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Edward Mountain MSP
Convener
Rural Economy and Connectivity Committee
Room T3.40
The Scottish Parliament
EDINBURGH
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15 July 2020

Dear Edward,

UK SI NOTIFICATION: THE PLANT BREEDERS' RIGHTS (AMENDMENT) (EU EXIT) REGULATIONS 2020

Thank you for your correspondence of 26 June 2020 concerning the notification of The Plant Breeders' Rights (Amendment) (EU Exit) Regulations 2020 ("the 2020 Regulations"), on which Lord Gardiner had sought consent from the Scottish Parliament to lay this UK statutory instrument in Westminster.

The time for scrutiny was shortened in the first instance by a clerical error, in which we received the consent request letter for the Welsh Minister by mistake and this took Defra a few days to rectify. I was equally disappointed that this UK SI which Lord Gardiner seeks consent for laying in Westminster has breached the 28 day rule. Officials have informed Defra that this is not acceptable and Defra have offered assurances that this won't happen again. I was assured that this SI is high priority, and with a number of UK SIs requiring the Scottish Parliament's consent, a few consents were sought pre-summer recess in order to lessen the load of the main exercise both for Defra and ourselves after the summer.

The 2020 regulation is a technical statutory instrument which allows Ministers to grant plant breeders' rights, a form of intellectual property, designed to protect new varieties of plants and allow for royalties to be collected. The main changes are that the provisions for a no deal Brexit have been removed and replaced with provisions in relation to the Withdrawal Act.

You also asked a further two questions on some of the changes being made –

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The duration of CPVRs and the exhaustion of intellectual property rights

Varieties that currently have Community Plant Variety Rights, are being given UK PBR for the term of protection. This will be at least equal to the remaining period of protection in the UK. Also holders of the resulting PBR in the UK are not prevented from surrendering these rights in the UK.

The amendment to the 2019 Regulations will give effect to all CPVR granted before IP completion day, rather than to those granted prior to two months before IP completion day. Consequently, about 30,000 CPVRs are expected to be given effect under this instrument and the 2019 Regulations, allowing rights holders to maintain their intellectual property protection in the UK without any administration or financial investment themselves. This will provide certainty for businesses and give confidence for continued investment in the breeding of plant varieties for UK conditions and markets, which should benefit the entire plant sector and consumers.

Community Plant Variety Rights (CPVR) applications that have not been resolved by the end of the transition period

This instrument provides for an ad-hoc right of priority within six months of IP completion day to all UK applications for the same plant variety which has not yet been granted CPVR. Providing the right of priority in this instrument means the date of a UK application is given the date of the earlier CPVR application. This increases the likelihood of the plant variety remaining eligible for plant breeders' rights, thus helping to recoup the breeder's investment and encouraging the continued introduction of novel plant varieties onto the UK market.

Any Community PVR declared null and void or cancelled up to the end of the transition period would also have the corresponding PBR in the UK declared null and void or cancelled.

The legislation for PBR is of a very technical nature, and with the number of applications for UK plant breeders' rights set to rise, Scottish Government asked Defra during the drafting and consultation period with the Devolved Administrations, that they provide guidance to this legislation for any successors responsible for this policy area, as well as to the delivery body (the Animal and Plant Health Agency), but more importantly for any tribunal who may in future require to deal with any disputes that fall under this piece of legislation. This request was supported by the Welsh Government and DAERA.

I hope the explanation has helped satisfy your concerns.



MAIRI GOUGEON

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