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STATUTORY RULES OF NORTHERN IRELAND

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**2020 No. 302**

**AGRICULTURE**

**EUROPEAN UNION**

**SEEDS**

**The Seeds (Variety Lists) Regulations (Northern Ireland) 2020**

*Made* - - - - *4th December 2020*

*Coming into operation* *31st December 2020*

The Department of Agriculture, Environment and Rural Affairs being a Department designated<sup>(1)</sup> for the purposes of the European Communities Act 1972<sup>(2)</sup> in relation to the common agricultural policy of the European Union makes the following Regulations in exercise of the powers conferred by section 2(2) of, as read with paragraph 1A of Schedule 2 to, that Act.

These Regulations make provision for a purpose mentioned in section 2(2) of that Act and it appears to the Department that it is expedient for references to the instruments specified in regulation 2 and paragraph 2(2) of Schedule 2 to be construed as references to those instruments as amended from time to time.

**Citation and commencement**

1. These Regulations may be cited as the Seeds (Variety Lists) Regulations (Northern Ireland) 2020 and come into operation on 31<sup>st</sup> December 2020.

**Interpretation**

2. In these Regulations—

“the 1990 Directive” means Council [Directive 90/220/EEC](#)<sup>(3)</sup> on the deliberate release into the environment of genetically modified organisms, as amended from time to time;

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(1) [S.I. 2000/2812](#).

(2) [1972 c. 68](#). The European Communities Act 1972 was repealed by section 1 of the European Union (Withdrawal) Act 2018 ([c. 16](#)) with effect from exit day, but saved with modifications until IP completion day by section 1A of that Act (as inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 ([c. 1](#))). Section 2(2) of the European Communities Act 1972 was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 ([c. 51](#)) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 ([c. 7](#)).

(3) OJ No L 117, 8.5.1990, p. 15.

“the 2001 Regulations” means the Seeds (National Lists of Varieties) Regulations 2001<sup>(4)</sup>;

“authorised officer” means an officer authorised by the Department for the purposes of these Regulations;

“a B List vegetable variety” means a variety whose seed may not be controlled except as standard seed;

“certified”, in relation to seed, has the same meaning as in the Seed Marketing Regulations and “certification” shall be construed accordingly;

“the Commission Regulation” means [Commission Regulation \(EC\) No 637/2009](#)<sup>(5)</sup> establishing implementing rules as to the suitability of the denominations of varieties of agricultural plant species and vegetable species, as amended from time to time;

“a Common Catalogue” means, as the case may be, either the Common Catalogue of varieties of species of agricultural plants or the Common Catalogue of varieties of species of vegetables, both published in the Official Journal of the European Communities;

“the Common Catalogue Directive” means Council [Directive 2002/53/EC](#)<sup>(6)</sup> on the common catalogue of varieties of agricultural plant species, as amended from time to time;

“conservation variety” means a landrace or plant variety of a species specified in Part I of Schedule 1 that is naturally adapted to the local and regional conditions (or, in the case of a vegetable variety, that has been traditionally grown in particular localities and regions) and is threatened by genetic erosion, and for these purposes—

- (a) “landrace” means a set of populations or clones of a plant species which are naturally adapted to the environmental conditions of their region; and
- (b) “genetic erosion” means loss of genetic diversity between and within populations or varieties of the same species over time, or reduction of the genetic basis of a species due to human intervention or environmental change;

“the Deliberate Release Directive” means Council [Directive 2001/18/EC](#)<sup>(7)</sup> on the deliberate release into the environment of genetically modified organisms, as amended from time to time;

“the Department” means the Department of Agriculture, Environment and Rural Affairs;

“derogated species” means a species of plant specified in Part II of Schedule 1;

“the Equivalence Decision” means Council [Decision 2005/834/EC](#)<sup>(8)</sup> on the equivalence of checks on practices for the maintenance of varieties carried out in certain third countries and amending [Decision 2003/17/EC](#), as amended from time to time;

“the Fees Regulations” means the Seeds (National Lists of Varieties) (Fees) Regulations 1994<sup>(9)</sup>;

“the Food and Feed Regulation” means Council Regulation [\(EC\) No 1829/2003](#)<sup>(10)</sup> on genetically modified food and feed, as amended from time to time;

“the Gazette” means the Plant Varieties and Seeds Gazette published in accordance with section 34(1) of the Plant Varieties and Seeds Act 1964<sup>(11)</sup>;

“genetically modified” has the same meaning as for the purposes of the Deliberate Release Directive;

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(4) [S.I. 2001/3510](#), as amended by [S.I. 2004/2949](#), [2007/1871](#), [2008/2683](#), [2009/1273](#), [2010/1195](#), [2011/464](#), [2012/2897](#), [2013/2042](#) and [2020/579](#).

(5) OJ No L 191, 23.7.2009, p. 10.

(6) OJ No L 193, 20.07.2002, p. 1.

(7) OJ No L 106, 17.4.2001, p. 1.

(8) OJ No L 312, 29.11.2005, p. 51.

(9) [S.I. 1994/676](#), relevant amending instruments are [S.I. 1997/383](#), [1999/1090](#), [2001/3510](#).

(10) OJ No L 268, 18.10.2003, p. 1.

(11) [1964 c. 14](#).

“maintainer”, in respect of a plant variety, means a person named in or ascertainable by reference to a National List as responsible for maintaining a variety in accordance with the characteristics to which regard was had when that variety was accepted on a National List; and “maintenance” shall be construed accordingly;

“name”, in respect of a plant variety, includes denomination;

“NI Variety List” means any list of varieties of species of agricultural plants and varieties of species of vegetables, prepared and published in accordance with regulation 3;

“the Novel Foods Regulation” means Council Regulation (EC) No 258/97(12) concerning novel foods and food ingredients, as amended from time to time;

“official measures” includes official examinations, growing trials, tests and assessments;

“person affected”, in respect of a proposed relevant decision or a relevant decision, means—

- (a) any person to whom the Department have given notice of the proposed relevant decision or the relevant decision;
- (b) any person appearing to the Department to have a sufficient interest in the matter to which the decision relates; and
- (c) any person or organisation appearing to the Department to be representative of a class of persons likely to be affected by the decision;

“region of origin” means the region identified by the Department when a conservation variety is accepted on to an NI Variety List as being the region in which the variety has historically been grown and to which it is naturally developed;

“relevant decision” means a decision of the Department—

- (a) under regulation 5 to accept or refuse a plant variety on to an NI Variety List;
- (b) that it is satisfied a plant variety has a name suitable, in accordance with regulation 7, for publication in the Gazette;
- (c) to accept, or refuse to accept, an application under regulation 8;
- (d) to renew, or not to renew, the acceptance of a variety under regulation 14; or
- (e) to revoke the acceptance of a variety under regulation 15, replace the original acceptance of a variety under that regulation or delete the name of a person as the maintainer of a variety under regulation 15(4)(e);

and “proposed relevant decision” and “proposal for a relevant decision” shall be construed accordingly;

“the relevant legislation” means—

- (a) in respect of a genetically modified variety any material derived from which is intended to be used as food or a food ingredient within the meaning of Article 2 of Council Regulation (EC) No 178/2002(13) laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety and falling within the scope of Article 3 of the Food and Feed Regulation—
  - (i) in relation to material authorised before 18 April 2004—
    - (aa) the 1990 Directive; or
    - (bb) the Deliberate Release Directive;
    - (cc) the Novel Foods Regulation; and

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(12) OJ No L 043, 14.2.1997, p. 1.

(13) OJ No L 031, 1.2.2002, p. 1.

- (ii) in relation to material authorised on or after 18 April 2004, the Food and feed Regulation;
- (b) in respect of a genetically modified variety any material derived, from which is intended to be used as feed or a feed ingredient within the meaning of Article 3 of Council Regulation (EC) No 178/2002 and falling within the scope of the Food and Feed Regulation, as amended from time to time—
  - (i) in relation to material authorised before 18 April 2004—
    - (aa) the 1990 Directive; or
    - (bb) the Deliberate Release Directive; and
  - (ii) in relation to material authorised on or after 18 April 2004, the Food and Feed Regulation; and
- (c) in respect of a genetically modified variety any material derived from which is intended to be used for any other purpose—
  - (i) the 1990 Directive; or
  - (ii) the Deliberate Release Directive;

“seeds” means seeds for sowing;

“the Seeds Marketing Directives” means—

- (a) Council Directive 2002/54/EC on the marketing of beet seed(14);
- (b) Council Directive 66/402/EEC on the marketing of cereal seed(15);
- (c) Council Directive 66/401/EEC on the marketing of fodder plant seed(16);
- (d) Council Directive 2002/57/EC on the marketing of seed of oil and fibre plants(17);
- (e) Council Directive 2002/56/EC on the marketing of seed potatoes(18); and
- (f) Council Directive 2002/55/EC on the marketing of vegetable seed(19),

in each case as amended from time to time;

“the Seed Marketing Regulations” means the Seed Marketing Regulations (Northern Ireland) 2016(20);

“standard seed”, in relation to seed of a vegetable variety, has the same meaning as in the Seed Marketing Regulations;

“the Tribunal” means the tribunal continued as the Plant Varieties and Seeds Tribunal by section 42 of the Plant Varieties Act 1997(21);

“varietal association” means an association of—

- (a) certified seed of a male-sterile hybrid variety accepted on to an NI Variety List or a Common Catalogue; with
- (b) certified seed of one or more varieties capable of shedding pollen accepted on to an NI Variety List or a Common Catalogue;

mechanically combined in proportions jointly determined by the maintainers of all the varieties in the association;

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(14) OJ No L 193, 20.7.2002, p. 12.

(15) OJ No L 125, 11.7.1966, p. 2309.

(16) OJ No L 125, 11.7.1966, p. 2298.

(17) OJ No L 193, 20.7.2002, p. 74.

(18) OJ No L 193, 20.7.2002, p. 60.

(19) OJ No L 193, 20.7.2002, p. 33.

(20) S.R. 2016, No. 244, as amended by S.R. 2017 No. 222.

(21) 1997, c. 66.

“a variety known in the European Union”, is any variety—

- (a) accepted on to—
  - (i) an NI Variety List;
  - (ii) a list of a member State corresponding to an NI Variety List; or
  - (iii) a Common Catalogue; or
- (b) in respect of which an application for acceptance on to an NI Variety List or a list of a member State corresponding to an NI Variety List has been submitted and has not been determined,

and “a variety not known in the European Union” shall be construed accordingly; and

“the Vegetable Seed Marketing Directive” means Council [Directive 2002/55/EC](#) on the marketing of vegetable seed<sup>(22)</sup>, as amended from time to time.

(2) Subject to paragraph (3), “marketing” means—

- (a) selling, holding with a view to sale or offering for sale; or
- (b) any disposal, supply or transfer for the purpose of commercial exploitation of seed to third parties,

whether or not for consideration; and “market” and “marketed” shall be construed accordingly.

(3) Trade in seed not aimed at commercial exploitation of the variety, such as the following operations—

- (a) the supply of seed to official testing and inspection bodies; and
- (b) the supply of seed to a person who provides processing or packaging services but who does not thereby acquire title to the seed supplied,

shall not be regarded as marketing of seed of that variety.

(4) Expressions in these Regulations which are not defined in the preceding paragraphs and which appear or are referred to in the Common Catalogue Directive have the same meaning in these Regulations as in that Directive.

(5) Expressions in these Regulations which are not defined in the preceding paragraphs and which appear or are referred to in the Vegetable Seed Marketing Directive have the same meaning in these Regulations as in that Directive.

(6) The Interpretation Act (Northern Ireland) 1954<sup>(23)</sup> shall apply to these Regulations as it applies to an Act of the Assembly.

### **Preparation of NI Variety Lists of plant varieties and publication in the Gazette**

3.—(1) For the purposes referred to in paragraph (2) the Department shall—

- (a) prepare the NI Variety Lists of plant varieties of the species, specified in Part I of Schedule 1, accepted on to the NI Variety Lists by the Department; and
- (b) publish these NI Variety Lists in the Gazette.

(2) The Department shall accept a plant variety on to an NI Variety List in accordance with these Regulations—

- (a) for purposes in relation to the marketing of seed of the variety; and
- (b) in the case of a plant variety, other than a B List vegetable variety, for purposes in relation to the certification of seed of the variety,

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<sup>(22)</sup> OJ No L 193, 20.7.2002, p. 33.

<sup>(23)</sup> 1954 c. 33 (N.I.)

and the lists of vegetable plant varieties shall be subdivided into B list vegetable varieties and varieties whose seed may be certified as “pre-basic seed”, “basic seed” or “certified seed”, or may be controlled as “standard seed”, in accordance with the Seed Marketing Regulations.

(3) The NI Variety Lists shall not include—

- (a) varieties intended for use solely as components of final varieties except to the extent that seeds belonging to such varieties are to be marketed under the names of those components; and
- (b) varieties, the seed or propagating material of which, are intended for export.

(4) In respect of each variety accepted on to an NI Variety List, the reference to the variety in that List shall include—

- (a) a reference to the name under which the variety is accepted; and
- (b) except in respect of any B List vegetable variety widely known on 1st January 1973, a reference to the maintainer of the variety.

(5) If any plant variety accepted on to an NI Variety List is a genetically modified variety the Department shall publish a clear indication of that fact in that List together with the reference number under which the variety has been accepted for marketing in accordance with the relevant legislation.

(6) The Department shall publish in the Gazette notice of any—

- (a) application made in accordance with these Regulations;
- (b) application so made which is withdrawn;
- (c) proposed relevant decision and the reasons for it;
- (d) relevant decision;
- (e) decision of the Tribunal made on appeal brought in respect of a relevant decision; and
- (f) other change made to an NI Variety List or an application in respect of an NI Variety List,

together with, in respect of any notice containing information about a genetically modified variety, a clear indication of that fact.

(7) Where an application for acceptance of a variety on to an NI Variety List is yet to be determined, the Department shall not publish in the Gazette details of any proposed maintainer or proposed substitution or addition of a maintainer of that variety.

(8) Where the Department proposes to make a relevant decision, the Department, in addition to publishing in the Gazette notice of the proposed decision, shall also publish in the Gazette—

- (a) a statement that oral and written representations may be made about the proposed relevant decision by persons likely to be affected by it; and
- (b) a statement of the manner in which, and the period (not being less than 14 days) within which, written representations, and a request for oral representations, may be made.

(9) The Department shall not make a relevant decision before the expiry of the period published in the Gazette as being the period within which written representations, and a request for oral representations, in respect of the proposal for the decision may be made.

#### **Applications in relation to NI Variety Lists**

4.—(1) Applications shall be made to the Department in accordance with this regulation, for acceptance by the Department—

- (a) of a plant variety of a species specified in Part 1 of Schedule 1 on to an NI Variety List;
- (b) of a renewal of an acceptance of the kind referred to in subparagraph (a);
- (c) of an amendment—

- (i) to any information published in an NI Variety List in relation to a variety accepted on to that List; or
  - (ii) to any information included in an application already made but not yet determined by the Department;
- (d) of a change by a maintainer of a variety on an NI Variety List to the name of the variety; or
- (e) of a change to the reference in an NI Variety List of any maintainer of the variety.
- (2) The application shall be in writing and—
  - (a) shall include such information and documents relevant to the application as the Department may require for the purpose of determining the application; and
  - (b) shall be accompanied by any fee determined under regulation 11 in relation to the application.
- (3) An application for acceptance of a plant variety on to an NI Variety List shall include—
  - (a) such reproductive or other material of the plant variety, and any of its components,; and
  - (b) where a previous application has been made in a member State for acceptance of the plant variety concerned on any list published in that member State corresponding to an NI Variety List, such copies of the documents and information relating to the previous application,as the Department may require.
- (4) An application for—
  - (a) a change to the reference in an NI Variety List to a maintainer of a variety on that List; or
  - (b) the addition of a reference in an NI Variety List to a maintainer of a variety on that List,shall include such reproductive or other material of the plant variety, and of any of its components, as the Department may require.
- (5) If any document required by paragraph (2)(a) or (3)(b) to be included with an application is in a language other than English the Department may require it to be accompanied by a complete and adequate translation into the English language.
- (6) If the Department has reasonable grounds for believing that any information, document, reproductive or other material of a plant variety relating to but not included with an application referred to in paragraph (1) is necessary or desirable for the purpose of determining the application, the Department may, by notice to the applicant specifying the information, document or material, require the information, document or material to be given to it within such reasonable period as it may specify.
- (7) If an applicant—
  - (a) fails to comply with a notice under paragraph (6); or
  - (b) fails to pay any fee determined under regulation 11 in relation to the application, within such period as may be specified for the payment of the fee under that regulation,the application shall be treated as if it had been withdrawn.
- (8) Where a person has made an application under this regulation in respect of any matter relating to a variety that person may not make another application in respect of that matter until the previous application has been finally determined or withdrawn.

### **Acceptance of plant varieties**

**5.—**(1) Subject to the following paragraphs, the Department shall base acceptance of a variety on to an NI Variety List on the results of official measures, particularly growing trials, carried out in

respect of the variety by or on behalf of the Department or by or on behalf of a competent authority in any member State.

(2) The Department may base acceptance of a variety on to an NI Variety List on the results of official growing trials conducted by competent authorities outside Northern Ireland if the Department is satisfied that those growing trials are of equivalent standards to those carried out by or on behalf of the Department.

(3) In respect of a B List vegetable variety the Department may also take into consideration the results of unofficial tests and knowledge gained from practical experience during cultivation.

(4) In respect of a conservation variety, the requirement in paragraph (1) to base acceptance on to an NI Variety List on the results of official measures does not apply if the Department is satisfied that other information is sufficient for such acceptance.

(5) The Department shall not accept a plant variety on to an NI Variety List unless it is satisfied that—

- (a) the variety is a variety of a species specified in Part 1 of Schedule 1;
- (b) the variety is stable and sufficiently uniform as described in paragraphs 3 and 4 of Part 1 of Schedule 2, and distinct as described in—
  - (i) paragraph 2 of that Part, in the case of a conservation variety; or
  - (ii) paragraph 1 of that Part, in any other case;
- (c) in respect of any variety other than a variety referred to in Part 3 of Schedule 2, the variety is of satisfactory value for cultivation and use as described in Part 2 of that Schedule;
- (d) in respect of a conservation variety, it presents an interest for the conservation of plant genetic resources;
- (e) in respect of a genetically modified variety, it has been accepted for marketing in accordance with the relevant legislation;
- (f) in respect of a variety other than a genetically modified variety any material to be derived from which is intended for use as a food, or a food ingredient, within the meaning of Article 1(2) of the Novel Foods Regulation, the food or food ingredient intended to be so derived is authorised pursuant to the relevant legislation;
- (g) it has a name suitable for publication in the Gazette (and notwithstanding a conservation variety may have more than one name if the names concerned are historically known and so suitable for publication); and
- (h) in respect of a variety other than a B list vegetable variety widely known on 1 January 1973, there is a maintainer of the variety accepted in accordance with regulation 8.

(6) The Department shall not accept a plant variety as a conservation variety on to an NI Variety List if—

- (a) it is already listed in the Common Catalogue or an NI Variety List as a variety other than a conservation variety;
- (b) having been so listed, it has been deleted from the Common Catalogue or that NI Variety List and it is less than two years since the deletion or the expiry of any extended period for certification and marketing granted by the Department or the competent seed certification authority in a member State in accordance with Article 15(2) of the Common Catalogue Directive or Article 15(2) of the Vegetable Seed marketing Directive; or
- (c) it is protected by Community plant variety right as provided for in Council Regulation (EC) No 2100/94 on Community plant variety rights<sup>(24)</sup> or by plant breeders' rights granted

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(24) OJ No L 227, 1.9.94, p. 1.



under the Plant Varieties Act 1997, or where an application for such rights has been made but not finally determined.

(7) The Department may refuse to accept a plant variety on to an NI Variety List, whether or not it is satisfied of the matters in respect of the variety specified in paragraph (3), if it is satisfied that—

- (a) the refusal is required by virtue of any provision of national law justified on the grounds of the protection of health and life of humans, animals or plants; or
- (b) cultivation of the variety could be harmful, in relation to plant health, to the cultivation of other varieties or species.

(8) The Department may determine that the acceptance of a variety in accordance with the Common Catalogue Directive or the Vegetable Seed Marketing Directive on to a list published in a member State corresponding to a National List is equivalent to acceptance for inclusion on an NI Variety List and, where it so determines, may accept the variety on to an NI Variety List.

(9) The Department shall inform the applicant of an acceptance or refusal to accept a variety under this regulation, or a determination under paragraph (8), and of the reasons.

(10) The Department may make arrangements for the purpose of enabling any person to act under the Department's supervision in carrying out any function of the Department under these Regulations, including functions in relation to the administration and determination of any application under these Regulations, the examination or inspection of any documents, records or material, the service of notices, the provision of information and the issue of approvals.

(11) The Department must not make an arrangement under paragraph (10) unless it is satisfied that provision is made for the purpose of preventing the person with whom the arrangement is made, and any other person, from—

- (a) deriving any private gain from any official measures carried out under the arrangement; and
- (b) carrying out any official measures under the arrangement except under the supervision of the Department.

### **Amateur vegetable varieties**

**6.—**(1) The provisions of these Regulations relating to conservation varieties apply in relation to amateur vegetable varieties, with the exceptions and modifications listed in paragraphs (2), (3) and (4).

(2) The following provisions do not apply to amateur vegetable varieties—

- (a) regulation 5(5)(d) (requirement that the variety presents an interest for the conservation of plant genetic resources);
- (b) regulation 8 (maintainers of plant varieties); and
- (c) regulation 13 (maintenance of accepted plant varieties).

(3) Paragraph (6) of regulation 5 is modified by—

- (a) in sub-paragraph (a), the substitution of “an amateur vegetable variety” for “a conservation variety”; and
- (b) in sub-paragraph (b), the omission of “the Common Catalogue or”.

(4) Sub-paragraph (1) of paragraph 2 of Schedule 2 is modified by—

- (a) in paragraph (a), the omission of “Directive 2003/90 or”; and
- (b) in paragraph (b), the substitution of “that Directive” for “those Directives”.

(5) In this regulation an amateur vegetable variety is a vegetable variety with no intrinsic value for commercial crop production but developed for growing under particular agro-technical, climatic or pedological conditions.

### **Naming of plant varieties**

7.—(1) A name of a plant variety, other than a conservation variety, is suitable for publication in the Gazette if—

- (a) the name is not unsuitable as described in paragraph (3); and
- (b) in respect of a plant variety known at the time the Department determine an application for its acceptance on to an NI Variety List, the name of the variety is so far as it can be, the name under which the plant variety is already known at that time.

(2) A name of a plant variety of a conservation variety is suitable for publication in the Gazette if the name is not unsuitable as described in paragraph (3)(a), (e) or (f).

(3) For the purposes of this regulation a name of any plant variety is unsuitable if the Department is satisfied that—

- (a) its use in the territory of the European Union is precluded as provided in Article 2 of the Commission Regulation (trade mark as prior right of a third party);
- (b) it may commonly cause its users difficulties as regards recognition or reproduction;
- (c) it is identical or may be confused with a name of another plant variety as specified in Article 4 of the Commission Regulation or regulation 3 of the Plant Breeders' Rights (Naming and Fees) Regulations 2006<sup>(25)</sup>;
- (d) it is identical to or may be confused with another name commonly used for the marketing of goods, or which is not available by virtue of other legislation;
- (e) it is liable to give offence or is contrary to the public interest; or
- (f) it is liable to mislead or cause confusion concerning the characteristics, value or identity of the variety.

(4) For the purposes of this regulation a variety is known at the time the Department determine an application for its acceptance on to an NI Variety List if—

- (a) it is registered in an official register of plant varieties as defined in Article 4(d) of the Commission Regulation of a member of the International Union for the Protection of New Varieties of Plants;
- (b) it has previously been accepted on to an NI Variety List, a GB Variety List or a list in a member State corresponding to a National List or the Common Catalogue;
- (c) it is not clearly distinguishable from another variety assessed, with regard to distinctness, stability and uniformity in accordance with rules corresponding to those of the Common Catalogue Directive or the Vegetable Seed Marketing Directive, in a country outside the European Union—
  - (i) which is a member of the International Union for the Protection of New Varieties of Plants;
  - (ii) with which there is an agreement in relation to official checks on practices for the maintenance of that other variety in the Annex to the Equivalence Decision; or
- (d) it is not clearly distinguishable from a variety previously accepted on to an NI Variety List, a list in a member State corresponding to a National List or the Common Catalogue.

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(25) S.I. 2006/648, as amended by S.I. 2018/942 and S.I. 2019/204.

(5) If the Department is aware that seed or propagating material of a plant variety, whose name is suitable for publication in the Gazette, is marketed in a country outside the European Union for commercial purposes under a different name, the Department shall include that name in the reference to the name of the variety on an NI Variety List.

(6) If the Department is satisfied that the name by reference to which the variety was accepted on an NI Variety List was not in accordance with the provisions of this regulation, the Department—

- (a) shall adapt the name of the variety on that List to ensure it conforms with those provisions and publish in the Gazette a notice of the adapted name; and
- (b) may publish a notice in the Gazette that the name by reference to which the variety was accepted may be used in addition to the adapted name for a period specified in the notice.

(7) The Department shall not grant an application for a change to the name of a variety accepted on to an NI Variety List or a change to the name of a variety proposed in any application for acceptance of a variety on to an NI Variety List unless it is satisfied that the proposed new name complies with the requirements of this regulation.

(8) The Department shall inform the applicant of a decision made by it under this regulation relating to the application and of the reasons for it.

(9) In this regulation “GB Variety List” means any list of varieties of species of agricultural plants and varieties of species of vegetables, prepared and published in accordance with the 2001 Regulations.

### **Maintainers of plant varieties**

**8.—**(1) The Department shall not grant an application for the substitution or addition of a maintainer of a variety accepted on to an NI Variety List unless it is satisfied the applicant is able to maintain the variety in accordance with the characteristics to which regard was had when the variety was accepted on to that NI Variety List and, in the case of a conservation variety, in its region of origin.

(2) For the purposes of a decision under paragraph (1), the Department shall have due regard to—

- (a) the facilities and services available to the applicant for the purpose of enabling him to maintain the variety; and
- (b) such information, documents, reproductive or other material of the plant variety and any of its components as the Department may have required under regulation 4.

(3) The Department may make arrangements for such examinations of reproductive or other material of the variety and any of its components produced by the applicant as appears to it to be necessary to establish that the material conforms with the characteristics to which regard was had when the variety was accepted on to that NI Variety List.

(4) The applicant shall pay any fee determined under regulation 11 in respect of the costs of any examinations carried out under arrangements made by the Department for the purposes of paragraph (3).

(5) If an application for acceptance of a variety on to a National List has not yet been determined, the Department shall not accept a person proposed in the application as a maintainer of the variety, or grant an application in respect of that application for the substitution or addition of a person proposed as a maintainer, unless it is satisfied the person—

- (a) is capable of maintaining the variety, including, in the case of a conservation variety, maintaining it in its region of origin;
- (b) has access to sufficient facilities and services for the purpose of enabling him to maintain the variety; and
- (c) is willing to maintain the variety.

(6) The Department shall inform the applicant of a decision made by it under this regulation relating to the application and of the reasons for it.

### **Official measures**

9.—(1) Official measures, particularly growing trials, on the results of which an acceptance of a variety on to an NI Variety List is based, shall cover a sufficient number of characteristics for the variety to be described; and the methods used for determining characteristics for this purpose shall be exact and reliable.

(2) For the purposes of establishing distinctness the growing trials shall include at least the available comparable varieties known in the European Union.

(3) For the purpose of accepting a variety on to an NI Variety List under a name determined in accordance with regulation 7, the growing trials for distinctness shall also include other available comparable varieties not known in the European Union.

### **Arrangements for official measures**

10.—(1) Subject to the following paragraphs, the Department may make arrangements, in such form as it considers necessary or desirable for the purpose of enabling any person to act under its supervision to carry out official measures.

(2) The Department shall not make an arrangement under this regulation unless it is satisfied that such an arrangement has provision for the purpose of preventing any person from—

- (a) deriving any private gain from any official measures carried out under the arrangement; and
- (b) carrying out any official measures under the arrangement except under the official supervision of the Department.

(3) An arrangement under this regulation may include such conditions as the Department considers necessary or desirable for the purposes referred to in paragraphs (1) and (2), including conditions—

- (a) specifying—
  - (i) the official measures that the person with whom the arrangement is made shall carry out under it;
  - (ii) the species of plant varieties on which the person may carry out the official measures;
  - (iii) the methods to be used in connection with the official measures the person carries out under the arrangement;
  - (iv) the amounts that may be charged by the person with whom the arrangement is made in relation to the official measures the person carries out under it; and
  - (v) the records that must be kept by the person with whom the arrangement is made in connection with the official measures that person carries out;
- (b) prohibiting the person with whom the arrangement is made from—
  - (i) carrying out the official measures except under official supervision; and
  - (ii) charging amounts in relation to the official measures that person carries out under the arrangement except to the extent that these do not exceed the costs that person incurs in carrying them out; and
- (c) prohibiting the person with whom the arrangement is made from making any further arrangement for any purpose in connection with the carrying out of any of the official measures that person has arranged with the Department to carry out unless—

- (i) the Department has first approved all the conditions of the further arrangement and the person with whom the arrangement was made has received the prior written approval of the Department to make the further arrangement;
  - (ii) the further arrangement includes a condition prohibiting the making of any subsequent arrangements for any purpose in connection with the carrying out of any of the official measures in respect of which the Department made the arrangement;
  - (iii) the further arrangement includes an acknowledgment by the person with whom it is made that the Department may vary, suspend or revoke the further arrangement, whether or not they also vary, suspend or revoke the arrangement they made with the person seeking their approval for the further arrangement, if it appears to them that the person with whom the further arrangement is made is not complying, or has failed to comply, with any condition of the further arrangement; and
  - (iv) the further arrangement includes the conditions specified in sub-paragraphs (a) and (b).
- (4) The Department shall not approve the making of a further arrangement by any person with whom they make an arrangement under this regulation unless it is satisfied that the person with whom the further arrangement is to be made—
  - (a) will not derive any private gain from any official measures he is to be authorised to carry out under the further arrangement; and
  - (b) will not carry out any official measures under the further arrangement except under official supervision of the Department.
- (5) The Department may vary, suspend or revoke an arrangement or the conditions of an arrangement made under this regulation, or a further arrangement or any of the conditions of a further arrangement under this regulation, by giving notice in writing to the person with whom the arrangement or further arrangement is made, and a further arrangement or any of the conditions of that arrangement may be varied, suspended or revoked under this paragraph notwithstanding that the arrangement in respect of which it was made or the conditions of that arrangement are not also varied, suspended or revoked.
- (6) A notice of a variation, suspension or revocation of an arrangement or further arrangement, or of a condition of an arrangement or further arrangement, shall specify—
  - (a) in respect of a variation or a revocation, a date on and after which the variation or revocation shall have effect; and
  - (b) in respect of a suspension, a period during which suspension shall have effect.
- (7) When a variation, suspension or revocation has effect, the Department may, for any purposes in relation to these Regulations or a determination under these Regulations, continue to have regard to such of the official measures carried out under an arrangement which was varied, suspended or revoked as appear to it to be official measures carried out in accordance with the provisions of these Regulations.

## **Fees**

- 11.—**(1) The Department may charge any person, including any person with whom an arrangement or further arrangement has been made under regulation 10, fees in respect of costs the Department reasonably incurs in carrying out official measures for the purpose of these Regulations.
- (2) The Department may charge any person concerned in any matter connected with these Regulations fees in respect of costs the Department reasonably incurs in the administration of that matter for the purposes of these Regulations, including—

- (a) the administration and determination of any application under these Regulations, including the administration and determination of an application—
    - (i) for acceptance of a variety on to an NI Variety List or a change to any such application;
    - (ii) to change the name of a plant variety for the purposes of these Regulations;
    - (iii) in relation to the maintainer or the maintenance of a plant variety; and
    - (iv) for renewal of acceptance of a variety.
  - (b) the examination or inspection of any documents, records or material under these Regulations; and
  - (c) the annual cost of keeping a variety accepted on an NI Variety List.
- (3) A person with whom an arrangement or further arrangement has been made in accordance with regulation 10, may charge any person, including any other person with whom that or any other arrangement or further arrangement has been made under that regulation, amounts in respect of costs reasonably incurred in carrying out official measures under the responsibility of the Department in accordance with these Regulations.
- (4) Where a person has been given notice—
- (a) by or on behalf of the Department of a fee duly charged in accordance with paragraphs (1) or (2); or
  - (b) by a person with whom an arrangement or further arrangement has been made under regulation 10 of an amount duly charged in accordance with paragraph (3),
- the person to whom the notice is given shall pay as specified in it the amount so charged.
- (5) An amount charged in accordance with this regulation in respect of which notice has been given in accordance with paragraph (4) shall be recoverable as a civil debt from the person to whom the notice was given.

### **Marketing prohibition notices**

**12.—**(1) A person shall not market any seeds of a plant variety of a species specified in Schedule 1 if a marketing prohibition notice has been published by the Department in the Gazette in relation to the variety.

- (2) For the purposes of paragraph (1), a “marketing prohibition notice”—
  - (a) in relation to a variety accepted on to a Common Catalogue or an NI Variety List, means a notice that an application to prohibit marketing of the variety has been made to the European Commission by or on behalf of the Department on the ground that—
    - (i) cultivation of the variety could be harmful, in relation to plant health, to the cultivation of other varieties or species and there is an imminent danger of the spread of harmful organisms; or
    - (ii) the variety presents a risk for human health or the environment and there is an imminent danger for human health or the environment; and
  - (b) in relation to a plant variety not accepted on to a Common Catalogue or an NI Variety List, being a derogated species referred to in paragraph 4 or 5 of Part II of Schedule 1, means a notice specifying that marketing of the variety is prohibited on either of those grounds; and
  - (c) in relation to a plant variety accepted on to a Common Catalogue or an NI Variety List, means a notice specifying that marketing of the variety is prohibited on either of those grounds.
- (3) If the Department has published a notice in the Gazette in respect of a variety—

- (a) specifying that—
    - (i) official growing trials carried out for the purpose of assessing value for cultivation and use in Northern Ireland, show that the variety does not produce results corresponding to those obtained from a comparable variety accepted in Northern Ireland; or
    - (ii) the Department is satisfied the variety is not suitable for cultivation in Northern Ireland by reason of its type or maturity class; and
  - (b) specifying a date after which marketing of the variety is prohibited,
- a person shall not market any seeds of the variety after that date.
- (4) If the acceptance of a plant variety—
- (a) of a species specified in Part I of Schedule 1 on to an NI Variety List or a Common catalogue; or
  - (b) of a derogated species specified in paragraph 3 of Part II of Schedule 1 on to a Common Catalogue,

has been revoked or has expired, a person shall not market any seeds of the variety unless a residual marketing period has been specified in a notice published by the Department in the Gazette in respect of seed of that variety and that period has not expired.

(5) A person shall not market seed of a variety accepted on to an NI Variety List or a Common Catalogue except under the name in which the variety is accepted.

(6) Where the Department adapts the name of a variety under regulation 7(6), and specifies in a notice published in the Gazette in respect of the variety a period during which seed of the variety may be marketed under the name as it was referred to in that NI Variety List before it was adapted, seed of the variety may be marketed during that period under the name as it was referred to in that List before it was adapted.

### **Maintenance of accepted plant varieties**

**13.—**(1) The maintainer of a plant variety on an NI Variety List, other than a B-List vegetable variety widely known on 1 January 1973, shall maintain the variety according to accepted practices for maintaining the variety.

- (2) The maintainer of a plant variety shall not maintain that variety except—
  - (a) in the United Kingdom or a member State; or
  - (b) in a third country referred to in the Equivalence Decision.
- (3) The maintainer of a conservation variety shall not maintain that variety except in its region of origin.
- (4) The maintainer of a plant variety shall keep records of all the generations of the variety the person maintains and shall on demand produce at that person's own expense such records for inspection by or on behalf of the Department and shall also, if so required at any time, at the person's own expense deliver to the Department samples of seed of that variety.
- (5) The maintainer of a plant variety shall at all reasonable times give to an authorised officer such facilities for the inspection or examination of any—
  - (a) plants, whether growing or harvested;
  - (b) plant materials; and
  - (c) records,

as the authorised officer considers necessary or desirable for the purposes of checking compliance with this regulation.

(6) If, for the purposes of checking compliance with this regulation, an authorised officer may, at any premises, take a sample of any seed of a variety requiring to be maintained under these Regulations.

### **Duration of acceptance of plant varieties**

**14.—**(1) Subject to the following paragraphs and regulation 15, the acceptance of a variety under regulation 5 is valid until the end of the tenth calendar year following acceptance.

(2) Provided the requirements of distinctness, uniformity and stability are still satisfied in respect of a variety the Department may renew acceptance of the variety if it is satisfied that cultivation of the variety is on such a scale as to justify renewed acceptance.

(3) The Department may determine an application for renewal of acceptance of a variety notwithstanding that any fee payable under regulation 11 in relation to the variety, whether in connection with that renewal or any other matter, has not been paid.

(4) An application for renewal of acceptance of a variety shall be made not later than two years before the date on which the acceptance is due to expire.

(5) Acceptance of a variety may be renewed more than once in accordance with this regulation.

(6) If an application for renewal of acceptance of a variety in accordance with this regulation has been made not later than two years before the date on which the acceptance is due to expire and the Department has not determined the application before that date, the Department may provisionally renew the acceptance for a reasonable period extending after that date to enable it to determine the application.

(7) The Department shall inform the applicant of a determination made by it under this regulation relating to the application and of the reasons for the determination.

### **Revocation of acceptance of plant varieties and maintainers**

**15.—**(1) The Department shall revoke acceptance of a variety if it is satisfied that—

- (a) on examination, the variety is no longer distinct, stable or sufficiently uniform; or
- (b) in respect of a variety other than a B List vegetable variety widely known on 1 January 1973—
  - (i) there is no maintainer of the variety and no application in relation to a maintainer of the variety has been made and not yet determined; or
  - (ii) whether or not there is a maintainer of the variety, it is not being properly maintained.

(2) If after a variety is accepted on to an NI Variety List the Department is satisfied that, at the time the variety was accepted, time the variety was not distinct as specified in Schedule 2 it shall make such other determination as it considers to be in accordance with the Common Catalogue Directive or, in respect of a vegetable variety, the Vegetable Seed Marketing Directive, and this other determination may be a determination—

- (a) to revoke and replace the original acceptance; or
- (b) to revoke and not replace the acceptance.

(3) If a determination is replaced by another determination under paragraph (2) the variety replaced shall, with effect from the date of that other determination, no longer be regarded as a variety known in the European Union within the meaning of Article 5(1) of the Common Catalogue Directive or, in respect of a vegetable variety, the Vegetable Seed Marketing Directive.

(4) If, in relation to any variety accepted on to an NI Variety List, it appears to the Department that—



- (a) cultivation of the variety, in relation to plant health, could be harmful to the cultivation of other varieties or species;
- (b) in respect of a genetically modified variety, any authorisation for marketing of the variety in accordance with the relevant legislation has been revoked or has otherwise expired;
- (c) in respect of a variety other than a genetically modified variety any material derived from which is intended for use as a food, or a food ingredient, within the meaning of Article 1(2)(b) of the Novel Foods Regulation, the authorisation of the food ingredient for the purposes of that Regulation has been revoked or has otherwise expired;
- (d) false or misleading information material to the acceptance of the variety on to an NI Variety List was given to the Department in relation to that acceptance;
- (e) the maintainer of the variety has failed to comply with a requirement of these Regulations in relation to maintenance of the variety; or
- (f) any fee determined under regulation 11 has not been paid,

the Department may revoke the acceptance of the variety and, in respect of a failure by the maintainer of the variety to comply with a requirement of these Regulations in relation to maintenance of the variety, delete the reference to the name of that person as the maintainer of the variety.

(5) The Department may revoke acceptance of a variety, whether or not it is satisfied of any of the matters in respect of the variety specified in paragraph (4), if it is satisfied that revocation is required by virtue of any provision of national law justified on grounds of the protection of health and life of humans, animals or plants.

(6) On being given notice by a maintainer that he intends to stop, or has stopped, maintaining the variety with effect from a date specified in the notice the Department shall delete the reference to the name of that person as the maintainer of the variety with effect from that date.

(7) Where a notice is given under paragraph (6) by the only maintainer of a variety, the Department shall not revoke the acceptance of the variety under paragraph (1)(b) until—

- (a) the Department has published a notice in the Gazette for the purpose of advertising for a new maintainer; and
- (b) after the period specified in the notice, during which a person may apply to be a maintainer of the variety, has expired.

(8) Where the Department makes a determination under this regulation in relation to a variety or a maintainer of a variety, it shall inform the maintainer, and any other person whose name is in the record of the variety kept by the Department under regulation 16, of the determination and of the reasons for it.

## **Records**

**16.—**(1) The Department shall keep a record of each application for acceptance of a variety on to an NI Variety List containing—

- (a) the date on which the application was received by the Department and the reference number given to it by the Department for the purposes of these Regulations;
- (b) the date on which details of the application were published in the Gazette;
- (c) the name and address of the applicant;
- (d) the description of the characteristics of the plant variety provided by the applicant;
- (e) the proposed name of the variety as published in the Gazette; and
- (f) such other information as appears to the Department to be desirable.

(2) Subject to paragraph (3) in respect of each variety accepted on to an NI Variety List, the Department shall keep a record of—

- (a) the information contained in the record kept under paragraph (1) of the application for acceptance of the variety;
- (b) the species, name and description of the variety and, so far as the Department is aware, any other name by which the variety is known;
- (c) the date of acceptance of the variety on to that NI Variety List and a summary of all the facts on which the acceptance was based;
- (d) in respect of a genetically modified variety, the reference number under which the variety was accepted for marketing in accordance with the relevant legislation;
- (e) in respect of a variety other than a genetically modified variety any material to be derived from which is intended for use as a food, or a food ingredient, within the meaning of Article 2(2)(b) of the Novel Foods Regulation, the reference under which the food or food ingredient may be placed on the market under that Regulation;
- (f) the date on which the acceptance of the variety on to that NI Variety List is due to expire;
- (g) the name and address of any maintainer of the variety or a reference sufficient to enable their name and address to be ascertained;
- (h) each—
  - (i) renewal of the variety under regulation 14;
  - (ii) revocation of the acceptance of the variety under regulation 15; and
  - (iii) deletion of the reference to the name of a person as the maintainer of the variety under regulation 15; and
- (i) such other information as appears to the Department to be desirable.

(3) Where, for the purposes of a relevant decision under these Regulations in relation to a variety, examination of the components of the variety is necessary in order to study hybrids and synthetic varieties, the Department shall ensure, if the applicant concerned in respect of that determination so requests, that it excludes from the record kept in respect of the variety under paragraph (2) and treats as confidential the results of the examination and the description of the components.

(4) The description in paragraph (2)(b) shall be the description obtained in the course of the official examination of the variety for the purposes of determining whether it is distinct, stable and sufficiently uniform.

(5) Subject to paragraph (3), the Department shall disclose a record kept under this regulation on payment of any fee charged by the Department under regulation 11 for the disclosure of the record.

### **Representations and hearings**

**17.—**(1) the Department shall provide any person likely to be affected by a proposed relevant decision an opportunity—

- (a) to make written representations to it about it in the manner, and within the period, published for the purpose in the Gazette under regulation 3; or
- (b) if a request for oral representations is made within the period published for the purpose in the Gazette under regulation 3, to make oral representations about the proposed relevant decision to a person appointed by it,

or to do both, subject to the payment of any fee in respect of such representations payable under the Fees Regulations.

(2) The Department may afford to any person entitled to make representations in accordance with paragraph (1) in respect of a proposed relevant decision an opportunity to make representations to it on more than one occasion if in the circumstances it appears to it to be necessary or desirable to

do so; and, on a second or subsequent such occasion, may afford to any such person the opportunity to do so without charging any fee.

(3) The Department shall send to each person entitled to make written representations in accordance with paragraph (1) of whom it is aware a copy of any representations so made.

(4) Where any person entitled to make oral representations in accordance with paragraph (1) in respect of a proposed relevant decision makes a request to do so in accordance with that paragraph, or is afforded an opportunity to make oral representations in respect of it in accordance with paragraph (2), the Department shall—

- (a) appoint a time and place in Northern Ireland for the hearing of oral representations in respect of the relevant decision, having regard to—
  - (i) the convenience, wishes and expenses of any such person;
  - (ii) the situation of any land or premises to be viewed in relation to the oral representations; and
  - (iii) all other circumstance;
- (b) appoint a person to conduct the hearing of the oral representations; and
- (c) give not less than 14 days notice of the time and place appointed for the hearing to those persons likely to be affected by the decision.

(5) Any person entitled to make oral representations at a hearing in accordance with this regulation shall, not later than 7 days before the day appointed for the hearing, deliver to the Department two copies of any documents which the person proposes to rely upon, and the Department shall deliver a copy of these documents to each of the other persons who appear to it to be concerned in the matter.

(6) The procedure in relation to the preparation for the hearing of oral representations in respect of a proposed relevant decision, and, subject to paragraph (7), the procedure at the hearing of them, including any adjournment or subsequent convening of the hearing, shall be as the person conducting the hearing directs having regard to the wishes of the persons affected by the proposed relevant decision who are entitled to make the oral representations in respect of it or who have been afforded an opportunity to make oral representations in respect of it in accordance with paragraph (2).

(7) A person who makes oral representations in accordance with this regulation may—

- (a) rely upon the documents in respect of which copies have been delivered to the Department as required by paragraph (5);
- (b) call witnesses; and
- (c) put questions directly to any witnesses called by or on behalf of any other person making oral representations at the hearing,

and may be represented for the purpose by a person of their choice.

(8) The Department shall not take a relevant decision until it has considered any oral or written representations made in accordance with this regulation in respect of the proposal for it and any documents relied on and evidence adduced at the hearing of any oral representations.

(9) The Department shall give to each person who has made oral or written representations in accordance with this regulation notice of its decision together with their reasons for it and shall inform such person of the time and manner in which an appeal against the relevant decision may be brought to the Tribunal.

## Appeals

**18.—**(1) Any person affected by a relevant decision, except a decision in respect of the naming of a plant variety, may appeal against the relevant decision to the Tribunal.

(2) Schedule 3 (except for paragraph 4 and references to paragraph 4) to the Plant Varieties Act 1997 (which make provision about the Tribunal) shall apply for the purposes of appeals under this regulation as it applies for the purposes of appeals in respect of which provision is made for the Tribunal to have jurisdiction in Regulations made under section 44 of that Act or in Rules under or having effect as if made under paragraph 13 of Schedule 3 to that Act.

(3) Where an appeal is made against a relevant decision, regulation 9 of the Plant Breeders' Rights Regulations 1998<sup>(26)</sup> shall apply in relation to the appeal as it applies for the purposes of appeals made under those Regulations with the modifications that—

- (a) references in that regulation to “the Controller” shall be construed as references to “the Department”;
  - (b) the reference in regulation 9(1) to “the United Kingdom” shall be construed as a reference to “Northern Ireland”; and
  - (c) for the reference in regulation 9(3) of those Regulations to suspension of the operation of decisions pending the final determination of the appeal, in respect of any decision of the Department the effect of which is to revoke the acceptance of a variety on grounds relating to human health, animal health or plant health, there shall be substituted a reference to the operation of the decision having effect in the period beginning on the date on which notice of the decision was given in accordance with these Regulations.
- (4) Where—
- (a) a relevant decision of the Department is to revoke the acceptance of a variety from NI Variety List;
  - (b) an appeal is brought against that decision;
  - (c) by virtue of regulation 9 of the Plant Breeders' Rights Regulations 1998, as applied by paragraph (3), the effect of the decision is suspended pending the final determination of the appeal; and
  - (d) the appeal is determined in favour of the applicant,

the Department shall publish a notice in the Gazette confirming the appeal has been successful and, accordingly, that the variety is still accepted on to the NI Variety List.

### **Obstruction**

**19.—**(1) A person shall not—

- (a) intentionally obstruct any person acting in the execution of these Regulations;
- (b) without reasonable cause, fail to give to any person acting in the execution of these Regulations any assistance or information which that person may reasonably require for the purpose of carrying out that person's functions under these Regulations; or
- (c) furnish to any person acting in the execution of these Regulations any information which he knows to be false or misleading.

(2) Nothing in paragraph (1)(b) shall be construed as requiring any person to answer any question or give any information if to do so might incriminate that person.

### **Offences and penalties**

**20.—**(1) A person contravening or failing to comply with any provision of regulation 12, 19 or 21(1) shall be guilty of an offence and shall be liable—

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(26) S.I. 1998/1027, as amended by S.I. 2001/3510, S.I. 2002/247, S.I. 2008/2683 and S.I. 2019/204.

- (a) on summary conviction to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months or to both;
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.

(2) Where a body corporate is guilty of an offence under these Regulations, and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar person of the body corporate; or
- (b) any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(3) For the purposes of paragraph (1), “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

### **Offences due to fault of another person and defence of due diligence**

**21.**—(1) Where the commission by any person of an offence under any of the provisions of these Regulations is due to the act or default of some other person, that other person shall be guilty of the offence; and a person may be charged with and convicted of the offence by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person.

(2) In any proceedings for an offence under any of the provisions of these Regulations, it shall, subject to paragraph (3), be a defence for the person charged to prove that that person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by a person under the person’s control.

(3) If in any case the defence provided by paragraph (2) involves the allegation that the commission of the offence was due to an act or default of another person, or to reliance on information supplied by another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless—

- (a) at least seven days before the hearing; and
- (b) where the person charged has previously appeared before a court in connection with the alleged offence, within one month of his first such appearance,

that person has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.

(4) In paragraph (3) any reference to appearing before a court shall be construed as including a reference to being brought before a court.

### **Application of provisions of the Seeds Act (Northern Ireland) 1965**

**22.** The following provisions of the Seeds Act (Northern Ireland) 1965<sup>(27)</sup> shall apply for the purpose of these Regulations as they apply for the purposes of seeds regulations having effect under that Act and, unless the context otherwise requires, any reference in them to seeds regulations or to that Act shall be construed as references to these Regulations—

section 8 (powers of entry);

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(27) 1965, c.22 (N.I.). Section 1 was amended by 1970 c. 20 (N.I.), section 10(1) and S.R. & O. (N. I.) 1972 No. 351, Article 3 and Schedule 3. Section 2 was amended by 1970 c. 20 (N.I.), section 10(2) and S.R. 1977 No. 295, regulation 2. The Ministry of Agriculture became known as the Department of Agriculture by virtue of section 7(5) of the Northern Ireland Constitution Act 1973 (c.36). The Department of Agriculture for Northern Ireland was renamed the Department of Agriculture and Rural Development by Article 3(4) of the Departments (Northern Ireland) Order 1999, S.I. 1999/283 (N.I. 1). The Department of Agriculture and Rural Development was renamed the Department of Agriculture, Environment and Rural Affairs by Article 1(2) of the Departments Act (Northern Ireland) 2016 (2016 c. 5 (N.I.)).

section 9 (use of samples in criminal proceedings);  
 section 10 (tampering with samples);  
 section 11 (institution of criminal proceedings), subject to the modification that it shall apply to proceedings in respect of any offence under these Regulations as it applies to the proceedings to which it refers;  
 section 12(1) (application of the Act to seed potatoes); and  
 section 14(2) (interpretation: contravention and failure of compliance).

## **Enforcement**

**23.** These Regulations shall be enforced by the Department.

## **Service of notices, etc.**

**24.—**(1) Any notice or other document to be given or served on any person under or in relation to these Regulations may be given or served—

- (a) by delivering it to that person;
- (b) in the case of an incorporated body, by delivering it to their secretary or clerk at their registered or principal office, or by sending it by post to him at that office; or
- (c) in the case of any other person, by leaving it, or sending it by post to him, at his usual or last known address.

(2) Where a notice or other document is to be given or served on the owner, proprietor, operator or occupier of any premises and it is not practicable after reasonable enquiry to ascertain the name and address of the person to or on whom it should be given or served, or the premises are unoccupied, the document may be given or served by addressing it to the person concerned by the description of “owner”, “proprietor”, “operator” or “occupier” of the premises (naming them) and—

- (a) by delivering it to some person on the premises; or
- (b) if there is no person on the premises to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises.

## **Saving and transitional provisions**

**25.—**(1) Any application made in accordance with regulation 4 of the 2001 Regulations but not determined at the coming into operation of these Regulations, shall be treated as an application referred to in paragraph (1) of regulation 4 of these Regulations and accordingly shall be subject to the remaining provisions of that regulation (in respect of anything needing to be done at the coming into operation of these Regulations in relation to the application by or on behalf of the applicant) and shall be determined in accordance with these Regulations.

(2) Any entry of a variety in a National List—

- (a) made in respect of an application referred to in regulation 5(1) of the Seeds (National Lists of Varieties) Regulations 1982<sup>(28)</sup> (the 1982 Regulations);
- (b) made in respect of an application referred to in regulation 5A of those Regulations and treated as having been lawfully entertained in accordance with regulation 5(1) of those Regulations;
- (c) renewed under regulation 14 of the 1982 Regulations;
- (d) made in respect of an application referred to in regulation 5(1) in the 2001 regulations; or

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<sup>(28)</sup> S.I. 1982/844, as amended by S.I. 1985/1529, 1989/1314, 1990/1353, 1992/1615 and 1998/2726.

(e) renewed under regulation 13 of the 2001 Regulations, and having effect at the coming into operation of these Regulations, shall have effect as an acceptance of the variety on to the relevant NI Variety List in accordance with the provisions of these Regulations.

(3) Any official measure being conducted at the coming in to operation of these Regulations for the purpose of regulation 5(1) of the 2001 Regulations shall have effect as if it were an official measure for the purpose of these Regulations.

(4) Any arrangement under regulation 9 of the 2001 Regulations having effect at the coming into operation of these Regulations shall have effect as if it were an arrangement for an official measure entered into under regulation 10.

(5) Any period specified in a notice published in the Gazette under paragraph (3) of regulation 11 of the 2001 Regulations, in respect of which a plant variety may be marketed in accordance with paragraphs (1) or (2) of that regulation, which has not expired at the coming into operation of these Regulations, shall have effect for the residue of that period as if it were a residual marketing period specified in a notice published under regulation 12(4).

(6) Any acceptance of a name of a variety—

(a) under regulation 17 of the 1982 Regulations and treated as having effect as an acceptance of that name under regulation 6 of the 2001 Regulations; and

(b) under regulation 6 of the 2001 Regulations,

shall have effect as an acceptance of that name under regulation 7.

(7) Any acceptance of a maintainer—

(a) under Regulation 18 of the 1982 Regulations and treated as an acceptance of that maintainer under regulation 7 of the 2001 Regulations; and

(b) under regulation 7 of the 2001 Regulations,

shall have effect as acceptance of a maintainer under regulation 8.

(8) Any proposed relevant decision referred to in paragraphs (1) or (2) of regulation 16 of the 2001 Regulations, in respect of which the decision has not been taken before the coming in to operation of these Regulations, shall have effect as a proposed relevant decision under these Regulations.

(9) Any oral or written representations made in accordance with regulation 16 of the 2001 Regulations, in respect of a decision—

(a) proposed but not taken under those Regulations at the coming in to operation of these Regulations; or

(b) proposed and taken under those Regulations at the coming into operation of these Regulations,

shall have effect as if they were oral or written representations made in accordance with regulation 17.

(10) Any appeal referred to in regulation 17 of the 2001 Regulations which, at the coming in to operation of these Regulations—

(a) may be made to the Tribunal under that regulation; or

(b) has been made to that tribunal but not finally determined,

shall have effect respectively as an appeal which may be or has been made to the Tribunal under regulation 18.

(11) Any fee payable under regulation 3 of the Fees Regulations in respect of a matter mentioned in that regulation, arising under the 2001 Regulations but not paid at the coming into operation of

these Regulations, shall be treated as a fee charged under, and recoverable as a debt in accordance with, regulation 11.

### Consequential amendments

#### 26.—(1) In the Seed Marketing Regulations—

- (a) in paragraph (d) of regulation 3(1), for the definition of “National List”, substitute—  
““NI Variety List” means the list of agricultural crop varieties prepared and published in accordance with the Seeds (Variety Lists) Regulations (Northern Ireland) 2020;”;
- (b) in regulations 7 and 10(a), in each place it occurs, for “National List”, substitute “NI Variety List”;
- (c) in Schedule 2, in paragraph 38(2), for “National List”, substitute “NI Variety List”;
- (d) in Schedule 3, in paragraphs 11 and 13, in each place it occurs, for “National List”, substitute “NI Variety List”;
- (e) in Schedule 4—
  - (i) in paragraphs 8, 10, 12, 14, 15 and 19, in each place it occurs, for “National List”, substitute “NI Variety List”;
  - (ii) in paragraphs 8(12), 9(3)(c) and 15(7), in each place it occurs, for “Seeds (National Lists of Varieties) Regulations 2001”, substitute, “Seeds (Northern Ireland Variety Lists) Regulations (Northern Ireland) 2020”;
  - (iii) in paragraph 11—
    - (aa) in sub-paragraph (1), for “National List” to “into the”, substitute “NI Variety List provided an application has been made for entry into the NI Variety List or the”;
    - (bb) in sub-paragraph (3), for “the National”, substitute “a NI Variety”;

#### (2) In the Seed Potato Regulations (Northern Ireland) 2016~~(29)~~—

- (a) in regulation 2(1), in the definition of “conservation variety”, for “National Lists Regulations”, substitute “NI Variety Lists Regulations”;
- (b) for the definition of “National List”, substitute—  
“the “NI Variety List” means the list of agricultural crop varieties prepared and published in accordance with the Seeds (Variety Lists) Regulations (Northern Ireland) 2020;”;
- (c) for the definition of “National Lists Regulations”, substitute—  
““NI Variety Lists Regulations” means the Seeds (Variety Lists) Regulations (Northern Ireland) 2020;”;
- (d) in regulation 5(1)(a), for “National List”, substitute “NI Variety List”;
- (e) in regulation 7—
  - (i) in sub-paragraphs (6)(a) and (b), in each place it occurs, for “National List”, substitute “NI Variety List”;
  - (ii) in sub-paragraph (6)(a), for “National Lists Regulations”, substitute, “NI Variety Lists Regulations”;
- (f) in Schedule 1, in subparagraph 3(a), for “National List”, substitute “NI Variety List”;



- (g) in Schedule 2, in subparagraph 5(b), for “National Lists Regulations”, substitute, “NI Variety Lists Regulations”;
- (h) in Schedule 5, in subparagraph 3(a)—
  - (i) for “National List”, substitute “NI Variety List”; and
  - (ii) for “Seeds (National Lists of Varieties) Regulations 2001”, substitute, “NI Variety Lists Regulations”.

Sealed with the Official Seal of the Department of Agriculture, Environment and Rural Affairs on  
4th December 2020



*Dave Foster*  
A senior officer of the  
Department

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## SCHEDULE 1

Regulations 2(1) and (2), 3(1), 5(5)(a) and 12(1)

## Varieties of plant species on Variety Lists and derogated species

## PART 1

## Varieties of plant species on Variety Lists

**Agricultural crop varieties**

1. Plants conforming with the characteristics of cultivated plant varieties of the following species intended for agricultural production but not for ornamental use:

<i>Name</i>	<i>Common name</i>
<b>Cereals</b>	
<i>Avena nuda</i> L	Small naked oat, Hulless oat
<i>Avena Sativa</i> L (includes <i>A byzantia</i> Koch)	Oats and red oat
<i>Hordeum vulgare</i> L	Barley
<i>Secale cereale</i> L	Rye
<i>X Triticosecale</i> Wittm Ex A Camus	Triticale
Hybrids resulting from the crossing of a species of the genus <i>Triticum</i> and a species of the genus <i>Secale</i>	
<i>Triticum aestivum</i> L	Wheat
<i>Triticum durum</i> L	Durum wheat
<i>Triticum spelta</i> L	Spelt wheat
<i>Zea Mays</i> L (partim)	Maize (except popcorn and sweetcorn)
<b>Potatoes</b>	
<i>Solanum tuberosum</i> L, including any other tuber-forming species or hybrids of <i>Solanum</i>	
<b>Beet</b>	
<i>Beta vulgaris</i> L	Sugar beet, fodder beet (including mangel)
<b>Fodder plants</b>	
(a) Grasses	
<i>Agrostis canina</i> L	Velvet bent
<i>Agrostis capillaris</i> L	Brown top
<i>Agrostis gigantea</i> Roth	Red top
<i>Agrostis stolonifera</i> L	Creeping bent grass
<i>Arrhenatherum elatius</i> (L) P Beauv ex J Presl & C Presl	Tall oatgrass

<i>Name</i>	<i>Common name</i>
<i>Bromus catharticus</i> Vahl	Rescue grass
<i>Bromus sitchensis</i> Trin	Alaska brome grass
<i>Dactylis glomerata</i> L	Cocksfoot
<i>Festuca arundinacea</i> Schreber	Tall fescue
<i>Festuca filiformis</i> Pourr	Fine leaved sheep's fescue
<i>Festuca ovina</i> L	Sheep's fescue
<i>Festuca pratensis</i> Huds	Meadow fescue
<i>Festuca rubra</i> L	Red fescue, Chewing's fescue
<i>Festuca trachyphylla</i> (Hack) Krajina	Hard fescue
<i>Lolium multiflorum</i> Lam	Italian ryegrass including Westerwold ryegrass
<i>Lolium perenne</i> L	Perennial ryegrass
<i>Lolium x boucheanum</i> Kunth	Hybrid ryegrass
<i>Phleum nodosum</i> L	Small timothy
<i>Phleum pratense</i> L	Timothy
<i>Poa annua</i> L	Annual meadowgrass
<i>Poa nemoralis</i> L	Wood meadowgrass
<i>Poa pratensis</i> L	Smooth-stalked meadowgrass
<i>Poa trivialis</i> L	Rough-stalked meadowgrass
<i>xFestulolium</i> Asch & Graebn	Festulolium
Hybrids resulting from the crossing of a species if the genus <i>Festuca</i> with a species of the genus <i>Lolium</i>	
(b) Legumes	
<i>Lotus corniculatis</i> L	Birdsfoot trefoil
<i>Lupinus albus</i> L	White lupin
<i>Lupinus angustifolius</i> L	Narrow leaved lupin (previously known as Blue lupin)
<i>Lupinus luteus</i> L	Yellow lupin
<i>Medicago lupulina</i> L	Black medick, Trefoil
<i>Medicago sativa</i> L	Lucerne
<i>Medicago x varia</i> T Martyn	Sand lucerne
<i>Onobrychis viciifolia</i> Scop	Sainfoin
<i>Pisum sativum</i> L (partim)	Field pea
<i>Trifolium hybridum</i> L	Alsike clover
<i>Trifolium pratense</i> L	Red clover

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<i>Name</i>	<i>Common name</i>
<i>Trifolium repens</i> L	White clover
<i>Vicia faba</i> L (partim)	Field bean
<i>Vicia pannonica</i> (Crantz)	Hungarian vetch
<i>Vicia sativa</i> L	Common vetch
<i>Vicia villosa</i> Roth	Hairy vetch
(c) Other fodder plants	
<i>Brassica napus</i> L yar <i>napobrassica</i> (L) Rchb	Swede
<i>Brassica oleracea</i> L convar <i>acephala</i> (DC) Alef	Fodder kale
Var <i>medullosa</i> Thell + var <i>viridis</i> L	
<i>Raphanus sativus</i> L var <i>oleiformis</i> Pers	Fodder radish
<b>Oleaginous and fibrous plants</b>	
<i>Brassica juncea</i> (L) Czern	Brown mustard
<i>Brassica napus</i> L (partim)	Swede rape (including plants commonly known as fodder rape and oilseed rape)
<i>Brassica nigra</i> (L) WDJ Koch	Black mustard
<i>Brassica rapa</i> L yar <i>silvestris</i> (Lam) Briggs	Turnip rape
<i>Cannabis sativa</i> L	Hemp
<i>Glycine max</i> (L) Merr	Soya bean
<i>Helianthus annuus</i> L	Sunflower
<i>Linum usitatissimum</i> L	Flax, Linseed
<i>Sinapis alba</i> L	White mustard

### Vegetable varieties

2.—(1) Plants conforming with the characteristics of cultivated plant varieties of the following species intended for agricultural or horticultural production but not for ornamental use:

<i>Name</i>	<i>Common name</i>
<i>Allium cepa</i> L	
—Cepa Group	Onion, Echalion
—Aggregatum Group	Shallot
<i>Allium fistulosum</i> L	Japanese bunching onion or Welsh onion
—all varieties	
<i>Allium porrum</i> L	Leek
—all varieties	
<i>Allium sativum</i> L	Garlic

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<i>Name</i>	<i>Common name</i>
—all varieties	
<i>Allium schoenoprasum</i> L	Chives
—all varieties	
<i>Apium graveolens</i> L	—
—Celery Group	—
—Celeriac Group	—
<i>Asparagus officinalis</i> L	Asparagus
—all varieties	
<i>Beta Vulgaris</i> L	
—Garden beet Group	Beetroot, including Cheltenham Beet
—Leaf beet Group	Spinach beet or Chard
<i>Brassica oleracea</i> L	
—Kale Group	—
—Cauliflower Group	—
—Capitata Group	Red cabbage and White cabbage
—Brussel Sprouts Group	—
—Kohlrabi Group	—
—Savoy Cabbage Group	—
—Broccoli Group	Calabrese type and Sprouting type
—Palm Kale Group	—
—Tronchuda Group	Portuguese cabbage
<i>Brassica rapa</i> L	
—Chinese Cabbage Group	—
—Vegetable Turnip Group	—
<i>Cichorium endivia</i> L	Endive
—all varieties	
<i>Cichorium intybus</i> L	Large leaved (Italian) chicory
<i>Cucumis melo</i> L	Melon
—all varieties	
<i>Cucumis sativus</i> L	
—Cucumber Group	—
—Gherkin Group	—
<i>Cucurbita maxima</i> Duchesne	Gourd

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<i>Name</i>	<i>Common name</i>
—all varieties	
<i>Cucurbita pepo</i> L	Marrow, including mature pumpkin and scallop squash, or Courgette, including immature scallop squash
—all varieties	
<i>Daucus carota</i> L	Carrot, Fodder Carrot
—all varieties	
<i>Lactuca sativa</i> L	Lettuce
—all varieties	
<i>Solanum lycopersicum</i> L	Tomato
—all varieties	
<i>Petroselinum crispum</i> (Mill) Nyman ex A W Hill	
—Leaf parsley Group	—
—Root Parsley Group	—
<i>Phaseolus coccineus</i> L	Runner bean
—all varieties	
<i>Phaseolus vulgaris</i> L	
— Dwarf French Bean Group	—
— Climbing French Bean Group	—
<i>Pisum sativum</i> L (partim)	
— Round Pea Group	—
—Wrinkled Pea Group	—
—Sugar Pea Group	—
<i>Raphanus sativus</i> L	
—Radish Group	—
—Black radish Group	—
<i>Rheum rhabarbarum</i> L	Rhubarb
—all varieties	
<i>Spinacia oleracea</i> L	Spinach
—all varieties	
<i>Vicia faba</i> L (partim)	Broad bean
—all varieties	
<i>Zea mays</i> L (partim)	

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<i>Name</i>	<i>Common name</i>
—Sweetcorn Group	—
—Popcorn Group	—

## PART 2

### Derogated species

#### Derogation in respect of requirement to provide an NI Variety List

3. Plants conforming with the characteristics of cultivated plant varieties of the following species intended for agricultural or horticultural production but not for ornamental use:

##### Agricultural crop species

<i>Name</i>	<i>Common name</i>
None	

##### Vegetable species

<i>Name</i>	<i>Common name</i>
<i>Cichorium intybus</i> L	Wiltloof chicory

#### Derogation in respect of requirement to provide an NI Variety List or restrict marketing

4. Other plants conforming with the characteristics of cultivated plants of the following species intended for agricultural or horticultural production but not for ornamental use:

##### Agricultural crop species

<i>Name</i>	<i>Common name</i>
<i>Alopecurus pratensis</i> L	Meadow foxtail
<i>Arachis hypogaea</i> L	Groundnut (peanut)
<i>Avena strigosa</i> Schreb	Black oat, Bristle oat
<i>Biserrula</i>	Biserrula
<i>Carthamus tinctorius</i> L	Safflower
<i>Carum carvi</i> L	Caraway
<i>Cynodon dactylon</i> (L) Pers	Bermuda grass
<i>Galega orientalis</i> Lam	Fodder galega
<i>Gossypium</i> spp	Cotton
<i>Hedysarum coronarium</i> L	Sulla
<i>Lathyrus cicero</i>	Chickling vetch/Dwarf chickling vetch
<i>Medicago doliaata</i>	Straight-spined medic

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<i>Name</i>	<i>Common name</i>
<i>Medicago italica</i>	Disc medic
<i>Medicago littoralis</i>	Shore medic/Strand medic
<i>Medicago murex</i>	Sphere medic
<i>Medicago polymorpha</i>	Bur medic
<i>Medicago rugose</i>	Wrinkled medic/Gama medic
<i>Medicago scutellata</i>	Snail medic/Shield medic
<i>Medicago truncatula</i>	Barrel medic
<i>Ornithopus compressus</i>	Yellow serradella
<i>Ornithopus sativus</i>	Serradella
<i>Oryza sativa</i> L	Rice
<i>Papaver somniferum</i> L	Poppy
<i>Phacelia tanacetifolia</i> Benth	California bluebell
<i>Phalaris aquatic</i> L	Harding grass, Phalaris
<i>Phalaris canariensis</i> L	Canary grass
<i>Plantago lanceolata</i>	Ribwort plantain
<i>Poa palustris</i> L	Swamp meadowgrass
<i>Sorghum bicolor</i> (L) Moench	Sorghum
<i>Sorghum sudanese</i> (Piper) Stapf	Sudan grass
<i>Sorghum bicolor</i> (L) Moench x <i>Sorghum sudanese</i> (Piper) Stapf	Hybrids resulting from the crossing of <i>Sorghum bicolor</i> and <i>Sorghum sudanese</i>
<i>Trisetum flavescens</i> (L) P Beauv	Golden oatgrass
<i>Trifolium alexandrinum</i> L	Berseem, Egyptian clover
<i>Trifolium fragiferum</i>	Strawberry clover
<i>Trifolium glanduliferum</i>	Glandular clover
<i>Trifolium hirtum</i>	Rose clover
<i>Trifolium incarnatum</i> L	Crimson clover
<i>Trifolium isthmocarpum</i>	Moroccan clover
<i>Trifolium michelianum</i>	Balansa clover
<i>Trifolium resupinatum</i> L	Persian clover
<i>Trifolium squarrosum</i>	Squarrose clover
<i>Trifolium subterraneum</i>	Subterranean clover
<i>Trifolium vesiculosum</i>	Aroow-leaf clover
<i>Trigonella foenum-graecum</i> L	Fenugreek
<i>Vicia benghalensis</i>	Purple vetch



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### Vegetable species

<i>Name</i>	<i>Common name</i>
<i>Anthriscus cerefolium</i> (L) Hoffm	Chervil
<i>Capsicum annum</i> L	Chilli or Pepper
<i>Cichorium intybus</i> L	Industrial chicory
<i>Citrullus lanatus</i> (Thunb) Matsum et Nakai	Water melon
<i>Cynara cardunculus</i> L	Cardoon, Globe artichoke
<i>Foeniculum vulgare</i> Mill	Fennel
<i>Sconzonera hispanica</i> L	Scorzonera or Black salsify
<i>Solanum melongena</i> L	Aubergine or egg plant
<i>Valerianella locusta</i> (L) Laterr	Corn salad or lamb's lettuce

### Vine species

<i>Name</i>	<i>Common name</i>
<i>Vitis</i>	Vine

### Derogation in respect of marketing restrictions

5. Other plants conforming with the characteristics of cultivated plant varieties of the following species intended for agricultural or horticultural production but not for ornamental use:

### Vegetable species

<i>Name</i>	<i>Common name</i>
<i>Allium cepa</i> L	
— <i>Aggregatum</i> Group	shallot
<i>Allium fistulosum</i> L	Japanese bunching onion or Welsh onion
<i>Allium sativum</i> L	Garlic
<i>Allium schoenoprasum</i> L	Chives
<i>Rheum rhabarbarum</i> L	Rhubarb

## SCHEDULE 2

Regulation 5(5)(b) and (c)

Distinctness, stability, sufficient uniformity and satisfactory value for cultivation and use

## PART 1

## Distinctness, stability and sufficient uniformity

**Distinctness**

1.—(1) A plant variety shall be regarded as distinct if, whatever the origin, artificial or natural, of the initial variation from which it has resulted, it is clearly distinguishable in one or more important characteristics from any other variety known in the European Union or accepted onto an official register of plant varieties corresponding to an NI Variety List in a country outside the United Kingdom with similar growing conditions at the time when the application for acceptance of the variety is duly made.

(2) The characteristics of a variety must be capable of precise recognition and precise definition.

(3) Where a variety is known in the European Union at the time when an application of a variety is duly made, but is no longer known in the European Union when that application is determined, for the purpose of determining distinctness as part of that application the variety no longer known in the European Union shall be disregarded.

2.—(1) A plant variety of a conservation variety is regarded as distinct if it satisfies the characteristics referred to in—

- (a) the technical questionnaires associated with the test protocols listed in Annex I to Directive 2003/90 or Directive 2003/91 applicable to the species in question; or
- (b) the technical questionnaires of the test guidelines listed in Annex II to those Directives, applicable to the species in question.

(2) In this paragraph—

- (a) “Directive 2003/90” means Commission [Directive 2003/90/EC](#) setting out implementing measures for the purposes of Article 7 of Council [Directive 2002/53/EC](#) as regards the characteristics to be covered as a minimum by the examination and the minimum conditions for examining certain varieties of agricultural plant species, as amended from time to time; and
- (b) “Directive 2003/91” means Commission [Directive 2003/91/EC](#) setting out implementing measures for the purposes of Article 7 of Council [Directive 2002/55/EC](#) as regards the characteristics to be covered as a minimum by the examination and the minimum conditions for examining certain varieties of vegetable species, as amended from time to time.

**Stability**

3. A variety shall be regarded as stable if, after successive propagation or multiplications, or where the applicant has defined a particular cycle of propagations or multiplications, at the end of each cycle, it remains true to the description of its essential characteristics.

**Sufficient uniformity**

4. A plant variety shall be regarded as sufficiently uniform if, apart from a very few aberrations, the plants of which it is composed are, account being taken of the distinctive features of the

reproductive system of the plants, similar or genetically identical as regards the characteristics, taken as a whole, considered by the Department for the purposes of determining whether the variety is sufficiently uniform.

## PART 2

### Satisfactory value for cultivation and use

#### **Satisfactory value for cultivation and use**

5.—(1) The values of a variety for cultivation or use shall be regarded as satisfactory if compared to other varieties accepted in an NI Variety List its qualities taken as a whole offer, at least as far as production in any given region is concerned, a clear improvement either for cultivation or as regards the uses which can be made of the crops or the products derived from the crops.

(2) Where other superior characteristics are present, individual inferior characteristics may be disregarded.

#### **Satisfactory values for cultivation and use of component varieties of varietal associations**

6.—(1) Where a variety is intended solely for use as a component of a varietal association the value of the variety for cultivation or use shall be regarded as satisfactory if, compared to other varieties accepted in an NI Variety List, the qualities of the varietal association taken as a whole offer, at least as far as production in any given region is concerned, a clear improvement either for cultivation or as regards the uses which can be made of the crops or the products derived from the crops resulting from the varietal association.

(2) Where other superior characteristics are present in the varietal association, individual inferior characteristics in it may be disregarded.

## PART 3

### Varieties the Department does not need to be satisfied are of satisfactory value for cultivation and use

7. Part 2 does not apply to—

- (a) varieties of vegetables;
- (b) varieties of grasses not intended for production of fodder plants if the applicant declares that the seed of the variety is not intended for the production of fodder plants;
- (c) any plant variety whose seed is to be marketed in a member State which has already accepted it on to a list corresponding to an NI Variety List, having regard to its value for cultivation and use;
- (d) any variety intended for use only as a component of a final plant variety; or
- (e) any conservation variety.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations, give effect, in Northern Ireland, to Council Directives [2002/53/EC](#) (OJ No L 193, 20.07.2002, p. 1) on the common catalogue of varieties of agricultural plant species and those elements of Council [Directive 2002/55/EC](#) (OJ No L 193, 20.7.2002, p. 33) on the marketing of vegetable seed which require member States to establish national lists of vegetable varieties.

Certain requirements of Council [Directive 98/95/EC](#) have not been transposed in full in these Regulations where there is existing provision in the Genetically Modified Organisms (Northern Ireland) Order 1991 ([S.I. 1991/1714 \(N.I.19\)](#)). The Order makes general provision for preventing damage to the environment from the release of genetically modified organisms. Relevant provisions include carrying out environmental risk assessments for genetically modified plant varieties, imposition of conditions appropriate for their cultivation and prohibition of their use where their cultivation could be harmful.

Regulation 3 defines expressions used in these Regulations and provides that expressions in the Regulations not so defined and which appear in Council Directives [2002/53/EC](#) and [2002/55/EC](#) have the same meaning in the Regulations as they have in those directives. Regulation 4 makes provision in relation to NI Variety Lists of plant varieties prepared and published in the Plant Varieties and Seeds Gazette

Regulation 5 provides for applications in relation to NI Variety Lists, regulation 6 provides for acceptance of plant varieties. Regulation 7 provides for amateur vegetable varieties and regulation 8 makes provision for the naming of plant varieties. The Department must be satisfied of the matters referred to in regulation 6(5) for acceptance on to NI Variety Lists of plant varieties of the species specified in Schedule 1. These include matters relating to genetically modified organisms; distinctness, stability and sufficient uniformity described in Part I of Schedule 2; and, in respect of the species of plant varieties other than the species described in Part III of Schedule 2, value for cultivation and use as described in Part II of Schedule 2.

Regulation 9 makes provision in relation to maintainers of plant varieties. Regulation 10 makes provision in relation to official measures and regulation 11 makes provision for arrangements for official measures. Regulation 12 provides for the charging of fees. The Department and persons with whom arrangements are made under regulation 11 may charge reasonable fees to cover the costs they reasonably incur in carrying out official measures. The Department may also charge persons concerned in matters connected with the Regulations reasonable fees to cover the costs the Department reasonably incurs in relation to the administration of official measures for the purposes of these Regulations; for example the administration and determination of applications for acceptance of plant varieties on to the NI Variety Lists.

Regulation 13 makes provision for marketing prohibition notices. Regulation 14 makes provision for maintenance of plant varieties accepted on to national lists. Regulation 15 provides that acceptance of plant varieties is initially for a period of 10 years and provides the conditions for renewal of acceptance. Regulation 16 provides for revocation of acceptance of plant varieties and maintainers of plant varieties and regulation 17 makes provision for records. Regulation 18 makes provision for representations and hearings in respect of proposed relevant decisions and regulation 19 makes provision for appeals against relevant decisions, except those in respect of naming of plant varieties.

Regulation 20 makes provision for obstruction and regulation 21 for offences and penalties. Regulation 22 makes provision for offences due to the fault of another person and the defence of due diligence, regulation 23 applies provisions of the Seeds Act (Northern Ireland) 1965 for the purposes

of these Regulations, regulation 24 makes provision for enforcement and regulation 25 for service of notices etc. Regulation 26 provides for savings and transitional provisions. Regulation 27 provides for consequential amendments to seeds marketing regulations.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.