

UNITED KINGDOM

Contribution received in reply to UPOV Circular E-24/047 of April 22, 2024

24 May 2024

UK Response

Call for replies to questions by the WG-SHF (UPOV Circular E-24/047) – UK response

At its fifth meeting, held on March 22, 2024, the Working Group on Guidance concerning Smallholder Farmers in relation to private and non-commercial use (WG-SHF) concluded that gathering information would be useful to consider the development of guidance concerning smallholder farmers in relation to private and non-commercial use and agreed that the Office of the Union should invite all UPOV members to reply to the following questions.

Article 15(1)(i) of the 1991 Act of the UPOV Convention provides for the following compulsory exception:

“(1) [Compulsory exceptions] The breeder’s right shall not extend to

(i) acts done privately and for non-commercial purposes,”

1. Is your country/intergovernmental organization implementing the exception “acts done privately and for non-commercial purposes”? If so, how is it implemented?

- As signatories to the 1991 convention, the UK implements the compulsory exceptions as outlined in Article 15 (1) (i) of the convention within UK Plant Varieties and Seeds (PVS) legislation. Specifically, it is implemented in section 8 of the [Plant Varieties Act 1997 \(legislation.gov.uk\)](#) (“the PVA 1997”),.
- This exception, in practice, can be most readily seen in horticulture, where gardeners are able to propagate plant material for their private and non-commercial use.
- In addition, Article 15(2) provides an optional exception which has been provided for in section 9 of the PVA 1997 concerning Farm Saved Seed (FSS).
- Section 9 of the PVA 1997 defines and allows for FSS, which is distinct to the horticulture example given above. FSS allows farmers to save and plant seed from their own harvests and has been a longstanding practice in the UK. This provides farmers with a relatively low-cost source of seed and allows for control over seed quality, provenance and treatment.
- When using FSS, farmers are required to pay a royalty to the holder of the Plant Breeders Right (PBR) of the variety in question (usually the original breeder of the variety) (Section 9, PVA 1997). Regulation 20A of the [Plant Breeders Rights Regulations 1998](#) sets out how remuneration of FSS is determined.

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- Although the legislation allows farmers to save and plant their own seed (i.e. FSS), UK legislation prohibits the marketing of seed unless it has been certified to national regulatory standards.

2. Concerning this exception, are there definitions for the following term: “acts done privately and for non-commercial purposes”?

- Section 8 of the PVA 1997 states the following:
 - Plant breeders’ rights shall not extend to any act done –
 - (a) for private and non-commercial purposes,
 - (b) for experimental purposes, or
 - (c) for the purpose of breeding another variety.

The terms are not defined within the PVA 1997, therefore when construing these terms, the grammatical and ordinary sense of the words would be adhered to unless that would lead to absurdity.

- In reference to Article 15(2) however, ‘small farmer’ is defined in section 9(10) of the PVA 1997 for the purpose of the application of section 9. Section 9(4) excludes small farmers who meet the definition of section 9(10) of the PVA 1997, from paying royalties associated with Farm Saved Seed.

3. Please specify legislation/regulation and jurisprudence concerning this exception.

3.1 Art 15(1) compulsory exception

The relevant UK Legislation concerning this exception is the following:

- ***Plant Varieties Act 1997:***
 - Section 8 General exceptions - [Plant Varieties Act 1997 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1997/53)

3.2 Art 15(2) optional exception

The relevant UK legislation concerning this exception is the following:

- ***Plant Varieties Act 1997:***
 - Section 9 Farm saved seed - [Plant Varieties Act 1997 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1997/53)
- ***The Plant Breeders’ Rights Regulations 1998/1027***
 - Regulation 20A Farm saved seed: determination of remuneration - [The Plant Breeders’ Rights Regulations 1998 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukreg/1998/1027)

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- ***The plant Breeders' Rights (Farm Saved Seed) (Specification of Species and Groups) Order 1998/1025:*** [The Plant Breeders' Rights \(Farm Saved Seed\) \(Specification of Species and Groups\) Order 1998 \(legislation.gov.uk\)](#)
 - This order specifies the species and groups to which FSS (section 9, PVA 1997) applies.
- ***The Plant Breeders' Rights (Farm Saved Seed) (Specified Information) Regulations 1998/1026:*** [The Plant Breeders' Rights \(Farm Saved Seed\) \(Specified Information\) Regulations 1998 \(legislation.gov.uk\)](#)
 - These regulations specify the information necessary for the purpose of section 9 of the PVA 1997.

4. Are there any challenges and/or opportunities in implementing this exception in your jurisdiction? Please explain.

- The PBR system within the UK is efficient and generally understood by those affected by it.
- The private and non-commercial exception is not routinely monitored but is investigated and enforced if reports of breaches are made. For example, Defra successfully took two separate prosecution cases against farmers and agricultural merchants for marketing of uncertified seed in 2011.
- The mechanisms by which FSS royalties are collected and paid are well established and are organised by the British Society for Plant Breeders on behalf of the UK Governments. The rates at which royalties are set for FSS are reviewed and determined by industry on an annual basis.
- Industry is largely supportive of the FSS system and recognise the importance of not allowing the marketing of uncertified seed due to the risk of low-quality seed leading to poor harvests and the spread of harmful organisms.
- The UK industry is supportive of the payment of royalties to the PBR holder, from FSS and industry feedback indicates that the payment does not prohibit the use of FSS where a farmer is within scope of the legislation to do so. The royalty costs of FSS are lower than the royalty costs associated with certified seed. It is recognised that income from royalties is important for plant breeders and allows them to reinvest in innovative plant breeding.
- The UK will continue its engagement with UPOV via the WG-SHF to better understand the impact of the 1991 convention on small holder farmers and subsistence farmers, and how and why it might be perceived as a barrier beyond the UK.