrative procedures involved in considering applications for UK Plant Breeders' Rights. A more detailed Guide to the Act is available free of charge on request and on our website.

The Plant Varieties Rights Office is happy to deal with queries concerning any aspect of UK Plant Breeders' Rights. If you have any questions, then please contact us. You will find our address, telephone number and email address on page 3.

## **Data Protection Act 1998 – Fair Processing Notice**

The purpose of this Fair Processing Notice is to inform you of the use that will be made of your personal data, as required by the Data Protection Act 1998.

Fera is the data controller in respect of any personal data that you provide when you complete NL and PBR Application Forms, Technical Questionnaires, Authorisation of Agent and Assignment of Rights forms.

Fera will use your personal data primarily for the purposes of producing the Public Record of National Lists and Grants of Plant Breeder's Rights in accordance with The Seeds (National Lists of Varieties) Regulations 2001 (as amended) and the Plant Breeders' Rights Regulations 1998. Your personal data will be disclosed to the Devolved Authorities, NIAB and the British Society of Plant Breeders for the administration of DUS tests and VCU trials.

Fera may also use your personal information where appropriate for purposes, including the production of the Common Catalogues of Agricultural and Vegetable Plant Species and the OECD List of Agricultural Plant Species Eligible for Seed Certification. Data may be passed to other bodies where necessary for any of the above-mentioned purposes. The data collected may also be used to provide publicly available statistics that will not identify individuals.

Fera may be required to release information, including personal data and commercial information, on request under the Environmental Information Regulations 2004 or the Freedom of Information Act 2000. However, Fera will not permit any unwarranted breach of confidentiality nor will we act in contravention of our obligations under the Data Protection Act 1998.

Fera or its appointed agents may use the name, address and other details on your application form to contact you in connection with occasional customer research aimed at improving the services that Fera provides to you.

Defra's Information Charter - Public Service Guarantee on Data Handling, which gives details of your rights in respect of the handling of your personal data, is on the Defra website at <http://defra/corporate/policy/opengov/defra/your-info/handling-guarantee.htm>. A document explaining the Guarantee is also on this website. If you don't have access to the internet, please telephone the Defra helpline 08459 33 55 77 and ask to speak to the Data Protection Officer for a copy of the Information Charter and 'explanation' document.

If you believe that any of the information we hold concerning you is incorrect or out of date, please provide us with the accurate information in writing together with supporting evidence (if appropriate). You should address your correspondence to:

Plant Variety Rights Office  
Food and Environment Research Agency  
Eastbrook  
Shaftesbury Road  
Cambridge  
CB2 8DR

Telephone 0300 060 0740  
Fax 0300 060 2115  
email [nlpbr.serv.del@fera.gsi.gov.uk](mailto:nlpbr.serv.del@fera.gsi.gov.uk)

# 1. The Plant Variety Rights Office

The Plant Variety Rights Office (PVRO) administers UK Plant Breeders' Rights. Our address, to which all applications and enquiries should be made is:

Plant Variety Rights Office  
Food and Environment Research Agency  
Eastbrook  
Shaftesbury Road  
Cambridge  
CB2 8DR

Tel: 0300 060 0740 (general enquiries)

Telephone numbers for specific species are published in the Plant Varieties and Seeds Gazette (the Gazette, see Section 22).

Fax 0300 060 2115

email [pvs.helpdesk@fera.gsi.gov.uk](mailto:pvs.helpdesk@fera.gsi.gov.uk)

Website:

<http://www.fera.defra.gov.uk/plants/plantVarieties/plantbreedersRights/index.cfm>

The Office is open to the public from 9.00 am to 5.00 pm Monday to Thursday and from 9.00 am to 4.30 pm on Fridays, except on Bank Holidays and at certain other times as detailed in National Listing and Plant Breeders' Rights Information Letters.

Plant Breeders' Rights issued by the PVRO are exercisable only in the United Kingdom. For protection in other countries a separate grant must be obtained by applying to the appropriate national authority (also see below).

## 1.1 Community Plant Variety Rights

A separate system of European Plant Breeders' Rights is also available. This is administered by the Community Plant Variety Office (CPVO) at the following address:

Community Plant Variety Office  
3 Boulevard Maréchal Foch  
BP 10121  
Fr-49021 Angers Cedex 02  
France

Tel +33 (0) 2 41 25 64 00

Fax +33 (0) 2 41 25 64 10

email [cpvo@cpvo.europa.eu](mailto:cpvo@cpvo.europa.eu)

Website <http://www.cpvo.europa.eu/main/en>

A grant of Community Plant Variety Rights gives protection throughout the European Union. Community Plant Variety Rights and UK Rights cannot operate simultaneously.

The UK, however, allows UK Plant Breeders' Rights to be suspended whilst Community Plant Variety Rights are exercised, which allows UK Rights to be re-invoked if Community Plant Variety Rights are terminated. These arrangements only apply where a grant of Community Plant Variety Rights follows the grant of a UK Rights and not *vice-versa*.

## 2. What are Plant Breeders' Rights?

Plant Breeders' Rights entitle the holder to prevent anyone doing any of the following acts as respects the propagating material of the protected variety without authority:

- production or reproduction (multiplication);
- conditioning for the purpose of propagation;
- offering for sale;
- selling or other marketing;
- exporting;
- importing;
- stocking for any of the purposes mentioned above; and
- any other act that may be prescribed by the provisions of the Plant Varieties Act 1997.

The holder of rights may authorise others to carry out these acts on whatever terms and conditions the holder wishes to impose, subject to the safeguard of compulsory licensing (see Section 19). The issue of licences to carry out any of the above acts on a protected variety, and terms of such licences, are matters for the holder of the rights, to whom all enquiries should be addressed. The PVRO has no powers to intervene in such matters apart from the case of compulsory licences.

Rights may also extend to harvested material obtained from the unauthorised use of propagating material, but only where the holder has not had reasonable opportunity to exercise rights.

Plant Breeders' Rights do not extend to any act done for private and non-commercial purposes, for experimental purposes or for the purpose of breeding another variety.

### 2.1 Hybrids and Essentially Derived Varieties

A holder of Plant Breeders' Rights also has the rights set out above in respect of any variety which is dependent on his protected variety. Dependent varieties are defined as those whose repeated production requires the repeated use of the protected variety (ie hybrids), or those which are essentially derived from a protected variety which is not itself essentially derived.

A variety is deemed to be essentially derived from another (initial) variety if it is predominantly derived from the initial variety, and it retains the essential characteristics resulting from the genotype, or combination of genotypes, of the initial variety. The PVRO has no role in deciding whether a variety is essentially derived or not. This is a private, commercial matter which, in the event of dispute, may be for the courts to resolve.

### 3. What species can be protected?

All plant genera and species can be protected by UK Plant Breeders' Rights. However, where new tests have to be devised to cater for new species, applicants may be asked to propose a testing method and meet the full costs of these tests.

### 4. Who can apply for Plant Breeders' Rights?

An application for Plant Breeders' Rights must be made by the person who bred or discovered and developed the variety, or his successor in title (referred to as the "breeder"). If a person breeds a variety, or discovers and develops it in the course of his employment, then, unless there is agreement to the contrary, the employer (or the employer's successor in title) is the person entitled to the grant of rights.

The breeder may however assign, (ie transfer), the rights in the variety to another person or company and thus forfeit any future claim on the variety. If rights are assigned to another person or company, written evidence from the breeder is required. An 'Assignment of Rights' form is available for this purpose. Once rights are assigned, the PVRO will have no further contact with the breeder and the grant of rights certificate will be issued in the name of the person or company to whom rights have been assigned.

An applicant for Plant Breeders' Rights may make his application through an agent if he so wishes. An applicant from outside the EU must nominate an address for service or an agent within the EU. If an agent is to be used written authorisation from the applicant is required to confirm appointment of an agent. An 'Authorisation of Agent' form is available for this purpose. All correspondence and requests for fees are directed to the agent and the PVRO has no direct contact with the applicant.

### 5. What criteria must a plant variety meet to qualify for Plant Breeders' Rights?

Once a valid application for Plant Breeders' Rights is received, seed/plant material of the variety will be requested for official tests designed to assess whether it is distinct, uniform and stable (DUS). The variety must also be new.

## 5.1 Distinctness

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

A variety is in common knowledge if:

- it is, or has been, the subject of a plant variety right in any country;
- it is, or has been, entered in an official register (ie National List) of plant varieties in any country; or
- an application for Plant Breeders' Rights or entry in an official register is under consideration in any country, provided the application is successful.

A variety may also be in common knowledge if it is already in cultivation, has been exploited for commercial purposes, is held in a recognised reference collection or has a precise description in any publication.

## 5.2 Uniformity

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

## 5.3 Stability

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

## 5.4 Novelty

A variety is deemed to be new if propagating or harvested material has not been sold or otherwise disposed of, for the purpose of exploiting the variety, with the consent of the applicant:

- in the UK earlier than 1 year before the date of application; and
- outside the UK earlier than 4 years (6 years in the case of trees or vines) before the date of application

- 

## 5.5 Name

The variety must have an approved name. See Section 12.

Varieties that meet these criteria are eligible for a grant of Plant Breeders' Rights.

## 6. When does protection start?

Plant Breeders' Rights cannot be exercised until a grant of rights has been made by the Controller of Plant Variety Rights. However, once rights are granted, the holder is entitled to "reasonable" compensation for anything done during the application period which, had it been done after rights were granted, would have constituted an infringement. The application period begins on the day the application is published in the Gazette (see Section 22) and ends with the granting of rights.

In the event of dispute, it would ultimately be for the courts to determine what constitutes "reasonable" compensation.

## 7. How do I make an application?

All of the forms required for making an application for UK Plant Breeders' Rights can be obtained from the PVRO website, at <http://www.fera.defra.gov.uk/plants/forms/breedersRightsForms.cfm>. The forms should be submitted electronically to the dedicated mailbox [NLPBR-Applications@fera.gsi.gov.uk](mailto:NLPBR-Applications@fera.gsi.gov.uk). In the event of any queries please write, telephone or email using the contact details on page 2.

When making an application the following must be submitted to the PVRO:

- a completed, signed, application form;
- a completed technical questionnaire for the particular species, including a confidential section if wished;
- the application fee; and
- for applications for ornamental species, a colour photograph showing the representative features of the variety.

The following may also be required when making an application:

- an 'Assignment of Rights' form if the applicant is not the breeder (see Section 4);
- an 'Authorisation of Agent' form if you wish to use an agent (see Section 4).

Please note that all applications and documents must be in English, or be accompanied by an English translation.

Any forms submitted in hard copy must bear an original signatures. Where an application is made by a company it must be signed 'for and on behalf of ' the company, by a person with authority to sign.

An automatic acknowledgement is generated on receipt of the application. A letter will be sent, within 7 days of receipt of the application, which will allocate a reference number. This number must be quoted on all correspondence regarding the variety.

At the appropriate time, seed or plant material will be ordered for DUS tests to be done.

## 7.1 Genetically Modified Varieties

Applicants must notify the PVRO if an application relates to a genetically modified (GM) plant variety within the meaning of Article 2(2) of Council Directive 2001/18. The relevant parts of the application form and technical questionnaire must also be completed. As GMOs cannot be released into the environment unless they have a consent issued in accordance with Council Directive 2001/18 or Council Regulation (EC) No. 1829/2003, no testing of GM varieties can take place unless and until the appropriate release consent has been issued.

It is the applicant's responsibility to obtain all the necessary consents and to inform the PVRO of any restrictions that have been imposed which may affect conduct of the statutory tests. Copies of the consent and of any conditions that are attached to the consent must be provided with the application form. In cases where conditions have been applied to the release consent it may take longer to design the tests and applicants are therefore urged to provide this information as quickly as possible.

The PVRO should also be informed as soon as a decision is taken to make an application in respect of a GM variety.

**Please note that if you do not provide any information, documents, or plant material requested within the time allowed, your application may be refused.**

# 8. Commercialisation of varieties submitted for Plant Breeders' Rights

There is no restriction on commercialisation of the variety while an application for a grant of Plant Breeders' Rights is under consideration. However there may be other restrictions on marketing. In particular, The Seeds (National Lists of Varieties) Regulations 2001 (as amended), state that no seed of the major agricultural and vegetable species may be marketed in the UK unless the variety is on a UK National List or the EC Common Catalogue. Further information on National List requirements is available from the PVRO, telephone 0300 060 0740, or from the PVRO website at [www.fera.defra.gov.uk/plants/plantVarieties/nationalListing/documents/guideNationalListing.pdf](http://www.fera.defra.gov.uk/plants/plantVarieties/nationalListing/documents/guideNationalListing.pdf).

## 9. Claiming priority

If a Plant Breeders' Rights application has been made overseas it may be possible to claim priority based on the first application, providing the UK application is received within one year of the first application. In order to claim priority, a copy of the earlier application, certified by the office in the country in which it was made must be supplied to the PVRO within 3 months. (Likewise the PVRO can supply certified copies of UK applications).

If priority is granted in respect of an earlier application in another country, then the date of the UK application is backdated to the date of this earlier application.

## 10. DUS tests

When an application has been received, seed/plant material will be ordered to enable DUS tests to be carried out. This work is carried out by organisations approved to do so. They include NIAB, the Science and Advice for Scottish Agriculture (SASA) and the Agri-Food and Biotechnology Institute for Northern Ireland (AFBI). For some species testing is carried out by testing authorities in other European Member States under bi-lateral agreements.

In most cases DUS tests for ornamentals will take one year, herbage varieties and trees a minimum of three years, and two years for other species. But tests may take longer if there is difficulty in establishing distinctness and applicants will be notified in these circumstances.

Please note that for hybrid varieties, DUS tests may need to be conducted on the parent lines. If this is the case then a test fee will be charged for each parent line as well as the hybrid.

Copies of reports and botanical descriptions made as a result of these tests will be supplied to anyone who asks for them. Details of hereditary sources of a hybrid may not be made public.

### 10.1 Special DUS Tests

If applicants anticipate that there may be distinctness problems for a variety, the need for a special DUS test should be indicated on the technical questionnaire when submitting the application. If feasible, arrangements will be made for the test to be carried out by one of the testing authorities who will invoice applicants directly for the work carried out. Where possible such special tests will be carried out within the normal testing period.

# 11. Fees

The fees payable in connection with Plant Breeders' Rights applications are shown on the PVRO website at <http://www.fera.defra.gov.uk/plants/plantVarieties/nationalListing/documents/fees2008.pdf>.

Changes are detailed in National Listing and Plant Breeders' Rights Information Letters.

# 12. Naming of varieties

If a proposed name for a variety is not supplied with the application, the PVRO will write requesting a proposed name. Please note that, if a name is not submitted within the time specified, the PVRO is not obliged to take any further steps in relation to the application until a name has been proposed. Continued failure to submit a name for consideration may lead to the application being refused. A grant of Plant Breeders' Rights cannot be made if the variety does not have an approved name.

Please note that a name may be rejected if it does not comply with current guidelines. Further information is available from the PVRO.

In summary a name is unsuitable if:

- its use is precluded by the prior right of a third party;
- it causes difficulties as regards recognition or reproduction;
- it is identical to or may be confused with the name of another variety of the same or a related species;
- it is identical to or may be confused with other goods;
- it is misleading or causes confusion concerning the characteristics of the variety or other features.

The UPOV guidelines for variety denominations are given at Appendix I and the list of related species (naming classes) is given at Appendix II.

Applicants may at any time propose a name in substitution for the name already submitted. A fee is payable for requesting a change of approved name.

## 12.1 Objections to the Approval of a Name

The PVRO will publish proposed names which appear to be acceptable in the Gazette and allow a period of 3 months for any interested person to make representations. Any person may object to the approval of a name proposed for a plant variety if they feel the name may lead to confusion with the name of an existing variety or to the ownership or characteristics of the variety. A fee for making an objection is payable on delivery of the written representations.

## 12.2 Use of Names

From the date on which rights are granted, reproductive material of the variety must only be sold or offered for sale using the name registered by the PVRO. A trademark or trade name may also be used in connection with the registered variety name provided that the mark or name and registered name are juxtaposed and the registered name is easily recognisable. This applies both during and after the expiry of Plant Breeders' Rights.

# 13. Granting Plant Breeders' Rights

On completion of the appropriate DUS tests, the variety will be considered by experts to ascertain whether all the appropriate requirements for Plant Breeders' Rights have been met.

If the variety meets the criteria for a grant of rights then a proposal to grant rights in the variety will be published in the Gazette.

We will send copies of the final report to the applicant and inform them of any proposed decision regarding the variety. Following a representation period (normally 18 days) and subject to payment of any relevant fees, a grant of Plant Breeders' Rights for the variety will be issued.

A notice will be advertised in the Gazette when the grant of rights is issued giving the name of the holder of rights, the grant number and the name of any agent.

## 13.1 Plant Breeders' Rights Refusals

If it is recommended that a variety be refused a grant of rights, the PVRO will write to the applicant giving the reason for refusal and allowing a period in which to make written representations and/or apply for a hearing against the recommendation.

# 14. Representations procedure

The PVRO will inform the applicant of any proposed decision relating to their variety. These proposed decisions will also be published in the Gazette.

A representation period, which allows any persons affected by the decision the opportunity to make comments or objections, will be allowed before any decision is finalised.

Such representations may take the form of written representations and/or the opportunity of being heard in person by the Controller or a person appointed by the Controller. A fee must be paid when making representations or applying to be heard. The procedure for making representations is set out in the Gazette.

If no representations are received within the period allowed the decision will be finalised. The applicant will be informed directly and given reasons for the decision and will also be advised of the time within which an appeal against the decision can be made to the Plant Varieties and Seeds Tribunal. If no appeal is made the applicant is notified of the final decision, which will also be published in the Gazette.

## 15. Appeals to the Plant Varieties and Seeds Tribunal

If any person who took advantage of the opportunity to make representations disagrees with a final decision, they are entitled to make an appeal to the Plant Varieties and Seeds Tribunal. The Tribunal address will be given in the letter informing them of the right to appeal. Any person thinking of using the appeal mechanism is strongly advised to seek their own legal advice.

Where notice of an appeal has been given, the operation of the Controller's decision will be suspended pending the final outcome. A notice will be published in the Gazette giving details of appeals received and the suspension of decisions. Once an appeal has been heard the decision of the Tribunal will be communicated to all persons concerned and published in the Gazette.

## 16. Duration of Plant Breeders' Rights

Plant Breeders' Rights are granted for a term beginning with the date of the grant of rights and ending 25 years later for all species except trees, vines and potatoes which have a period of 30 years.

Plant Breeders' Rights will only remain in force subject to the holder paying any relevant fees during the term of the rights, and fulfilling the requirements of the regulations, eg regarding maintenance of the variety.

## 17. Enforcement of Plant Breeders' Rights

The PVRO does not play any part in enforcing Plant Breeders' Rights - this is a civil matter for the holder of rights.

The Plant Varieties Act 1997 gives breeders the same remedies for infringement as exist for other proprietary rights. The 1997 Act also recognises the difficulties which ornamental breeders have in enforcing their rights.

It therefore enables breeders to request details of the source of suspect material by use of an information notice to help them establish whether harvested materials (eg pot plants) have been obtained through authorised propagation.

If the information is refused, without reasonable excuse, then in subsequent infringement proceedings the Courts will presume the plants were obtained by illicit propagation unless the defendant can prove otherwise. The information to be supplied includes details of the supplier and the amount of material in the consignment. Plant breeders are required to treat the information obtained as confidential, to protect the interests of traders.

## 18. Loss or destruction of Grants

If you lose your grant of rights or it is destroyed you may apply to the PVRO for a duplicate copy. A duplicate copy of the grant will be issued only if the PVRO is satisfied that the original certificate has been lost or destroyed.

## 19. Compulsory Licences

If a holder of rights refuses to authorise others to use his protected variety or offers authorisation on unreasonable terms then an application may be made to the PVRO for a compulsory licence. Details on applying for a compulsory licence can be found in a separate guide, 'Applying for a Compulsory Licence' which is available from the PVRO free of charge or on the PVRO website at [www.fera.defra.gov.uk/plants/plantVarieties/plantbreedersRights/compulsoryLicence.cfm](http://www.fera.defra.gov.uk/plants/plantVarieties/plantbreedersRights/compulsoryLicence.cfm).

## 20. Termination and surrender of Plant Breeders' Rights

A holder of rights may request to surrender their rights at any time.

A notice proposing the surrender of rights in a variety will be advertised in the Gazette. Following the representation period, normally 18 days after publication in the Gazette, rights in the variety will be terminated providing no representations have been made.

In certain exceptional circumstances the PVRO may terminate Plant Breeders' Rights eg if the variety is no longer uniform or stable.

## 21. Nullity

The PVRO is required to declare Plant Breeders' Rights null and void if information comes to light, after the grant of rights, which shows that the variety did not meet the DUS criteria, or the person to whom rights were granted was not entitled to them. Rights declared null and void are deemed never to have had effect.

## 22. The Plant Varieties and Seeds Gazette

The Plant Varieties and Seeds Gazette is normally published monthly and contains information relating to the administration of UK Plant Breeders' Rights. It is available on the PVRO website at <http://www.fera.defra.gov.uk/plants/publications/gazette.cfm> .

Notices of the following are included in each edition if they have occurred:

- information for applicants;
- applications received (including applications for compulsory licences);
- withdrawal of applications;
- proposed, approved and changes to names;
- proposed grants and refusals;
- grants and refusals;
- proposed surrenders of rights;
- terminations of rights;
- amendments to the Register of Plant Variety Rights; and
- appeals to the Plant Variety and Seeds Tribunal.

### 22.1 The Plant Varieties and Seeds Gazette - Special Edition

A full list of varieties holding UK Plant Breeders' Rights is produced twice a year as a Special Edition of the Plant Varieties and Seeds Gazette. It specifies, by species, all varieties currently holding rights, including details of the grant number and the holder as at 31 December of the previous year and 30 June of that year.

The Gazette and Special Gazette are published on the PVRO website at <http://www.fera.defra.gov.uk/plants/publications/gazette.cfm>. Copies of the Gazette or Special Edition may be obtained from the PVRO..

## 23. Plant variety information

A record of applications for Plant Breeders' Rights and grants issued is kept by the PVRO. It is available for inspection by any member of the public on application to the PVRO.

The register includes the following information for applications under consideration:

- the date on which the application was received;
- the date on which details of the application were published in the Gazette;
- the name and address of the applicant;

- the description of the characteristics of the plant variety provided by the applicant;
- the reference number allocated to the variety by the PVRO;
- the name of the variety as published in the Gazette; and
- any other particulars which appear to the Controller to be desirable, including a copy of the application form and, for genetically modified varieties, a copy of the relevant release consent published at <http://www.defra.gov.uk/environment/gm/regulation/registers/consents/index.htm>

As well as the above information the register also includes the following details for varieties holding a grant of rights:

- the name and address of the holder of rights;
- a description of the characteristics of the plant variety;
- the name of the variety as published in the Gazette;
- the date on which rights were granted;
- the date on which rights expired, terminated or were declared null and void; and
- the period for which rights were granted.

## 24. Royalty payments on farm saved seed

The Plant Varieties Act 1997 provides for holders of rights to claim remuneration from farmers for the use of farm saved seed of varieties of the following species:

### Fodder plants

Chickpea milkvetch  
 Yellow lupin  
 Lucerne  
 of flax  
 Field Pea  
 Berseem/Egyptian clover  
 Persian clover  
 Field Bean  
 Common vetch

### Potatoes

Potatoes

### Cereals

Oats  
 Barley  
 Rice  
  
 Canary grass  
 Rye  
 Triticale  
 Wheat  
 Durum wheat  
 Spelt wheat

### Oil and fibre plants

Swede rape  
 Turnip rape  
 Linseed, with the exclusion

Farmers who use farm saved seed of a protected variety, or a variety which is essentially derived from the protected variety, are liable to pay the holder of rights equitable remuneration, which is "sensibly lower" than the amount charged for the production of propagating material of the variety with his authority in the same area.

Full details of the farm saved seed provisions are at Section 9 of the 1997 Act and in The Plant Breeders' Rights (Farm Saved Seed)(Specification) Order 1998 and The Plant Breeders' Rights (Farm Saved Seed)(Specified Information) Regulations 1998.

Advice and information on payment rates or collection is available from:

British Society of Plant Breeders Ltd  
BSPB House  
114 Lancaster Way Business Park  
ELY  
CB6 3NX  
Tel: +44(0)1353 653200  
Fax: +44(0)1353 661156  
Email: [enquiries@bspb.co.uk](mailto:enquiries@bspb.co.uk)  
Website: <http://www.bspb.co.uk/index.asp>

## 25. Miscellaneous

### 25.1 Advice on Plant Breeders' Rights Matters

The PVRO will give enquirers any help it can by way of general information and explanation of Plant Breeders' Rights and the procedures of the office. We cannot, however, undertake to give legal advice, or pre-judge decisions of the Controller.

### 25.2 False representations

It is a criminal offence for any person to give, knowingly or recklessly, false information to the PVRO in an application where the Controller's decision may be appealed to the Tribunal, (or in support of such an application), or in respect of information in connection with the maintenance of a variety. The penalty on conviction is a fine not exceeding level 3 on the standard scale.

It is also a criminal offence for any person to make, knowingly or recklessly, false representations that he is entitled to exercise Plant Breeders' Rights. This applies regardless of whether the variety is the subject of Plant Breeders' Rights. The penalty on conviction is a fine not exceeding level 3.

# Appendix I UPOV Guidelines for variety denominations

Extract from ' Explanatory Notes on Variety Denominations Under the UPOV Convention ' ([UPOV/INF/12/2](#)) of 22 October 2009

The Explanatory Notes below correspond to the paragraph numbers within Article 20 of the 1991 Act and Article 13 of the 1978 Act and 1961 Convention, unless indicated otherwise.

## Paragraph 1

(Paragraphs 1 and 3 of Article 13 of the 1961 Convention)

*[Designation of varieties by denominations; use of the denomination]* The variety shall be designated by a denomination which will be its generic designation. Each Contracting Party shall ensure that, subject to paragraph (4), no rights in the designation registered as the denomination of the variety shall hamper the free use of the denomination in connection with the variety, even after the expiration of the breeder's right.

## Paragraph 2

*[Characteristics of the denomination]* The denomination must enable the variety to be identified. It may not consist solely of figures except where this is an established practice for designating varieties. It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. In particular, it must be different from every denomination which designates, in the territory of any Contracting Party, an existing variety of the same plant species or of a closely related species. (*See appendix II for naming classes*).

## Paragraph 3

(Paragraph 4 of Article 13 of the 1961 Convention)

*[Registration of the denomination]* The denomination of the variety shall be submitted by the breeder to the authority. If it is found that the denomination does not satisfy the requirements of paragraph (2), the authority shall refuse to register it and shall require the breeder to propose another denomination within a prescribed period. The denomination shall be registered by the authority at the same time as the breeder's right is granted.

## Paragraph 4

(Paragraph 10 of Article 13 of the 1961 Convention)

*[Prior rights of third persons]* Prior rights of third persons shall not be affected. If, by reason of a prior right, the use of the denomination of a variety is forbidden to a person who, in accordance with the provisions of paragraph (7), is obliged to use it, the authority shall require the breeder to submit another denomination for the variety.

### **Paragraph 5**

*[Same denomination in all Contracting Parties]* A variety must be submitted to all Contracting Parties under the same denomination. The authority of each Contracting Party shall register the denomination so submitted, unless it considers the denomination unsuitable within its territory. In the latter case, it shall require the breeder to submit another denomination.

### **Paragraph 6**

*[Information among the authorities of Contracting Parties]* The authority of a Contracting Party shall ensure that the authorities of all the other Contracting Parties are informed of matters concerning variety denominations, in particular the submission, registration and cancellation of denominations. Any authority may address its observations, if any, on the registration of a denomination to the authority which communicated that denomination.

### **Paragraph 7**

*[Obligation to use the denomination]* Any person who, within the territory of one of the Contracting Parties, offers for sale or markets propagating material of a variety protected within the said territory shall be obliged to use the denomination of that variety, even after the expiration of the breeder's right in that variety, except where, in accordance with the provisions of paragraph (4), prior rights prevent such use.

### **Paragraph 8**

*[Indications used in association with denominations]* When a variety is offered for sale or marketed, it shall be permitted to associate a trademark, trade name or other similar indication with a registered variety denomination. If such an indication is so associated, the denomination must nevertheless be easily recognisable.

## Appendix II Naming classes

(a) General Rule (one genus / one class): for genera and species not covered by the List of Classes in this Annex, a genus is considered to be a class;

(b) Exceptions to the General Rule (list of classes):

- (i) classes within a genus: List of classes in this Annex: Part I;
- (ii) classes encompassing more than one genus: List of classes in this Annex: Part II.

### LIST OF CLASSES

#### Part I

##### *Classes within a genus*

	Botanical names	UPOV codes
Class 1.1	Brassica oleracea	BRASS_OLE
Class 1.2	Brassica other than Brassica oleracea	other than BRASS_OLE
Class 2.1	Beta vulgaris L. var. alba DC., Beta vulgaris L. var. altissima	BETAA_VUL_GVA; BETAA_VUL_GVS
Class 2.2	Beta vulgaris ssp. vulgaris var. conditiva Alef. (syn.: B. vulgaris L. var. rubra L.), B. vulgaris L. var. cicla L., B. vulgaris L. ssp. vulgaris var. vulgaris	BETAA_VUL_GVC; BETAA_VUL_GVF
Class 2.3	Beta other than classes 2.1 and 2.2.	other than classes 2.1 and 2.2
Class 3.1	Cucumis sativus	CUCUM_SAT
Class 3.2	Cucumis melo	CUCUM_MEL
Class 3.3	Cucumis other than classes 3.1 and 3.2	other than classes 3.1 and 3.2
Class 4.1	Solanum tuberosum L.	SOLAN_TUB
Class 4.2	Solanum other than class 4.1	other than class 4.1

#### Part II

##### *Classes encompassing more than one genus*

	Botanical names	UPOV codes
Class 201	Secale, Triticale, Triticum	SECAL; TRITL; TRITI
Class 202	Megathyrsus, Panicum, Setaria, Steinchisma	MEGAT; PANIC; SETAR; STEIN
Class 203*	Agrostis, Dactylis, Festuca, Festulolium, Lolium, Phalaris, Phleum and Poa	AGROS; DCTLS; FESTU; FESTL; LOLIU; PHALR; PHLEU; POAAA
Class 204*	Lotus, Medicago, Ornithopus, Onobrychis, Trifolium	LOTUS; MEDIC; ORNTP; ONOBR; TRFOL
Class 205	Cichorium, Lactuca	CICHO; LACTU
Class 206	Petunia and Calibrachoa	PETUN; CALIB
Class 207	Chrysanthemum and Ajanía	CHRYSS; AJANI
Class 208	(Statice) Goniolimon, Limonium, Psylliostachys	GONIO; LIMON; PSYLL
Class 209	(Waxflower) Chamelaucium, Verticordia	CHMLC; VERTI; VECHM
Class 210	Jamesbrittania and Sutera	JAMES; SUTER

\* Classes 203 and 204 are not solely established on the basis of closely related species.

# Appendix III Official publications relating to Plant Breeders' Rights

## 1. Legislation

1. [The Plant Varieties Act 1997](#) - (ISBN 0-10-546698-0)
2. [The Plant Breeders' Rights Regulations 1998](#) - (SI No1027/1998)
3. [The Plant Breeders' Rights \(Farm Saved Seed\) \(Specification of Species and Groups\) Order 1998](#) - (SI No 1025/1998)
4. [The Plant Breeders' Rights \(Farm Saved Seed\)\(Specified information\) Regulations 1998](#) - (SI No 1026/1998)
5. [The Plant Breeders' Rights \(Information Notices\) Regulations 1998](#) - (SI No 1024/1998)
6. [The Plant Breeders' Rights \(Information Notices\)\(Extension to European Community Plant Variety Rights\) Regulations 1998](#) - (SI No 1023/1998)
7. [The Plant Breeders' Rights \(Naming and Fees\) Regulations 2006](#) - (SI No 648/2006)

Items 1-7 may be purchased, details from - <http://www.tso.co.uk/>

TSO Orders/Post Cash Dept  
PO Box 29  
Norwich  
NR3 1GN

Email [customer.services@tso.co.uk](mailto:customer.services@tso.co.uk)  
Tel 0870 600 5522  
Fax 0870 600 55334

## 2. Official Journal of the European Community

A list of sales agents for the Official Journals can be found at [http://publications.europa.eu/others/agents/index\\_en.htm](http://publications.europa.eu/others/agents/index_en.htm)

The Official Journal is published on line at the following web address – <http://eur-lex.europa.eu/JOIndex.do?ihmlang=en>

## 3. The Plant Varieties and Seeds Gazette.

The Plant Varieties and Seeds Gazette can be found on the Fera website at <http://www.fera.defra.gov.uk/plants/publications/gazette.cfm..>

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