

Reprint
as at 13 January 2020



Plant Variety Rights Regulations 1988 (SR 1988/101)

Paul Reeves, Governor-General

Order in Council

At Wellington this 16th day of May 1988

Present:

His Excellency the Governor-General in Council

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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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

These regulations are administered by the Ministry of Business, Innovation, and Employment.

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Regulations

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—

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.

Regulation 5(1): substituted, on 1 January 2002, by regulation 3 of the 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 a 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: inserted, on 22 May 1997, by regulation 2 of the 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), 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 or Australia 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.

Regulation 9(c): amended, on 13 January 2020, by section 114 of the Regulatory Systems (Economic Development) Amendment Act 2019 (2019 No 62).

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 1 month before the anniversary of the grant and ending 1 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).

20 Revocations

The regulations specified in Schedule 2 are hereby revoked.

Schedule 1
Quantities of seed to accompany applications

r 5(1)

Schedule 1: substituted, on 1 January 2002, by regulation 4 of the Plant Variety Rights Amendment Regulations 2001 (SR 2001/359).

Description of variety	Seed (g)	Seed in ears (ears)
<i>Arable crops and vegetables</i>		
peas	3 000	—
beans, lentils, lupins, and maize	2 000	—
barley, oats, ryecorn, triticale, and wheat	2 000	100
linseed and sunflower	1 000	—
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	—
<i>Grasses</i>		
brome and ryegrass	500	—
cocksfoot, crested dogstail, fescue, koeleria, and paspalum	50	—
bents, phalaris, and yorkshire fog	10	—
<i>Other pasture plants</i>		
serradella and sulla	100	—
lotus, lucerne, plantain, and red clover	50	—
yarrow	25	—
white clover	10	—

Schedule 2
Regulations revoked

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Plant Varieties Regulations 1975 (SR 1975/138)

Plant Varieties Regulations, Amendment No 1 (SR 1975/238)

Plant Varieties Regulations, Amendment No 2 (SR 1980/134)

Plant Varieties Regulations, Amendment No 4 (SR 1986/341)

Marie Shroff,
Clerk of the Executive Council.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 19 May 1988.

Reprints notes

1 *General*

This is a reprint of the Plant Variety Rights Regulations 1988 that incorporates all the amendments to those regulations as at the date of the last amendment to them.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Regulatory Systems (Economic Development) Amendment Act 2019 (2019 No 62): section 114
Plant Variety Rights Amendment Regulations 2001 (SR 2001/359)
Plant Variety Rights Amendment Regulations 1997 (SR 1997/67)