

Plant Variety Rights Regulations 1988
(SR 1988/101)

Note

These regulations are administered in the Ministry of Agriculture and Fisheries.

PURSUANT to section 38 of the Plant Variety Rights Act 1987, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

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1 Title and commencement

- (1) These regulations may be cited as the Plant Variety Rights Regulations 1988.
- (2) These regulations shall come into force on the commencement of the Plant Variety Rights Act 1987.

2 Interpretation

- In these regulations—
The Act means the Plant Variety Rights Act 1987
The Register means the register required to be kept by section 14(3) of the Act.

Part 1 Prescribed matters

3 Applications to be completed in English

- Every application must be completed in the English language.

4 Applications to be legible

- Every application must be legibly typed, written, or printed.

5 Quantities of seed to be provided with applications

- (1) An application for a variety of a kind of plant described in column 1 of Schedule 1 must be accompanied by the quantity of seed specified (opposite the description) in column 2 of Schedule 1, together with the quantity, if any, of seed ears specified (opposite the description) in column 3 of Schedule 1.
- (2) The standard of purity and germination of the seed must be acceptable to the Commissioner.

Subclause (1) was substituted, as from 24 August 1989, by regulation 2(1) Plant Variety Rights Regulations 1988, Amendment No 1 (SR 1989/227).

Subclause (1) was further substituted, as from 1 July 1999, by regulation 2 Plant Variety Rights Amendment Regulations 1999 (SR 1999/160).

Subclause (1) was further substituted, as from 1 January 2002, by regulation 3 Plant Variety Rights Amendment Regulations 2001 (SR 2001/359).

5A Colour photographs to be supplied with certain applications

- (1) This regulation applies to every variety of plant other than herbage, agricultural crops, plants grown for the purpose of harvesting vegetables, and fungi.
- (2) An application for a variety of plant to which this regulation applies must be accompanied by—
 - (a) A satisfactory photograph of all or part of a typical plant of the variety, showing the variety's distinguishing features; or
 - (b) 2 or more satisfactory photographs (each being a photograph of all or part of a typical plant of the variety) that together show the variety's distinguishing features.
- (3) A photograph is satisfactory if—
 - (a) It is photograph of a plant that has been propagated from the original bred or discovered plant concerned (not of that original plant); and
 - (b) It is a positive colour print (not a slide, transparency, or other negative); and
 - (c) It is clear enough and large enough to enable the subject-matter to be easily identified.

Regulation 5A was inserted, as from 22 May 1997, by clause 2 Plant Variety Rights Amendment Regulations 1997 (SR 1997/67).

6 Prescribed periods for giving descriptions, material, and information

- (1) Where a variety is to be subject to test trials by the applicant, under the control of the applicant, or by or under the control of a person who is not independent of the applicant,—
 - (a) The applicant must give the Commissioner a description of the kind described in section 5(2)(a) of the Act within 18 months or (if the Commissioner is satisfied that there are exceptional reasons justifying an extension of time) within any longer period the Commissioner allows after making the application; and
 - (b) The applicant must give the Commissioner material or information of the kind described in section 5(3) of the Act within 12 months or any longer period the Commissioner allows after being requested by the Commissioner to do so.
- (2) Subject to subclause (1) of this regulation, an applicant must give the Commissioner—
 - (a) A description of the kind described in section 5(2)(a) of the Act; or
 - (b) Material or information of the kind described in section 5(3) of the Act,—within 12 months, or any longer period the Commissioner allows after making the application or, as the case requires, after being requested by the Commissioner to do so.

7 Requirements for proposed denominations

- (1) The requirements for a proposed denomination are that it must conform with international usage relating to the names of cultivated plants.
- (2) The Commissioner must notify an applicant of a refusal to approve a proposed denomination, and request the applicant to submit another.

8 Matters requested to be published in Journal

- (1) The Commissioner must publish in the Journal, in respect of every application,—
 - (a) The applicant's name and address:
 - (b) The date of the application:
 - (c) The genus or species of the variety:
 - (d) Every denomination that—
 - (i) Has been proposed for the variety; and
 - (ii) The Commissioner has not immediately indicated that the Commissioner will not approve:
 - (e) If the application lapses or is withdrawn, the fact that it has lapsed or been withdrawn.
- (2) The Commissioner must publish in the Journal, in respect of every grant,—
 - (a) The name and address for service of the grantee:
 - (b) The genus or species to which the variety belongs:
 - (c) The denomination the Commissioner has approved for the variety:
 - (d) The date of the grant.
- (3) The Commissioner must publish in the Journal—
 - (a) The fact that a grant has expired or has been cancelled or surrendered; and
 - (b) The day the expiry, or cancellation, or surrender took effect.

9 Matters required to be recorded in Register

- The Commissioner must record in the Register, in relation to each grant,—
 - (a) The grantee's name:
 - (b) The date of the application:
 - (c) An address in New Zealand for service for the grantee:
 - (d) The date of the grant:
 - (e) The term of the grant (including any extensions):
 - (f) The genus or species to which the variety belongs:
 - (g) The variety's denomination:
 - (h) A reference number relating to the Commissioner's file record of the variety's distinctive features:
 - (i) Details of every compulsory licence or sale order made in respect of the variety:
 - (j) Details of any cancellation of the grant:

- (k) Where the Commissioner is satisfied that the grant has been acquired by any person other than the original grantee, details of the acquisition:
- (l) Where the grant was made by virtue of a priority under section 12 of the Act, details of the equivalent application concerned.

Part 2

Plant Variety Rights Office

10 Inspection of Register

- The Commissioner must hold the Register open for public inspection whenever the Office is open for the transaction of public business under the Act.

11 Copies of entries in Register

- The Commissioner must, on payment of the prescribed fee (if any), provide any person with a copy of any entry in the Register.

12 Commissioner may correct mistakes

- (1) The Commissioner may correct any mistake, omission, or irregularity in the Register, or in any document produced in the Office.
- (2) The Commissioner may correct any mistake, omission, or irregularity in any document sent to or filed in the Office, on payment of the prescribed fee (if any) by the person who sent or filed it.
- (3) If, in the opinion of the Commissioner, the correction of a mistake, omission, or error may affect the interest of any person (other than a person who requested it), the Commissioner shall publish details of it in the Journal.

13 Commissioner may replace lost documents

- (1) If satisfied that any document issued by the Office has been lost or destroyed, the Commissioner may, on payment of the prescribed fee (if any), issue a replacement to the person entitled to the original.
- (2) The replacement must show that it is a replacement.

14 Date of surrender of grant

- A surrender of a grant shall take effect from the later of—
 - (a) The day it is received in the Office; and
 - (b) A day specified by the grantee.

15 Applications by agents

- Where an application purports to be made by an agent for a principal,—
 - (a) The application must indicate that it is made by an agent; and
 - (b) The application must give details of both agent and principal; and
 - (c) The application must be signed by the agent; and
 - (d) The agent must satisfy the Commissioner that the agent is authorised to act for the principal.

Part 3

Growing trials

16 Growing trials

- (1) If the Commissioner has insufficient information to be satisfied that a variety in respect of which an application has been made is distinct, homogeneous, or stable, as required by section 10(2)(d) of the Act, the Commissioner may undertake or commission, or approve the applicant's undertaking or commissioning of, growing trials of the variety, or may examine

and evaluate the results of growing trials already conducted by a person or body independent of the applicant.

(2) The Commissioner may disregard any results of any growing trials undertaken or commissioned by an applicant unless—

- (a) The trials were conducted under conditions, at places, and over periods, approved in writing by the Commissioner; and
- (b) The Commissioner and persons authorised by the Commissioner were allowed any access to the property on which the trial was conducted that the Commissioner required.

(3) Where an applicant supplies the Commissioner with any report or document in a language other than English relating to any growing trials, the Commissioner may disregard it until the applicant has paid the cost of obtaining an independent translation of it.

Part 4 **Compulsory licences and sales**

17 Information to be supplied

- A person who under section 21(1) of the Act requests the Commissioner to consider whether or not reasonable quantities of reproductive material of a reasonable quality of a variety are available for purchase by members of the public at a reasonable cost must do so in writing, and must supply the Commissioner with information and arguments to assist the Commissioner to arrive at a conclusion.

18 Notice to be given

- As soon as is possible after issuing a licence or order under section 21(2) of the Act, or limiting, varying, extending, or revoking such a licence or order, the Commissioner must give the grantee of the variety concerned, and the person in whose favour it was issued, notice of the action taken.

Part 5 **Miscellaneous**

19 Period for payment of annual grant fee

- (1) In any year, the annual grant fee payable in relation to a grant must be paid within the period commencing one month before the anniversary of the grant and ending one month after.
- (2) In any year, the annual grant fee payable in relation to a grant may not be paid before the period described in subclause (1) of this regulation.

20 Revocations

- The regulations specified in Schedule 2 to these regulations are hereby revoked.

Schedule 1 **Quantities of seed to accompany applications**

- Schedule 1 was substituted, as from 1 July 1993, by regulation 2(1) Plant Variety Rights Regulations 1988, Amendment No 2 (SR 1993/146).
- Schedule 1 was further substituted, as from 1 July 1999, by regulation 3 Plant Variety Rights Amendment Regulations 1999 (SR 1999/160).
- Schedule 1 was further substituted, as from 1 January 2002, by regulation 4 Plant Variety Rights Amendment Regulations 2001 (SR 2001/359).

Description of variety	Seed (g)	Seed in ears (ears)
Arable crops and vegetables—		
peas	3000	—
beans, lentils, lupins, and maize	2000	—
barley, oats, rye, corn, triticale, and wheat	2000	100
linseed and sunflower	1000	—
beets	500	—
asparagus, borage, and cucurbits	100	—
allium, amaranthus, capsicum, chicory, forage brassicas, phacelia, and radish	50	—
carrot, lettuce, brassicas (other than forage brassicas), parsnip, and tomato	30	—
evening primrose	10	—
Grasses—		
brome and ryegrass	500	—
cocksfoot, crested dogstail, fescue, koeleria, and paspalum	50	—
bents, phalaris, and yorkshire fog	10	—
Other pasture plants—		
serradella and sulla	100	—
lotus, lucerne, plantain, and red clover	50	—
yarrow	25	—
white clover	10	—

Schedule 2
Regulations revoked

Title	Statutory Regulation No
The Plant Varieties Regulations 1975	1975/138
The Plant Varieties Regulations, Amendment No 1	1975/238
The Plant Varieties Regulations, Amendment No 2	1980/134
The Plant Varieties Regulations, Amendment No 4	1986/341

MARIE SHROFF,
Clerk of the Executive Council.

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