

**1975/138**



## THE PLANT VARIETIES REGULATIONS 1975

DENIS BLUNDELL, Governor-General  
ORDER IN COUNCIL

At the Government House at Wellington this 9th day of June 1975

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to section 37 of the Plant Varieties Act 1973, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

### REGULATIONS

**1. Title and commencement**—(1) These regulations may be cited as the Plant Varieties Regulations 1975.

(2) These regulations shall come into force on the day after the date of their notification in the *Gazette*.

(3) These regulations shall apply to the plant varieties specified in the First Schedule to these regulations.

**2. Interpretation**—(1) In these regulations, unless the context otherwise requires,—

“The Act” means the Plant Varieties Act 1973:

“Denomination” means the proposed description which, if approved will form part of the grant of plant selectors’ rights:

“Genus” includes species:

“Species of plant variety” means any genus specified in the First Schedule to these regulations.

(2) Unless expressly defined for the purposes of these regulations, terms and expressions defined in the Act shall, when used in these regulations, have the meanings defined in the Act.

### PART I

#### PLANT VARIETIES OFFICE REQUIREMENTS

**3. Date of application or document**—Any application made to or document filed with the Registrar under the Act shall be deemed to have been made or filed when it is received in the Plant Varieties Office.

**4. Rectification of errors, omissions, and irregularities**—(1) Any document delivered to the Registrar relating to any matter arising under the Act or under these regulations may, with the consent of the Registrar and on application by the person delivering the document, be amended and any irregularity of procedure rectified upon payment of the prescribed fee and under such terms, if any, as the Registrar may specify, and thereupon no proceeding shall be invalidated in consequence of any error, omission, or irregularity so rectified.

(2) The Registrar may rectify any error, omission, or irregularity contained in any document of the Plant Varieties Office.

(3) Where rectification of any error, omission, or irregularity under subclause (1) or subclause (2) of this regulation may affect the interests of a third party under the Act or these regulations, the Registrar shall notify details of the rectification in the *Gazette*.

**5. Loss or destruction of document**—Where the Registrar is satisfied that any document issued by him has been lost or destroyed he may issue a duplicate thereof to the person entitled thereto on payment of the prescribed fee.

**6. Fees**—The fees payable under these regulations shall be those prescribed in the Second Schedule to these regulations.

**7. Details in register of plant varieties**—(1) The register of plant varieties kept by the Registrar for the purposes of subsection (3) of section 20 of the Act shall, in relation to each grant, include the following and such additional details as the Registrar may determine:

(a) The name of the grantee and his address for service in New Zealand:

(b) The date of the application:

(c) The date of the grant:

(d) The period of the grant (including any extended period):

(e) The date of the expiry, lapse, or termination of the grant:

(f) The species to which the plant variety belongs:

(g) The denomination of the plant variety:

(h) Reference to the record kept of distinctive features of the variety:

(i) Details of any compulsory licence issued under subsection (2) of section 23 of the Act:

(j) Details of any revocation or notification of the grant:

(k) Details of any assignment or transmission of the grant.

(2) A grantee who has changed his name or address for service shall notify the Registrar in writing, to enable the Registrar to amend the register.

**8. Public inspection**—(1) The register of plant varieties shall be open to public inspection during the hours fixed in accordance with subsection (2) of section 5 of the Act and notified in the *Gazette*.

(2) The Registrar may, on request, supply a copy of any entry in the register on payment of the prescribed fee.

## PART II

## APPLICATION FOR GRANT OR PROTECTIVE DIRECTION

**9. Form of application—**(1) An application for a grant, or for a protective direction under section 18 of the Act, shall be—

- (a) In the English language; and
  - (b) In the form set out in the Third Schedule to these regulations, or in a form provided by the Registrar for the purpose, or in a form acceptable to the Registrar.
- (2) The application shall be accompanied by the prescribed fee.

**10. Denomination of variety—**(1) The denomination submitted in an application for a grant or protective direction under subclause (1) of regulation 9 of these regulations shall—

- (a) Be denoted by one designation only; and
- (b) Conform to international usage for the nomenclature of cultivated plants; and
- (c) Not be the same as, or likely to be confused with, any trade mark.

(2) The Registrar may at any time request the Commissioner of Trade Marks to search his records under subclause (1) of regulation 103 of the Trade Marks Regulations 1954\*.

(3) Where a variety has already been submitted for registration or registered in another country, only the denomination under which the variety has been registered in that country shall be accepted by the Registrar, unless he decides that the denomination is unsuitable in New Zealand for linguistic or other reasons.

(4) The Registrar may accept temporarily or reject any denomination submitted in an application for a grant or protective direction where, in his opinion, the denomination does not comply with the provisions of subclauses (1) and (3) of this regulation.

(5) The Registrar may accept a breeder's reference as a temporary denomination while a protective direction is in force.

(6) The Registrar shall notify the applicant in writing of a rejection of denomination under subclause (4) of this regulation and request him to submit an alternative denomination.

**11. Gazette notice of application—**(1) The Registrar shall, after he has acknowledged receipt of an application,—

- (a) Notify receipt of the application in the *Gazette* stating—
  - (i) The name and address of the applicant;
  - (ii) The date of receipt of the application for the grant or protective direction;
  - (iii) The species of plant variety;
  - (iv) The denomination submitted;
  - (v) The breeder's reference, where available;
  - (vi) The date of the grant of protective direction, if applicable; and
- (b) Notify the applicant in writing of any protective direction granted.

(2) In addition to the provisions of subclause (1) of this regulation, the Registrar may publish such other information as he thinks fit.

**12. Lapse or withdrawal of application for grant**—(1) An application for a grant shall lapse if the applicant fails to comply with any requisition of the Registrar within one year from the date of the requisition or such extensions of time as the Registrar may grant.

(2) Any request to withdraw an application for a grant shall be in writing addressed to the Registrar.

**13. Withdrawal of protective direction**—(1) Except where the grantee of a protective direction has applied for withdrawal, the Registrar shall in all other cases notify the grantee of a protective direction in writing of any proposal to withdraw the protective direction.

(2) The Registrar shall notify withdrawal of a protective direction in the *Gazette*.

**14. Objection**—When any person wishes to lodge an objection pursuant to section 19 of the Act the objection shall be lodged in writing and shall be accompanied by the prescribed fee.

### PART III

#### PROCEDURE FOLLOWING APPLICATION FOR GRANT

**15. Test growing trials**—(1) Before making a grant the Registrar may require the applicant to pay the prescribed fee, and—

(a) To have the variety test grown by the applicant himself under such conditions, at such locations, and over such periods as the Registrar may specify in writing, or by an appropriate organisation, or a Government or national testing authority in New Zealand or overseas under terms and conditions acceptable to the Registrar, including the provision of test trial reports; or

(b) To supply, for the purpose of such trials,—

(i) Such additional information, diagrams, coloured photographs or slides, records, and illustrations; and

(ii) Such reproductive and other plant material as the Registrar may require, on such conditions and from such sources in New Zealand or overseas as the Registrar may determine.

(2) Where independent trials have been conducted overseas and where test reports acceptable to the Registrar are available from other national authorities in a language other than English the cost of translating the reports shall be met by the applicant.

**16. Notice of grant**—The Registrar shall notify the applicant in writing of the proposed grant and the term and conditions thereof, and upon receipt of the fee prescribed for the purposes of this regulation the Registrar shall publish in the *Gazette* the following details of the grant:

- (a) The name and address for service of the grantee;
- (b) The species to which the plant variety belongs;
- (c) The denomination of the plant variety to which the grant relates;
- (d) The breeder's reference where available;
- (e) The date on which the grant was made;
- (f) The term of the grant.

**17. Renewal fees**—A renewal fee at the rate prescribed in the Second Schedule to these regulations shall be paid annually in respect of each grant not later than one month after the last anniversary of the date of the grant or the expiration of such further period as the Registrar may permit.

**18. Extension of term of grant**—(1) An application for the extension of the term of a grant shall be in writing delivered to the Registrar.

(2) Every application shall give reasons therefor, and shall be accompanied by the prescribed fee.

(3) The Registrar shall advise the grant holder of his decision in writing and, by notice in the *Gazette*, publish details of any extension that is approved.

**19. Surrender of grant**—(1) An application offering to surrender a grant shall be in writing delivered to the Registrar.

(2) The Registrar shall publish receipt of the application by notice in the *Gazette*, which notice shall allow one calendar month for persons to lodge objections to the proposed surrender.

(3) Any objection to an application offering to surrender a grant shall be in writing addressed to the Registrar and shall be accompanied by the prescribed fee.

(4) The Registrar shall not terminate a grant until he has considered any objection to a proposed surrender thereof and given the objector and the grantee a reasonable opportunity to be heard.

(5) The Registrar shall notify the grantee in writing of his acceptance of the surrender of the grant and the date of the termination of the period of the grant, and shall, by notice in the *Gazette*, publish his acceptance and the date of the termination of the grant.

**20. Revocation of grant**—(1) The Registrar shall notify the grantee in writing of any decision made under any of the provisions of subsections (1), (2), and (3) of section 24 of the Act.

(2) The Registrar shall, by notice in the *Gazette*, publish the date of revocation of a grant.

## PART IV

### COMPULSORY LICENCES

**21. Application for licence**—(1) An application made pursuant to subsection (2) of section 23 of the Act for the issue of a compulsory licence shall be made in writing to the Registrar.

(2) An application shall give reasons for the request, and shall be accompanied by the prescribed fee.

(3) The Registrar shall notify the grantee of the application for a compulsory licence, and shall give the applicant and the grantee a reasonable opportunity to be heard thereon.

(4) The registrar shall send the grantee a copy of any licence issued pursuant to subsection (2) of section 23 of the Act.

**22. Notice of compulsory licence**—The Registrar shall, by notice in the *Gazette*, publish the following details of any compulsory licence issued under subsection (2) of section 23 of the Act:

- (a) The name and address of the licensee:
- (b) The name and address of the grantee:
- (c) The genus of the plant variety to which the compulsory licence relates:
- (d) The denomination of that plant variety:
- (e) The period of the licence.

**23. Variation or revocation of licence**—(1) An application to extend, limit, or vary in any other respect, or revoke, a compulsory licence shall be made in writing to the Registrar, and shall be accompanied by the prescribed fee.

(2) The decision of the Registrar shall be notified in writing to the applicant, licensee, or grantee, as the case may be, and shall be published by notice in the *Gazette*.

## PART V

### MISCELLANEOUS PROVISIONS

**24. Application by an agent**—When an application for a grant is made by or through a patent attorney or other agent, the patent attorney or agent shall satisfy the Registrar that he has the necessary authority to act for the applicant.

**25. Application by a successor in title**—When an application for a grant is made by a person claiming to be a successor in title of a breeder, it shall be accompanied by the assignment, the original or an official copy of the grant of administration within the meaning of the Administration Act 1969, or such other documentary evidence as, in the opinion of the Registrar, is sufficient to establish the title of the applicant.

**26. Execution of documents**—When an application for a grant or other communication to the Registrar is completed by—

- (a) An individual person, it shall be signed by him:
- (b) A partnership, it shall be signed by all the partners or by one of them on behalf of the partnership:
- (c) A registered company, it shall be signed by a director, or the secretary or other principal officer of the company authorised to sign on behalf of the company:
- (d) An incorporated society, Government department, or other organisation, it shall be signed by a person satisfying the Registrar that he is qualified to do so.

## SCHEDULES

Reg. 1 (3)

## FIRST SCHEDULE

## PLANT VARIETIES TO WHICH THESE REGULATIONS APPLY

<i>Common Name</i>	<i>Genus</i>	<i>Test Trial Requirements</i>
Rose	<i>Rosa L.</i>	Quantities: Bush variety—6 trees Shrub variety—6 trees Climbing Variety—2 trees Quality: (a) First quality, visually healthy, maiden (or 2-year-old trees at the discretion of the Registrar): (b) Plants typical of the variety.

Reg. 6

## SECOND SCHEDULE

## LIST OF FEES PAYABLE

Item	Regulation	Amount \$
1 Rectification of errors and irregularities	4 (1)	5
2 Issue of duplicate document	5	5
3 Copies of entries in register of plant varieties	8 (2)	1 per page of register
4 Application for grant	9 (2)	50
5 Application for protective direction	9 (2)	10
6 Objection to application for grant	14	25
7 Test trial fees—per annum		
(a) Trials by applicant	15 (1)	25
(b) Independent trials in New Zealand	15 (1)	50
(c) Independent trials overseas	15 (1)	75
(d) Independent trials overseas where test reports acceptable to the Registrar are available from other national authorities	15 (1)	25
8 Notice of grant	16	10
9 Annual renewal fee in respect of grant or extended grant	17	15
10 Application for extension of term of grant	18 (2)	25
11 Objection to surrender of grant	19 (3)	15
12 Application for compulsory licence	21 (2)	50
13 Application to extend, limit, vary, or revoke a compulsory licence	23 (1)	20

## THIRD SCHEDULE

Reg. 9 (1)

FORM OF APPLICATION FOR GRANT OF PLANT SELECTORS' RIGHTS  
OR PROTECTIVE DIRECTION

The Registrar,  
Plant Varieties Office,  
Ministry of Agriculture and Fisheries,  
P.O. Box 2298,  
WELLINGTON.

**Particulars of applicant**

1. Name and address of applicant.
2. Capacity in which application is made.
3. Address for service in New Zealand if different from address last mentioned.
4. Name and address of breeder or discoverer if different from applicant.

**Details of Plant Variety**

5. Species to which the plant variety belongs.
6. Country and locality therein in which the variety was bred or discovered.
7. Details of parentage.
8. Indicate whether variety is a natural or induced mutation.
9. Botanical description and features of the variety.
10. Distinctive characteristics:
  - (a) Nearest known variety or varieties of the same species:
  - (b) Distinctive characteristics claimed in relation to last-mentioned variety or varieties.
11. Breeder's reference (if any).
12. Proposed denomination.
13. Other information.

**Previous Sales of the Variety Outside New Zealand**

14. Country.
15. Date of first sale or offer for sale.
16. Terms and conditions of sale.
17. Has the breeder or discoverer given his consent to the sale(s) in the country/countries on the date(s) specified:
  - (a) Yes/No
  - (b) Comments.

**Applications Outside New Zealand**

18. If application for plant selectors' rights for the variety has been made outside New Zealand, show:

Country: .....

Date of application: .....

Denomination applied for: .....

Denomination granted: .....

Whether rights have yet been granted: Yes/No.

Where rights have not been granted indicate stage application has reached or if application has been declined: .....

If application has been declined, state reason: .....



THIRD SCHEDULE—*continued*

19. If trials of the variety have been held before the lodging of this application, show:

Place of trial: ..... Country: .....

Date trial commenced: ..... Date completed: .....

Name of Testing Authority: .....

Address of Testing Authority: .....

20. Either—

(a) Attach copies of trial reports; or

(b) State where reports can be obtained—

Name: .....

Address: .....

**Bulking up of Stock for Sale when Grant is made**

21. (a) Name of contractor

(b) Address

**Supporting Diagrams and Photographs**

22. Diagrams of the variety (2 sets required, minimum size 200 mm × 200 mm per diagram).

23. Coloured photographs of the variety (2 sets required, minimum size 200 mm × 200 mm per photograph) or coloured slides.

**Technical Description**

24. A technical description of the variety must be attached to this application. Forms setting out the details required are available from the Plant Varieties Office.

**Certification**

25. I/We certify that to the best of my/our belief the statements made in this application are correct and that the plant variety the subject of this application has not previously been sold in New Zealand.

I/We apply for plant selectors' rights and enclose the prescribed fee.

Signature of applicant(s): .....

Date: .....

**Protective Direction (To be completed if required)**

26. I/We request that a protective direction be given in respect of the plant variety covered by this application and enclose the prescribed fee. I/We undertake that no plants of the plant variety, and no material forming part thereof, will be offered or exposed for sale in New Zealand by me/us, with my/our consent, in the period between the making of this application and the time when it is finally determined whether the application for plant selectors' rights is to be allowed or refused, or until this undertaking ceases to be binding under the Act, whichever event first occurs.

Signature of applicant(s): .....

Date: .....

P. G. MILLEN,  
Clerk of the Executive Council.

## EXPLANATORY NOTE

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations relate to the operation of the Plant Varieties Office, grants of plant selectors' rights, protective grants, and compulsory licences.

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Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 12 June 1975.

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