
STATUTORY INSTRUMENTS

1974 No. 1136

PLANT BREEDERS' RIGHTS SEEDS

The Plant Varieties and Seeds Tribunal Rules 1974

<i>Made</i>	- - - -	<i>26th June 1974</i>
<i>Laid before Parliament</i>		<i>11th July 1974</i>
<i>Coming into Operation</i>		<i>1st August 1974</i>

The Lord Chancellor, in exercise of the powers conferred on him by paragraph 9(2) of Schedule 4 to the Plant Varieties and Seeds Act 1964, after consultation with the Council on Tribunals in accordance with section 10 of the Tribunals and Inquiries Act 1971 as applied to the Plant Varieties and Seeds Tribunal, and with the approval of the Treasury in regard to the fees prescribed by these Rules, hereby makes the following Rules:—

PRELIMINARY

Citation and commencement

1. These Rules may be cited as the Plant Varieties and Seeds Tribunal Rules 1974 and shall come into operation on 1st August 1974.

Interpretation

2.—(1) In these Rules, unless the context otherwise requires—

“the Act” means the Plant Varieties and Seeds Act 1964;

“the chairman” means the chairman of the tribunal appointed by the Lord Chancellor or, in relation to proceedings in Scotland or Northern Ireland, by the Lord President of the Court of Session or the Lord Chief Justice of Northern Ireland, as the case may be;

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

“the Part I regulations” means the Plant Breeders' Rights Regulations 1969(1);

“the Part II regulations” means the Forest Reproductive Material Regulations 1973(2), the Seeds (National Lists of Varieties) Regulations 1973(3) and the Seeds (Registration and Licensing) Regulations 1974(4);

(1) (1969 II, p. 2976).
(2) (1973 II, p. 2843).
(3) (1973 II, p. 3024).
(4) (1974 I, p. 2914)

“respondent authority” means—

- (a) in relation to an appeal under the Forest Reproductive Material Regulations 1973, the Forestry Commissioners;
- (b) in relation to an appeal under the Seeds (National Lists of Varieties) Regulations 1973, the Minister of Agriculture, Fisheries and Food, the Secretary of State for Scotland and the Secretary of State concerned with agriculture in Northern Ireland; and
- (c) in relation to an appeal under the Seeds (Registration and Licensing) Regulations 1974, the Minister of Agriculture, Fisheries and Food or the Secretary of State, as the case may be;

“the secretary” means the secretary of the tribunal;

“the tribunal” means the Plant Varieties and Seeds Tribunal⁽⁵⁾ established by section 10 of and Schedule 4 to the Act as respectively amended by paragraph 5(5) of Schedule 4 to the European Communities Act 1972;

expression defined in the Part I regulations or in the Part II regulations shall have the same meaning in these Rules;

a form referred to by number means the form so numbered in Schedule 1 to these Rules or a form substantially to the like effect.

(2) Unless the context otherwise requires, any reference in these Rules to any regulations or enactment shall be construed as a reference to that regulation or enactment, as amended, extended or applied by any other regulation or enactment.

(3) The Interpretation Act 1889 shall apply to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

APPEALS FROM CONTROLLER

Notice of appeal

3. An appeal under Part I of the Act or under the Part I regulations against any decision of the Controller shall be instituted by the appellant serving on the secretary within 28 days of the Controller's giving notice of his decision in pursuance of the Part I regulations a notice of appeal in Form 1, which shall be accompanied by all documents referred to therein.

Notices to appellant and persons entitled to be heard

4.—(1) On receiving a notice of appeal the secretary shall serve a copy on the Controller, who shall on receiving the notice or, where there is more than one appeal against the same decision, the first notice, supply the secretary with—

- (a) a copy of the notice of his decision, including the reasons for it;
- (b) a list containing the names and addresses of the persons entitled under the Part I regulations to appear and be heard as parties to any appeal against the decision;
- (c) a copy of any representations made to the Controller and any written evidence or other documents given or supplied in the course of the proceedings before him;
- (d) a factual summary of the oral evidence at any hearing before the Controller or any person appointed by him; and
- (e) a list of all plants and plant material relevant to the decision which are in the Controller's possession or under his control, stating where such plants and material are available for

(5) Formerly the Plant Variety Rights Tribunal.

inspection by the tribunal and by any person entitled to appear and be heard as a party to any appeal against the decision.

(2) On receiving from the Controller the names and addresses of the persons entitled to appear and be heard, the secretary shall—

- (a) serve on every appellant—
 - (i) a notice in Form 2;
 - (ii) a list of the documents and plants or plant material supplied or made available by the Controller in accordance with sub-paragraphs (c), (d) and (e) of paragraph (1) of this rule, stating where such documents, plants and plant material may be inspected; and
- (b) serve on all persons, other than the appellant, entitled to appear and be heard as parties to the appeal—
 - (i) a notice in Form 3;
 - (ii) a list of the documents and plants or plant material mentioned in sub-paragraph (a) (ii) above, stating where such documents, plants and plant material may be inspected;
 - (iii) a copy of the notice of appeal, stating where the documents supplied with it may be inspected.

Notice of intention to appear

5.—(1) Any person entitled under the Part I regulations to appear and be heard as a party to an appeal may, within 28 days of receiving notice from the secretary under rule 4(2)(b), serve on the secretary a notice in Form 4 of his intention to appear; and the secretary shall serve a copy of the notice on the appellant, the Controller, and every other person entitled to appear and be heard.

(2) If the Controller intends to appear on the hearing of an appeal, he shall notify the secretary within 28 days of receiving a copy of the relevant notice of appeal and the secretary, shall notify the appellant and every other person entitled to appear and be heard as a party to the appeal of the Controller's intention.

Inspection and copies of evidence

6.—(1) The appellant and any person who has given notice under rule 5(1) of his intention to appear shall be entitled, on serving notice on the secretary in Form 5, and on payment of the prescribed fee, to inspect any document (including the summary of oral evidence) and any plants or plant material supplied or made available by the Controller or by any party to the appeal, and to be supplied with copies of any such document.

(2) If the Controller has given notice under rule 5(2) of his intention to appear on the hearing of the appeal, he shall, on giving notice in that behalf to the secretary, be entitled to inspect any document and any plants or plant material supplied or made available by any party to the appeal and to be supplied with copies of any such document.

Date and place of hearing

7.—(1) As soon as may be after the members of the tribunal to hear the appeal have been selected, the chairman shall fix a date, time and place for the hearing, and the secretary shall serve not less than 28 days' notice thereof on the appellant, the Controller and on every person who has given notice under rule 5(1) of his intention to appear.

(2) Where more than one appeal against the same decision falls to be heard by the same members of the tribunal, the chairman may direct that the appeals shall be heard at the same time.

(3) The chairman may alter the date, time or place of the hearing if it appears to him necessary or desirable to do so to avoid hardship or inconvenience to any party or for any other reason appearing to the chairman to be sufficient.

Withdrawal of appeal and default of appearance

8.—(1) An appellant who wishes to withdraw his appeal may do so by serving notice in writing on the secretary at any time before the hearing and on receiving such a notice the secretary shall forthwith notify the Controller, all persons entitled to appear and be heard as parties to the appeal and any other person who is appealing against the same decision.

(2) An appellant who without good cause fails to attend a hearing at the place and time fixed shall be deemed to have withdrawn his appeal.

(3) If, on the withdrawal of an appeal, it appears to the chairman that the case may be a proper one for the award of costs (or, in Scotland, expenses) in accordance with paragraph 9(1) or paragraph 9(4) of Schedule 4 to the Act, he shall cause the tribunal to be convened for the purpose of determining whether costs or expenses should be awarded; and the secretary shall serve not less than seven days' notice of the date, time and place appointed for that purpose on all persons on whom notice of the hearing was served in pursuance of rule 7(1).

Attendance of witnesses

9.—(1) The attendance of witnesses before the tribunal, with or without documents, may be secured by a notice in Form 6 signed by the chairman and served by the secretary on the person to whom it is addressed.

(2) The appellant, any person who has given notice under rule 5(1), and the Controller if he has notified the secretary under rule 5(2) of his intention to appear, may apply for the issue of a notice under paragraph (1) of this rule by serving on the secretary a notice in Form 7.

Tribunal to sit in public

10.—(1) The tribunal shall sit in public unless it appears to them that there are exceptional reasons which make it desirable that the hearing or any part of it should take place in private.

(2) Nothing in this rule shall prevent a member of the Council on Tribunals or of the Scottish Committee of the Council from attending a hearing in private in his capacity as such.

Representation and procedure at hearing

11.—(1) The Controller, the appellant and any other person entitled to appear and be heard may do so in person, by counsel or solicitor, or by a representative appointed in writing.

(2) At the hearing the appellant or, if more than one, such of the appellants as the tribunal may direct shall begin and the other parties shall be heard in such order as the tribunal may determine.

(3) Subject to the provisions of these Rules and to any direction given by the chairman, the procedure at the hearing shall be such as the tribunal may direct.

Evidence

12.—(1) Subject to paragraph (4) of this rule, every party appearing before the tribunal may give evidence and call witnesses, and shall be entitled to cross-examine any other witness and re-examine his own witnesses after cross-examination.

(2) The tribunal may consider any representations submitted to the Controller in the course of the proceedings before him and any other written evidence or documents given or supplied in the course

of those proceedings and may inspect any plants or plant material made available by the Controller or, subject to paragraph (4) of this rule, by any person entitled to appear and be heard.

(3) The tribunal may call a witness who may, after giving evidence, be cross-examined by any party.

(4) The tribunal may refuse to consider any documents or to inspect any plants or plant material not submitted with or sufficiently described in any notice of appeal or in a notice under rule 5(1) or statement under rule 17(1) and may refuse to hear any witness (other than a party to the appeal) who has not been named in any such notice or statement.

(5) The tribunal may require any witness to give evidence on oath or affirmation, to be administered by the chairman.

(6) The tribunal shall not be bound to reject any evidence on the ground only that it would be inadmissible in a court of law.

Adjournments

13. The tribunal may adjourn any hearing to enable any plant to be grown or tested or for any other reason appearing to the tribunal to be sufficient.

Decision of tribunal

14.—(1) The decision of the tribunal shall be given in writing, together with a statement of the tribunal's reasons for their decision.

(2) The chairman may correct any clerical mistake in the written record of the tribunal's decision.

(3) The secretary shall serve a copy of the tribunal's decision and reasons on the appellant, the Controller and on every person who was entitled to appear and be heard as a party to the appeal.

APPEALS FROM MINISTERS AND FROM THE FORESTRY COMMISSIONERS

Notice of appeal

15. An appeal under the Part II regulations against a decision of a respondent authority shall be instituted by the appellant serving on the secretary within 28 days of the respondent authority's giving notice of its decision a notice of appeal in Form 8, which shall be accompanied by the documents referred to therein.

Parties

16.—(1) The appellant and the respondent authority shall be parties to an appeal under the Part II regulations.

(2) Any person who was under the Part II regulations entitled to make representations to, or to be heard by, the respondent authority in the proceedings in respect of which the decision was given, and who availed himself of that opportunity, shall be entitled to appear and be heard as a party to an appeal against the decision of the respondent authority.

Respondent authority's statement, etc

17.—(1) On receiving notice of appeal under rule 15 the secretary shall serve a copy on the respondent authority which shall within 28 days supply the secretary with a copy of its decision and of the reasons for it, together with two copies of a statement in Form 9.

(2) On receiving the respondent authority's statement, the secretary shall serve a copy on the appellant together with a notice in Form 10.

- (3) Where any person is entitled under rule 16(2) to appear and be heard as a party to any appeal—
- (a) the respondent authority shall, when supplying a statement under paragraph (1) of this rule, supply the secretary with a list containing the names and addresses of the persons so entitled;
 - (b) the secretary shall serve on each such person a notice in Form 3 together with a copy of the notice of appeal and of the respondent authority's statement;
 - (c) rule 5(1) shall apply in relation to each such persons as it applies in relation to a person entitled to appear under the Part I regulations as if for the reference therein to rule 4(2)(b) there were substituted a reference to sub-paragraph (b) of this paragraph.
- (4) The respondent authority shall, on giving notice in that behalf to the secretary, be entitled to inspect any document and any plants or plant material or basic material supplied or made available by any party to the appeal and to be supplied with copies of any such document.

Application of rules

18. Rules 3, 4, 5(2) and 6(2) shall not apply to appeals from a respondent authority but in all other respects these rules shall, subject to rule 17(3)(c), apply to such appeals as if for references to the Controller there were substituted references to the respondent authority, as if the references in rules 6(1), 12(2) and 12(4) to plants or plant material included a reference to basic material and as if in rule 9(2) the words “if he has notified the secretary under rule 5(2) of his intention to appear” were omitted.

SUPPLEMENTAL

19.—(1) Every document required or authorised by these Rules to be served on any person shall be deemed to have been duly served if it is delivered to him personally or delivered or sent by post to his proper address.

(2) Any document required or authorised to be served on an incorporated body or company shall be duly served if it is served on the secretary or clerk of the body or company.

(3) For the purpose of these Rules, the proper address of a person shall, in the case of a secretary or clerk of any incorporated body or company, be that of the registered or principal office of the body or company and shall in any other case be his last known address.

(4) If any person on whom any document is required to be served cannot be found, or has died and has no known personal representative, or if for any other reason service on that person cannot be readily effected in accordance with these Rules, the chairman may dispense with service or may make an order for substituted service on such other person or in such form (whether by advertisement in a newspaper or otherwise) as the chairman may think fit.

Extension of time

20. The time appointed by these Rules for doing any act or taking any step in connection with any proceedings may be extended by the chairman on such terms and conditions, if any, as appear to him to be just.

Interlocutory applications

21. An application to the tribunal or the chairman to exercise any power under rules 13, 14, 19(4) and 20 shall, if not made in the course of a hearing, be made in writing to the secretary, who shall serve a copy of the application on each of the following persons not being the applicant, that is to say, the appellant, the Controller and every person who has given notice under rule 5(1) of his intention to appear.

Failure to comply with rules

22. Failure to comply with any requirement of these Rules shall not render the proceedings or anything done in pursuance thereof invalid unless the chairman or the tribunal so directs.

Fees

23. The fees specified in Schedule 2 to these Rules shall be payable to the secretary in respect of the matters mentioned in that Schedule and shall be paid when the relevant notice or application is served on or made to the secretary by cheque or postal order.

Revocation of rules

24. The Plant Variety Rights Tribunal Rules 1965(6) are hereby revoked.

Dated 21st June 1974

Elwyn-Jones, C

We approve the fees prescribed by these Rules.

Dated 26th June 1974

James A. Dunn
James Hamilton
Two of the Lords Commissioners of Her
Majesty's Treasury

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SCHEDULE 1

Rule 3

Form 1 PLANT VARIETIES AND SEEDS TRIBUNAL

Form 2 PLANT VARIETIES AND SEEDS TRIBUNAL

Rule 4(2)

Form 3 PLANT VARIETIES AND SEEDS TRIBUNAL

rules 4(2) and 17(3)

Form 4 PLANT VARIETIES AND SEEDS TRIBUNAL

Form 5 PLANT VARIETIES AND SEEDS TRIBUNAL

Form 6 PLANT VARIETIES AND SEEDS TRIBUNAL

Form 7 PLANT VARIETIES AND SEEDS TRIBUNAL

Form 8 PLANT VARIETIES AND SEEDS TRIBUNAL

Form 9 PLANT VARIETIES AND SEEDS TRIBUNAL

Form 10 PLANT VARIETIES AND SEEDS TRIBUNAL

SCHEDULE 2

FEES

No. of Fee	Description of Proceeding	Amount of Fee £
1.	On giving notice of appeal under rule 3 or rule 15	10.00
2.	On giving notice under rule 5(1) of intention to appear	2.00
3.	On applying under rule 6(1)—	
	(a) to inspect documents supplied or submitted to the tribunal	0.50
	(b) to inspect any plants or plant material or basic material—	
	(i) in the custody of the Controller or the respondent authority	2.00
	(ii) in the custody of any other person	1.00
	(c) for copies of documents—	
	(i) foolscap (or A4 ISO) of smaller, per page	0.10
	(ii) larger pages, per page	0.20
4.	On applying under rule 9 for a notice to secure the attendance of a witness, for each witness	1.00

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No. of Fee	Description of Proceeding	Amount of Fee £
5.	On making an interlocutory application (except in the course of a hearing) to the tribunal or the chairman	2·00

EXPLANATORY NOTE

These Rules replace with amendments the rules of procedure for the Plant Varieties and Seeds Tribunal, which was formerly known as the Plant Variety Rights Tribunal. The main changes from the earlier rules are in rules 15 to 18: these Rules take account of the regulations, specified in rule 2(1) (made under Part II of the Plant Varieties and Seeds Act 1964, as amended by the European Communities Act 1972), which have conferred rights of appeal to the tribunal in relation to the agricultural and forestry plants which may be marketed and to the registration of seed merchants, packers and processors.