

Statutory Document No. 2016/0314



Plant Varieties Act 1997

PLANT BREEDERS' RIGHTS (NAMING AND FEES) (ISLE OF MAN) REGULATIONS 2016¹

Approved by Tynwald: 15 November 2016
Coming into Operation: 1 December 2016

The Department of Environment, Food and Agriculture makes the following Regulations under sections 18(1) and (2), 28, 29 and 48(1)(b) of the Plant Varieties Act 1997.

1 Title

These Regulations are the Plant Breeders' Rights (Naming and Fees) (Isle of Man) Regulations 2016.

2 Commencement

If approved by Tynwald, these Regulations come into operation on 1 December 2016.

3 Interpretation

In these Regulations —

“**the 1997 Act**” means the Plant Varieties Act 1997;

“**the 2016 Regulations**” means the Plant Breeders' Rights (Isle of Man) Regulations 2016¹;

“**plant breeders' rights**” means rights which may be granted in accordance with Part I of the 1997 Act.

4 Selection of names for plant varieties

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

¹ SD 2016/0315

- (2) The Controller shall not accept a name proposed in pursuance of paragraph (1) or (3) unless he is satisfied that the name is suitable, having regard to the criteria for determining the suitability of a variety denomination in –
 - (a) paragraphs 2, 3 and 4 of Article 63 of Council Regulation (EC) No. 2100/94 of 27 July 1994 on Community plant variety rights as last amended by Council Regulation (EC) No. 873/2004 of 29 April 2004; and
 - (b) the detailed rules for the application of certain of those criteria in Articles 2 to 6 of Commission Regulation (EC) No. 930/2000 of 4 May 2000 establishing implementing rules as to the suitability of the denomination of varieties of agricultural plant species and vegetable species as amended by Commission Regulation (EC) No. 1831/2004 of 21 October 2004.
- (3) If the Controller does not accept a name proposed for a plant variety in accordance with paragraph (2) he shall inform the applicant of the reason for its rejection and require that the applicant propose within such time as the Controller may specify another name for the plant variety.
- (4) Any person may object to the name proposed for a plant variety as being unsuitable, on the basis of the EU provisions referred to in paragraph (2), and may make representations to the Controller within such time as the Controller shall specify in the notice of his proposed decision to allow an application for the grant of plant breeders' rights published by him in accordance with regulation 6(1) of the 2016 Regulations.
- (5) Before accepting a name for a plant variety the Controller shall consider any representations which are made to him in accordance with paragraph (4).
- (6) If an applicant for a grant of plant breeders' rights fails to propose a name in accordance with the requirements of this regulation the Controller shall not be obliged to take any further steps in relation to the application until those requirements (except as regards the time allowed for compliance) have been complied with.
- (7) If, after the service by the Controller on the applicant of a notice informing him of the consequences of a continued failure to comply with any requirement of this regulation, the applicant has not complied with such requirement, within such time, not being less than 14 days, specified in the notice, the application shall be deemed to have been abandoned.
- (8) An applicant for a grant of plant breeders' rights or a holder of plant breeders' rights may at any time propose to the Controller a name for the plant variety in respect of which the application is made or plant breeders' rights have been granted in substitution for the name already proposed or accepted for that plant variety and, if the Controller is satisfied that the

name proposed is suitable having regard to the EU provisions referred to in paragraph (2) —

- (a) he shall publish in the gazette and in such manner as appears to him to be necessary or desirable a notice of that proposed name;
- (b) any person may object to the name as being unsuitable, having regard to the EU provisions referred to in paragraph (2), and may make representations to the Controller within such time as the Controller shall specify in the notice published under subparagraph (a); and
- (c) before accepting the name, the Controller shall consider any representations that are made to him.

(9) In this regulation —

“**name**” includes any designation; and

“**the gazette**” means the gazette published under section 34 of the Plant Varieties and Seeds Act 1964.

5 Payment of fees

- (1) The Controller may charge any person a fee in respect of costs the Controller reasonably incurs in —
 - (a) carrying out tests on or examination of a plant variety which is the subject of an application for a grant of plant breeders' rights or having such tests or examinations carried out on his behalf; or
 - (b) purchasing a report of a test or examination for such a plant variety from an authority in another country, whose functions include the testing of plant varieties.
- (2) The Controller may charge any person a fee in respect of costs the Controller reasonably incurs in the administration of plant breeders' rights for a plant variety including in relation to —
 - (a) an application for the grant of plant breeders' rights;
 - (b) an application for a compulsory licence;
 - (c) an application to extend, limit, vary or revoke a compulsory licence;
 - (d) making representations to the Controller as provided for in the 1997 Act or in the 2016 Regulations;
 - (e) attending to be heard by the Controller or by a person appointed by him; and
 - (f) the examination or inspection of any documents, records or material.
- (3) The Controller shall specify the date on which a fee shall be due.

- (4) If a fee has not been paid by the date specified under paragraph (3), the Controller is not obliged to take any further steps in relation to the matter in respect of which the fee is payable until the fee has been paid.
- (5) If a fee payable under regulation 4(1)(a) or 4(2)(a) remains unpaid after the expiry of 28 days beginning with the date of service by the Controller on the applicant of a notice informing him that continued failure to pay the fee may result in his application being refused, the Controller may refuse the application.

MADE 17 OCTOBER 2016

ENDNOTES

Table of Endnote References

¹ The format of this legislation has been changed as provided for under section 75 of, and paragraph 2 of Schedule 1 to, the Legislation Act 2015. The changes have been approved by the Attorney General after consultation with the Clerk of Tynwald as required by section 76 of the Legislation Act 2015.