STATUTORY INSTRUMENTS

1969 No. 1026

PLANT BREEDERS' RIGHTS

The Plant Breeders' Rights (Narcissi, Freesias and Gladioli) Scheme 1969

Made - - -	*23rd July* 1969
Laid before Parliament	*6th August* 1969
Coming into Operation	*7th August* 1969

The Minister of Agriculture, Fisheries and Food, the Secretary of State for Scotland and the Secretary of State for the Home Department (being the Secretary of State concerned with agriculture in Northern Ireland), acting jointly, in exercise of the powers conferred on them by sections 1, 3, 5 and 7 of, and paragraph 1 of Schedule 3 to, the Plant Varieties and Seeds Act 1964(a), as extended to Northern Ireland by the Plant Varieties and Seeds (Northern Ireland) Order 1964(b), and of all other powers enabling them in that behalf, after consultation with the Controller of Plant Variety Rights and with representatives of such interests as appear to them to be concerned, hereby make the following Scheme:—

Citation and Commencement

1. This Scheme may be cited as the Plant Breeders' Rights (Narcissi, Freesias and Gladioli) Scheme 1969 and shall come into operation on 7th August 1969.

Interpretation

2.—(1) In this Scheme, unless the context otherwise requires—

"the Act" means the Plant Varieties and Seeds Act 1964 as extended to Northern Ireland;

"the Controller" means the Controller of Plant Variety Rights;

"plant breeders' rights" means rights which may be granted in accordance with Part I of the Act;

"plant variety" means any clone, line, hybrid or genetic variant.

(2) The Interpretation Act 1889(c) shall apply to the interpretation of this Scheme as it applies to the interpretation of an act of Parliament.

Plant Varieties for which Plant Breeders' Rights may be Granted

3. There are prescribed for the purposes of the grant of plant breeders' rights all plant varieties of narcissi, daffodils and jonquils which conform with the characteristics of cultivated plant varieties of the genus *Narcissus* L., all plant varieties of freesias which conform with the characteristics of cultivated plant varieties of the genus *Freesia* Klatt and all plant varieties of gladioli which conform with the characteristics of cultivated plant varieties of the genus *Gladiolus* L.

(a) 1964 c. 14.

(b) S.I. 1964/1574 (1964 III, p. 3543).

(c) 1889 c. 63.

Period for which Rights are Exercisable

4. The period for which plant breeders' rights shall be exercisable in respect of the plant varieties referred to in the last preceding paragraph shall be 20 years.

Classes of Plant Varieties for the Purposes of Section 5(7) *of the Act*

5. The classes of plant varieties prescribed for the purposes of Section 5(7) of the Act (which enables classes of plant varieties to be prescribed in connection with the use of names likely to deceive or cause confusion) consist, (*a*) in relation to plant varieties of narcissi, daffodils and jonquils which conform with the characteristics of cultivated plant varieties of the genus *Narcissus* L., of all plant varieties of narcissi, daffodils and jonquils, (*b*) in relation to plant varieties of freesias which conform with the characteristics of cultivated plant varieties of the genus *Freesia* Klatt, of all plant varieties of freesias and (*c*) in relation to plant varieties of gladioli which conform with the characteristics of cultivated plant varieties of the genus *Gladiolus* L., of all plant varieties of gladioli.

Period prescribed for Purposes of Section 7(2) *of the Act*

6. In relation to the plant varieties referred to in paragraph 3 of this Scheme, the period prescribed for the purposes of section 7(2) of the Act (which enables a provision to be made whereby a compulsory licence granted by the Controller as respects a plant variety of a species or group specified in a scheme shall not have effect for a prescribed period after the grant of rights in that plant variety) shall be 3 years.

Additional Rights

7. Plant breeders' rights exercisable in respect of the plant varieties referred to in paragraph 3 of this Scheme shall include the exclusive right to produce or propagate and to authorise others to produce or propagate any such plant variety for the purpose of selling cut blooms of that plant variety.

In Witness whereof the official seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on 18th July 1969.

(L.S.) *Cledwyn Hughes,*
Minister of Agriculture, Fisheries and Food.

Given under the seal of the Secretary of State for Scotland on 21st July 1969.

(L.S.) *William Ross,*
Secretary of State for Scotland.

Given under the hand of the Secretary of State for the Home Department 23rd July 1969.

James Callaghan,
Secretary of State for the Home Department.

"plant breeders' rights" means rights which may be granted in accordance with Part I of the Act;

"reproductive material" means reproductive material of a plant variety and includes seeds for sowing and seed potatoes;

and other expressions have the same meaning as in the Act.

(2) The Interpretation Act 1889(a) shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament and as if these Regulations and the Regulations hereby revoked were Acts of Parliament.

Amendment of provisional list or Index

4. Following the publication by the Ministers in the gazette in accordance with paragraph 1 of Schedule 5 to the Act of a provisional list of plant varieties which are within the class of plant varieties to which a section of the Index will relate or of a notice of the coming into force of a section of the Index an application may be made to the Ministers by any person seeking—

(*a*) the addition of the name of a plant variety to,

(*b*) the correction of the name of a plant variety in, or

(*c*) the erasure of the name of a plant variety from

the said provisional list or the said section of the Index as the case may be.

Application for amendment of provisional list or Index

5. An application made in accordance with the last preceding paragraph (hereinafter referred to as "the application") shall be in writing and shall include references to—

(*a*) the particular provisional list or section of the Index to which the application relates;

(*b*) the nature of the application, that is to say whether it seeks an addition to, correction of or erasure from the particular provisional list or section of the Index;

(*c*) in a case where the application seeks a correction or erasure, the name of the plant variety to which the application relates;

(*d*) in a case where the application seeks a correction, the correction which is proposed;

(*e*) the documents, if any, submitted in support of the application; and

(*f*) the grounds relied on in support of the application.

Translations

6. Where any document submitted in support of the application is in a language other than the English language it shall unless the Ministers otherwise direct be accompanied by a complete and adequate translation thereof into the English language.

Lodging of application

7. The application and any documents submitted in support thereof shall be delivered or sent by post in a properly addressed pre-paid letter to the Minister of Agriculture, Fisheries and Food, Murray House, Vandon Street, London, S.W.1.

(a) 1889 c. 63.

Address for service

8. The person making the application (hereinafter referred to as "the applicant") shall, on or before making the application, give to the Ministers in writing an address within the United Kingdom (hereinafter referred to as his "address for service") which shall be the address at which any notices or other documents may be delivered to or served upon him and he shall be at liberty at any time to give to the Ministers in writing another address which shall thereafter be his address for service in substitution for that previously given.

Information and plant material

9.—(1) Where the application involves the question whether two or more plant varieties are distinct from one another the applicant shall—

(*a*) give to the Ministers such information and produce and deliver to them such documents, records and illustrations as they may from time to time require, and

(*b*) deliver to the Ministers reproductive material of such one or more of the said plant varieties as they shall require for carrying out examinations, tests and trials in the quantity and of the description and quality specified, and packed and in the condition also specified, in Schedule 1 to these Regulations and also such further reproductive and other plant material in such quantity and of such description and quality as shall appear to the Ministers to be required to replace any such material already delivered as may have been damaged in transit or damaged or lost in the course of tests and trials or which is, or has in the course of tests and trials been shown to be, unhealthy or otherwise unsuitable,

being information, documents, records, illustrations and material relevant to the application and in the possession, control or power of the applicant.

(2) Anything required to be given, produced or delivered in accordance with paragraph (1) of this Regulation shall be given, produced or delivered to the Ministers at such place as they shall require within 28 days of demand made by them in writing or within such longer time as they may allow.

Notification of decision

10. The Ministers shall give to the applicant a notice of their decision together with, if the application has been refused, their reasons for such refusal and a sufficient indication of the time within which and manner in which any appeal may be brought.

Fees

11.—(1) Subject to paragraph (2) of this Regulation there shall be paid to the Ministers in respect of the matters set out in the second column of Schedule 2 to these Regulations the fees set out in the fourth column of the said Schedule opposite the respective references to those matters and such fees shall be paid at the times specified in the third column of the said Schedule opposite such references.

(2) The fees prescribed in item No. 1 of the said Schedule 2 for the examination, tests and trials of a plant variety in relation to an application involving the question whether two or more varieties are distinct shall, if at the time of that application an application for a grant of plant breeders' rights in respect of such variety is made or has previously been made, be payable by the applicant only to the extent by which they exceed the amount of any fees which have been paid or which are or will become payable for trials of that variety in connection with a grant of plant breeders' rights.

EXPLANATORY NOTE

(This Note is not part of the Scheme.)

This Scheme, made under the Plant Varieties and Seeds Act 1964, prescribes the varieties of narcissi, daffodils, jonquils, freesias and gladioli in respect of which grants of plant breeders' rights may be made and also prescribes the period of 20 years as that during which the rights may be exercised.

The aforesaid Act, as read with this Scheme, provides that infringements of the rights in the registered name of a variety of narcissus, daffodil or jonquil, of freesia or of gladiolus may be the subject of legal proceedings when committed in connection, respectively, with any other variety of narcissus, daffodil or jonquil, of freesia or of gladiolus, as the case may be.

This Scheme also provides that a compulsory licence granted by the Controller of Plant Variety Rights in respect of a variety of narcissus, daffodil, jonquil, freesia or gladiolus shall not have effect during a period of 3 years from the date of the grant of rights in that variety.

Plant breeders' rights in respect of any variety of narcissus, daffodil, jonquil, freesia or gladiolus to which the Scheme applies are extended to the production and propagation of the variety for the purpose of selling cut blooms.