

# S.I. No. 23/1981 □ Plant Varieties (Proprietary Rights) Regulations, 1981.

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I, RAY MACSHARRY, Minister for Agriculture, in exercise of the powers conferred on me by sections 4, 11, 12, 15, 21 and 25 and paragraph (d) of article 2 of the First Schedule to the Plant Varieties (Proprietary Rights) Act, 1980 (No. 24 of 1980), hereby make the following regulations:

1. These Regulations may be cited as the Plant Varieties (Proprietary Rights) Regulations, 1981.

2. In these Regulations □

"the Act" means the Plant Varieties (Proprietary Rights) Act, 1980 (No. 24 of 1980);

"the Minister" means the Minister for Agriculture.

3. (1) An application for a grant of plant breeders' rights shall be made on a form supplied by the Controller and shall be delivered to the Controller and be accompanied by the prescribed fee.

(2) Where an application for plant breeders' rights is made by a person claiming to be the successor in title to the breeder or discoverer of the plant variety to which the application relates, the applicant shall produce to the Controller for inspection by him, within such period as the Controller shall specify, the assignment or a copy thereof, the original or an official copy of a grant of probate or letters of administration, or such other documentary evidence as is, in the opinion of the Controller, sufficient to establish the title of the applicant.

(3) Any person making any application for a grant of plant breeders' rights shall give to the Controller, within such period as the Controller shall specify (being a period of not less than twenty-one days), such reproductive and other plant material, in such quantity and of such description and quality, as the Controller may reasonably require.

(4) The Controller may require a person making an application for plant breeders' rights to furnish to him such information regarding tests and trials in connection with the plant variety which is the subject of the application as he may reasonably require.

(5) the Controller may require an applicant for plant breeders' rights, for the purpose of enabling the application to be disposed of, to make or cause to be made available to the Controller facilities for the inspection or examination, by him or on his behalf and in relation to the application, of plants, plant material, trial grounds or other land, or anything used for the purpose of or in connection with the breeding, production or propagation of plants.

4. (1) An applicant for a grant of plant breeders' rights shall, when so required by the Controller and within such time as he may direct, select a name for the plant variety in respect of which his application is made.

(2) The Controller may accept a name for entry in the register if, and only if, in his opinion the name complies with such of the guidelines as, in his opinion, are relevant in the particular case.

(3) Where an application is made for the grant of plant breeders' rights, any person may, within the period of sixty days beginning on the date of publication in the Journal, pursuant to section 19 (1) (b) of the Act, of the name proposed by the applicant, by a notice in writing and given to the Controller object to the name selected for the plant variety to which the application relates on the ground that it is unsuitable.

(4) Where the Controller rejects a name selected for a plant variety, he shall inform the applicant of the grounds upon which it was rejected and require him to select, within such time as he may direct, another name for the plant variety.

(5) In this Regulation "the guidelines" means the guidelines adopted by the International Union for the Protection of New Varieties of Plants (which union is in Regulation II of, and column (1) of the Fourth Schedule to these Regulations referred to as "UPOV") and set out in the First Schedule to these Regulations.

5. Any application

( a ) for a compulsory licence under section 8 of the Act or for the extension, limitation or other amendment, or for the revocation, of such a licence,

( b ) for an extension under section 9 of the Act,

( c ) to surrender under section 10 of the Act, a grant of plant breeders' rights,

or

( d ) for the registration of title under section 17 of the Act,

shall be made in writing, be delivered to the Controller and be accompanied by the prescribed fee (if any).

6. (1) Any person making an application under any provision of the Act shall furnish to the Controller such information or other evidence and produce or deliver to him such deeds, licences, records, illustrations, or other documents as he may reasonably require from time to time.

(2) Where any application or document is submitted to the Controller in a language other than the Irish language or the English language, he may require that such application or document be accompanied by a translation thereof attested to the satisfaction of the Controller, and in case the Controller makes a requirement under this paragraph, the applicant shall ensure that the translation supplied pursuant to the requirement is both complete and accurate.

7. (1) Where a person proposes to withdraw an application made under section 4, 9, 10, 17, 21 or 22 of the Act, he shall inform the Controller in writing of the proposal.

(2) Any person who objects to, or who proposes to make representations to the Controller as regards, a withdrawal mentioned in paragraph (1) of this Regulation shall, not later than sixty days after the publication in the Journal, pursuant to section 19 (1) (a) of the Act, of notice of the application to withdraw, give to the Controller notice in writing of the objection or proposal.

8. Each of the catalogues specified in the Second Schedule to these Regulations is hereby prescribed for the purposes of paragraph (d) of Article 2 of the First Schedule to the Act.

9. (1) There are hereby prescribed for the purposes of section 25 of the Act the fees specified in the Fifth Schedule to these Regulations in respect of the matters so specified.

(2) Where the Controller finds it expedient either

( a ) to have tests and examinations of a plant variety carried out other than by the Minister, or

( b ) to have access to the findings of a test or examination of a plant variety carried out other than by the Minister,

the applicant shall be liable for the actual costs and expenses thereby incurred by the Controller.

(3) In case there is a failure to pay any fee payable in connection with an application under the Act, the Controller is hereby authorised to refuse the application.

10. (1) The maximum period to be specified in a grant of plant breeders' rights as being that in which the plant breeders' rights thereby granted are to be exercisable in respect of a plant variety which is of a species specified in column (1) of the Third Schedule to these Regulations shall be the period of years specified in column (2) of that Schedule opposite the mention of that species.

(2) The period within which an appeal under section 11 (3) of the Act may be taken is the period of three months beginning on the day on which the relevant grant of plant breeders' rights is revoked by the Controller.

(3) For the purposes of paragraph (d) of Article 2 of the First Schedule to the Act the period of four years is hereby prescribed in relation to every plant variety which is of a species specified in column (1) of the Third Schedule to these Regulations.

11. (1) Each of the species specified in the Third Schedule to these Regulations is hereby specified for the purposes of section 4 of the Act.

(2) For the purposes of section 12 of the Act two or more plant varieties shall be regarded as being within the same class if they are each a plant variety of any of the genera or species specified in column (2) of the Fourth Schedule to these Regulations opposite a particular UPOV class specified in column (1) of that Schedule.

12. (1) An application under section 21 of the Act to the High Court shall be by motion made *ex parte*.

(2) The general notice referred to in section 11 (2) (a) (i) (II) of the Act shall be published in the Journal.

## FIRST SCHEDULE

Guidelines referred to in Regulation 4

*Article 1*

- (1) A variety shall be designated by only one denomination.
- (2) If a variety has already been submitted for registration or registered in a member state of the Union, only the denomination under which the variety has been registered in that State can be accepted in the other Member States unless the authority which has to decide on the new application considers the denomination unsuitable for linguistic or other reasons.

#### *Article 2*

The denomination must make it possible to identify the new variety without risk of confusing a purchaser of average attentiveness.

#### *Article 3*

- (1) The denomination must consist of one to three words with or without a pre-existing meaning, easy to pronounce and to remember and capable of being used as the generic name of the variety.
- (2) Figures to a maximum of 4 may be included in a denomination if they have a meaning in connection with the word or words they refer to.
- (3) A denomination may not be formed by substituting figures for other figures included in a denomination already in use, or by adding figures to a denomination or by omitting figures from it.
- (4) Where a variety is exclusively used for the production of propagating material of other varieties, its denomination may also be formed by combining letters and figures, provided that in the opinion of the competent authorities such combinations are established international custom for the species concerned.

#### *Article 4*

A denomination may not embody any element which, on expiration of the term of protection of the variety, would prevent or hamper the free use of such denomination, or would prevent the free commercialisation of the variety.

#### *Article 5*

The denomination must in particular not

- (1) be liable to deceive or cause confusion as to the origin, derivation, characteristics or value of the variety or identity of the breeder;
- (2) refer solely to attributes which are also common to other varieties of the species concerned;
- (3) be liable to give offence;
- (4) be unsuitable for linguistic reasons.

#### *Article 6*

The denomination may not consist of the botanical or common name of a species or genus; neither may it include the botanical or common name of a species or genus where this is likely to deceive or to cause confusion.

*Article 7*

The denomination must not be the same as that of any other variety belonging to a species of the same class as prescribed in the appendix, nor so nearly resemble it as to be likely to deceive or to cause confusion.

*Article 8*

The denomination must not suggest that the variety concerned is derived from or related to an other variety when this is not the case.

*Article 9*

The denomination must not include words such as "variety", "cultivar", "form", "hybrid" and "cross" or translations of such words.

*Article 10*

A new variety may not be given a denomination which has been applied previously to a variety belonging to a species of the same class as prescribed in the appendix if, according to a national authority, the old variety is still in cultivation or its denomination still of particular importance.

SECOND SCHEDULE

Catalogues

The National Catalogue of Vegetable Varieties.

The Common Catalogue of Varieties of Agricultural Plant Species of the European Communities.

The Common Catalogue of Varieties of Vegetable Species of the European Communities.

The national catalogue of any state, other than the State, which for the time being stands certified by the Controller as being in his opinion of a standard which is fit to be compared to that of the National Catalogue of Agricultural Plant Varieties.

THIRD SCHEDULE

(1)		(2)
Species		Period of years for which rights are exercisable
Name	Common Name	
Triticum aestivum L. emend. Fiori et Paol.	<input type="checkbox"/> Wheat	15
Avena sativa L.	<input type="checkbox"/> Oats	15
Hordeum vulgare L.	<input type="checkbox"/> Barley	15

Lolium perenne L.	<input type="checkbox"/> Perennial Ryegrass	20
Trifolium repens L.	<input type="checkbox"/> White Clover	20
Solanum tuberosum L.	<input type="checkbox"/> Potatoes	20

#### FOURTH SCHEDULE

(1)	(2)
UPOV Class number	Genera or species
1.	Avena, Hordeum, Secale, Triticum.
4.	Agrostis, Alopecurus, Arrhenatherum, Bromus, Cynosurus, Dactylis, Festuca, Lolium, Phalaris, Phleum, Poa, Trisetum.
7.	Medicago, Ornithopus, Onobrychis, Trifolium.
21.	Solanum tuberosum L.

#### FIFTH SCHEDULE

##### *Part I*

Fee payable on an application for a grant of plant breeders' rights. 100

##### *Part II*

Fees payable in respect of tests and examinations carried out by the Minister of a plant variety which is the subject of an application for a grant of plant breeders' rights.

Tests and examinations for which payable	Amount
	<input type="checkbox"/>
( a ) Tests and examinations in first year of a testing cycle	200
( b ) Tests and examinations in any one subsequent year of a testing cycle.	200

##### *Part III*

Periodical fees payable as regards rights granted under section 4 of the Act.

As regards second year of the period during	As regards third year of the period during	As regards fourth year of the period during	As regards fifth year of the period during	As regards sixth year of the period during	As regards seventh and each subsequent year of the
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which the rights are exercisable	which the rights are exercisable	which the rights are exercisable	which the rights are exercisable	which the rights are exercisable	period during which the rights are exercisable
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
100	110	120	130	140	150

*Part IV*

Fees payable in respect of matters other than the foregoing

Matter	Amount
	<input type="checkbox"/>
The grant of Plant breeders' rights in respect of any plant variety.	<input type="checkbox"/> 50.00
Application for an extension of the period for which plant breeders' rights are exercisable.	25.00
The grant of an extension of the period for which plant breeders' rights are exercisable.	25.00
Application for the approval of a substituted name for a plant variety.	15.00
Application for a compulsory licence.	10.00
Application under section 21 of Act for the amendment of the register of plant varieties, except in a case where the plant breeders' rights are transferred to an other person.	10.00
Application under section 22 of Act to correct register of plant varieties.	10.00
Application for registration of title under section 17 of Act.	15.00
Supplying a copy of a grant of plant breeders' rights or of an extension of the period for which plant breeders' rights are exercisable.	5.00
Supplying a copy of an entry in the register.	5.00

GIVEN under my Official Seal, this 22nd day of January, 1981.

RAY MACSHARRY,

Minister for Agriculture.

EXPLANATORY NOTE

The Regulations which implement certain provisions of the Plant Varieties (Proprietary Rights) Act, 1980 prescribe:

(1) the manner in which applications are to be made for the grant of plant breeders' rights, compulsory licences, extension of the period for the grant of rights, surrender of rights, registration of title, withdrawal of applications and refusal of applications;

(2) the fees to be charged by and payable to the Controller of Plant Breeders' Rights in respect of applications, tests, rights granted and other matters provided for in the Act;

(3) the particulars of applications and of decisions made by the Controller and information about other matters which are to be published in the Journal to be issued periodically by the Controller;

(4) the provisions for the selection of names for plant varieties in respect of which rights may be granted;

(5) the crop species to which the grant of rights under the Act applies viz. wheat, oats, barley, perennial ryegrass, potatoes and white clover.