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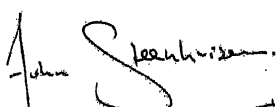
## DEPARTMENT OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT

NO. 6302

13 June 2025

**PLANT BREEDERS' RIGHTS ACT, 2018 (ACT No. 12 OF 2018)****REGULATIONS MADE IN TERMS OF THE PLANT BREEDERS' RIGHTS ACT**

I, J Steenhuisen, Minister of Agriculture, has, in terms of section 54 of the Plant Breeders' Rights Act, 2018 (Act No. 12 of 2018), made the regulations in the Schedule.



**MR J STEENHUISEN**  
MINISTER FOR AGRICULTURE

**SCHEDULE***Definitions*

1. In these regulations, unless the context otherwise indicates, regulations means the regulations made in terms of section 54 of the Plant Breeders' Rights Act, 2018 (Act No. 12 of 2018), published under Government Notice No. R.511 of 29 March 2019; and

"**Director-General**" means the Director-General of the department responsible for Agriculture;

"**DUS test**" means Distinctness, Uniformity and Stability test

"**Household consumption**" includes own use of non-edible agricultural products.

"**section**" means a section of the Act;

"**special edition**" means an edition of the Plant Variety Journal published annually, with a list of valid plant breeders' rights as at the end of that particular year.

"**the Act**" means the Plant Breeders' Rights Act, 2018 (Act No. 12 of 2018).

"**UPOV**" means the International Union for the Protection of New Varieties of Plants.

**"UPOV code"** means the abbreviation of the scientific name of a kind of plant in accordance with the International Union for the Protection of New Varieties of Plants (UPOV) system

**"withdrawal of application"** means voluntary withdrawal of an application by the applicant or agent whilst the application is still under consideration and before a decision could be made on the application.

## REGISTER OF PLANT BREEDERS' RIGHTS

### *Register of plant breeders' rights*

2 (1) The register of varieties referred to in section 4 of the Act must contain the following information:

- (a) the denomination of each variety and any approved amendment thereof, including the date of such amendment;
- (b) breeder's reference, where available;
- (c) the name of the applicant for each variety;
- (d) the country code for the country of origin of the variety;
- (e) the name of the person who has been appointed as the local agent;
- (f) the kind of plant for each variety indicating the scientific and common name;
- (g) the UPOV code for the kind of plant for each variety;
- (h) the application number and filing date for each variety;
- (i) Plant Variety Journal number and publication date on which a PBR application was published for each variety;
- (j) the date on which an application for a plant breeder's right is withdrawn or rejected;
- (k) the grant number and date on which the plant breeder's right was granted for each variety;
- (l) Plant Variety Journal number and publication date on which a plant breeder's right granted has been published for each approved variety;
- (m) Plant Variety Journal number and publication date on which a plant breeder's right application has been withdrawn, lapsed or rejected, or a plant breeder's right granted has been terminated;
- (n) duration of the plant breeder's right Sole Right Period and the expiry date thereof for each variety;
- (o) duration of plant breeder's right period (PBR period) and the expiry date thereof for each variety;
- (p) the date on which a plant breeder's right was terminated and the reason thereof and such other particulars as the Registrar may deem necessary, subject to the provisions of the Act.

- (2) The fee specified in item 1 of Table 1 shall be payable by a person requesting inspection of the register of plant breeders' rights.

*Inspection of documents*

3 (1) Any person requiring to inspect a document in terms of section 6(1) must -

- (a) make an appointment for such inspection with the Registrar
- (b) pay the fee specified in item 2 of Table 1, and furnish proof of payment thereof to the Registrar

(2) Any person requiring a copy of a document in terms of section 6(2) must -

- (a) apply in writing to the Registrar, and
- (b) pay the fee specified in item 3 of Table 1, and furnish proof of payment thereof to the Registrar.

(3) For the purposes of section 6(3)(c) no person other than the persons listed in section 6(4) may inspect or be furnished with a copy of any correspondence between the Registrar and the applicant, pertaining to the granting or refusal of a plant breeder's right.

## PLANT BREEDERS' RIGHT

*Duration of a Plant Breeder's Right and Sole Right period*

4 (1) The period of duration of a plant breeder's right in terms of section 8 shall be granted

- (a) for a period of 30 years in the case of fruit trees, vines, sugar cane and potatoes as specified in Table 2;
- (b) for a period of 25 years for all other crops,

calculated from the date on which a certificate of registration is issued in terms of section 28(b).

4 (2) Sole right periods in terms of section 9 of the Act for each kind of plant shall be granted

- (a) for a period of 8 years in the case of fruit trees, vines, sugar cane and potatoes as specified in Table 2;
- (b) for a period of 5 years for all other crops,

calculated from the date on which a certificate of registration is issued in terms of section 28(b).

(3) The Registrar must amend Table 2 upon receiving an application for a new kind of fruit tree and vine not listed in the Table at the time of lodging such an application within 30 days of receiving an application.

*Exceptions to plant breeder's right*

5 (1) A plant breeder's right shall not be infringed by a farmer who, within reasonable limits and subject to the safeguarding of the legitimate interests of the breeders, uses the propagating material of the protected variety in accordance to subregulation (3).

(2) For the purposes of section 10(2)(i) farmers are categorised into the following categories:

- a) *Household Farmer (Vulnerable):* a farmer that produces primarily for household consumption and has limited resources and skills to operate a market-oriented production system. This category includes child headed households, and households producing in communal land and commonages that are registered as indigents or meet the criteria for registration as indigents with their municipality.
- b) *Household Farmer (Subsistence) :* a farmer that produces primarily for household consumption. These farmers are not or would not be classified as indigents by their municipalities. They may market limited surplus production with an annual turnover of less than **R50 000**.
- c) *Smallholder Farmer:* a farmer or entity that produces (at primary, secondary, and tertiary levels) for household consumption and markets, therefore, farming is consciously undertaken in order to meet the needs of the household and derive a source of income. These are usually the new entrants aspiring to produce for the market at a profit with a maximum annual turnover **ranging from R50 001 to R1 million per annum**.
- d) *Medium Scale Commercial Farmer:* a an individual or entity that that produces and sell agricultural commodities for the purpose to make a profit. These are established enterprises producing for market to make a profit with an annual turnover ranging from **R1 000 001 – R10 million**). They are eligible for VAT registration and requires a water use licence authorization in terms of the relevant national legislation.
- e) *Large Scale Commercial Farmer:* an individual or entity that produces and sells agricultural commodities for the purpose of making a profit These are established enterprises producing for market to make a profit with an annual turnover ranging from **R10 000 001 – R50 million**. They are eligible for VAT registration and requires a water use licence authorization in terms of the relevant national legislation.

- f) *Mega/Corporate Farmer*: an individual or entity that produce and sells agricultural commodities for the purpose to make a profit. These are established enterprises producing for the market to make a profit with an annual turnover **above R50 million**. They are eligible for VAT registration and requires a water use licence authorization in terms of the relevant national legislation.

(3) A plant breeder's right shall not be infringed by:

- (a) A farmer included in subregulation (2)(a) and (b), who produces protected varieties for the kinds of plants listed in regulation 6 and save on their own holding, or exchange within categories in subregulation (2)(a) and (b) for propagating purposes the product of the harvest which they have obtained by planting, on their own holding the propagating material of such protected varieties.
- (b) A farmer included in subregulation (2)(c) who produces quantities of protected varieties for the kinds of plants listed in regulation 6 and save for propagation purposes, on their own holding, the product of the harvest which they have obtained by planting, on their own holding the protected variety of a kind of plant listed in regulation 6.
- (c) A farmer who produces quantities of protected varieties for the kinds of plants listed in regulation 6 in excess of the prescribed maximum quantities, and save for propagation purposes, on their own holding, the product of the harvest which they have obtained by planting, on their own holding the protected variety of a kind of plant listed in regulation 6 provided that such a farmer:
  - (aa) has legitimately obtained propagating material of the protected plant variety concerned;
  - (bb) notifies, in writing, the breeder or the holder of the plant breeder's right of the protected variety concerned as to the volumes of saved propagating material thereof;
  - (cc) pays the breeder or the holder of the breeders' right of the protected variety concerned a reasonable remuneration for using the saved propagating material thereof, in compliance with market conditions, an amount which is equivalent to a reasonable royalty for the purchased propagating material of the same variety in the Republic and the remuneration payable shall be agreed upon by the breeder or holder of the plant breeder's right and the farmer in a written licence agreement in accordance to section 34; and
  - (dd) preserves the identity of the protected variety at all times by clearly indicating on the label of any container containing saved propagating material of a protected variety the following information:
    - i) name of the kind of plant (crop);

- ii) variety denomination (name) approved in terms of the Act; and
- ii) name and address of the producer of the propagating material.

(4) The exception to a plant breeder's right in terms of section 10(1)(d) does not apply to:

- a) a farmer included in subregulation (2)(d) (e) and (f);
- b) protected varieties of ornamental plants; and
- c) any protected varieties of any kind of plant not listed under regulation 6.

6. The categories of plants on which section 10(2)(a)(ii) applies are listed below.

Categories of plants	Maximum seed produced per year per protected variety
<b>CATEGORY A: AGRICULTURAL AND VEGETABLE CROPS</b>	
<i>Allium cepa</i> L. (onion)	100g
<i>Arachis hypogea</i> L. (Groundnut)	50kg
<i>Avena sativa</i> L. (Oats)	50Kg
<i>Brassica oleracea</i> L. convar. <i>capitata</i> (L.) Alef. (Cabbage)	1000g
<i>Citrullus lanatus</i> (Thunb.) Matsum. & Nakai (Watermelon)	150g
<i>Colocasia esculenta</i> (L.) Schott (Taro, amadumbe)	50 000 tubers
<i>Cucumis melo</i> L. (Sweet melon)	100g
<i>Cucurbita maxima</i> Duchesne (Pumpkin)	100g
<i>Cucurbita moschata</i> Duchesne (Squash, butternut)	100g
<i>Cucurbita pepo</i> L. (Squash, zucchini, vegetable marrow)	100g
<i>Eleusine corocana</i> (L.) Gaertn. (Finger millet)	10kg
<i>Glycine max</i> (L.) Merr. (conventional Soy bean)	40kg
<i>Helianthus annuus</i> L. (Sunflower)	3kg
<i>Ipomoea batatas</i> (L.) Lam (Sweet potato)	25 000 tubers
<i>Lagenaria siceraria</i> (Molina) Standl. (Calabash)	100g
<i>Manihot esculenta</i> Crantz (Cassava)	25 000 tubers
<i>Pennisetum glaucum</i> (L.) R.BR. (Pearl millet)	15kg
<i>Phaseolus vulgaris</i> L. (Garden bean)	15 000g
<i>Solanum lycopersicum</i> L. (Tomato)	100g
<i>Solanum tuberosum</i> L. (Potato)	25 000 tubers
<i>Sorghum bicolor</i> (L.) Moench subsp. <i>bicolor</i> . (Sorghum)	20kg
<i>Triticum aestivum</i> L. subsp. <i>aestivum</i> . (Wheat)	25kg
<i>Triticum turgidum</i> L. subsp. <i>durum</i> (Desf.) van Slageren. (Durum wheat)	25kg
<i>Vigna radiata</i> (L.) Wilczek (Mungbean)	25kg
<i>Vigna subterranea</i> (L.) Verdc. (Jungo beans)	25kg
<i>Vigna unguiculata</i> L. Walp. (Cowpea)	25kg
<i>Zea Mays</i> L. (Conventional white and yellow maize)	12kg

<i>Zea mays</i> L. var. <i>saccharata</i> (Sturtev.) L.H.Bailey (Sweet corn)	1kg
Category B FRUIT CROPS	
All species as reflected in the Plant Breeders' Rights register maintained in terms of section 4 of the Act	05 per kind

*Transfer of a plant breeder's right*

- 7(1) The holder of a plant breeder's right must in terms of section 13 notify the Registrar of the transfer of a right or any part thereof to another person by submitting a duly completed form obtainable from the office of the Registrar.
- (2) The original signed form referred to in subregulation (1) must be mailed, couriered or hand delivered to the office of the Registrar:
- (a) within 30 days from the date on which the plant breeder's right concerned, or the portion thereof was transferred; and
  - (b) be accompanied by proof of payment for the fee specified in Item 4 of Table 1
- (3) If a person to whom a plant breeder's right or a portion thereof was transferred wants to appoint an agent, they must within 30 days of the transfer, notify the Registrar by submitting a duly completed form obtainable from the office of the Registrar

**APPLICATION FOR GRANT OF A PLANT BREEDER'S RIGHT***Appointment and substitution an agent*

- 8 (1) An applicant for the grant of a plant breeder's right in terms of section 16 of the Act must, if appointing an agent, submit to the Registrar a duly completed form obtainable from the office of the Registrar.
- (2) An applicant who is not domiciled and resident of the Republic of South Africa can only submit an application through an agent, and must inform the Registrar of an appointment of such an agent by submitting a duly completed form referred to in subregulation (1).
- (3) The original signed form referred to in subregulations (1) must be submitted together with an application for a grant of a plant breeder's right.
- (4) In the event where an applicant or a holder of plant breeder's right substitutes an appointed agent, the applicant or holder must notify the Registrar of such a substitution by submitting a duly completed form obtainable from the office of the Registrar within 30 days of the appointment of the new agent.
- (5) A duly completed and signed original form must be mailed, hand delivered or couriered to the office of the Registrar.



*Submission of an application and payment of application fees for a plant breeder's right*

9 (1) An applicant or agent must submit an original signed application with accompanying documents in terms of section 16(1) by mail or couriered or hand delivered to the office of the Registrar.

(2) In order to obtain a filing date, copies of the application and accompanying documents may be sent electronically to the Registrar, following which original documents must be submitted within three months in a manner described in subregulation (1).

(3) The application fee payable in terms of section 16 is specified in item 5 of Table 1.

(4) Application fees paid for applications that are subsequently withdrawn, rejected or lapsed are non-refundable.

*Voluntary withdrawal of an application for a plant breeder's rights*

10 (1) A notice by the applicant of a plant breeder's right of a withdrawal of an application for a plant breeder's right submitted in terms of section 16 must be furnished to the Registrar on a form obtainable from the office of the Registrar.

(2) A duly completed and signed form must be sent electronically, mailed, hand delivered or couriered to the office of the Registrar.

*Priority and redating of applications*

11 (1) In order for the Registrar to give priority for an application in accordance to section 17, the applicant or agent must:

- (a) upon payment of application fees specified in item 6 of Table 1, submit proof of payment to the Registrar.
- (b) within three months of submission of an application in terms of section 17(1)(a), mail, hand deliver or courier the documents specified in section 17 (2) of the Act to the Registrar.

*Provisional protection*

12 (1) Publication of particulars of an application for a plant breeder's right in a Plant Variety Journal published in terms of Section 40 is considered to constitute a notification of provisional protection as contemplated in section 18(4).

*Amendment of an application*

13 (1) An applicant or agent may apply for an amendment to the application for a plant breeder's right in accordance with section 21 in a relevant form obtainable from the office of the Registrar.

(2) Duly completed and signed original forms for the following amendments must be mailed, hand delivered or couriered to the office of the Registrar:

- (a) amendment of an applicant of a plant breeder's right
- (b) substitution of an agent
- (c) amendment of the holder of a plant breeder's right
- (c) amendment of a variety denomination
- (d) any other applicable amendment as deemed necessary and agreed upon with the Registrar.

3) The fee payable for amendment of an application is specified in item 7 of Table 2.

*Objection to application for grant of plant breeder's right*

14(1) Any person, may within 60 days of the publication of particulars in respect of an application made in accordance to section 16 in a Plant Variety Journal, lodge an objection with the Registrar in accordance to section 22 (1).

(2) Notwithstanding subsection (1) such an objection must be lodged before a plant breeder's rights for the variety concerned is granted, as granting of a plant breeder's right constitutes a decision of the Registrar of which an appeal may be lodged in accordance to section 41.

(3) The documentation for the objection may be sent electronically, mailed, hand delivered or couriered to the office of the Registrar, and such an objection must:

- a) state the name and address of the person objecting;
- b) state the kind of plant and the denomination of the variety in question;
- c) state the publication date of the Plant Variety Journal in which the particulars of the application of the variety concerned were published;
- d) state the grounds for the objection, substantiated by such proof as may be deemed necessary;
- e) be accompanied by the proof of payment for the fee specified in item 8 of Table 1.

4) If the applicant decides to lodge a counterstatement in accordance to section 22 (3), such a counterstatement must:

- a) be sent electronically or mailed, hand delivered or couriered to the office of the Registrar within 60 days of receiving the notification of the objection from the Registrar; and

- b) provide detailed responses to the grounds for the relevant objection, substantiated by such proof as may be deemed necessary.

## VARIETY DENOMINATIONS

### *Denomination of variety*

15.(1) The applicant must propose a variety denomination in accordance to section 23 of the Act and such denomination must –

- (a) be suitable to identify the variety concerned;
- (b) be the same as submitted in all convention countries for the same variety;
- (c) be different from known denominations of any existing varieties of the same or a closely related kind of plant in any other country;
- (d) be in line with relevant international practices such as UPOV prescripts;
- (e) not be used more than once in the same variety denomination class. A list of the denomination classes is available from the office of the Registrar upon request;
- (f) not be such as to be liable to mislead or to lead to confusion concerning the characteristics, value, geographical origin, or identity of the variety in question or the identity of the breeder thereof;
- (g) subject to the provisions of sub regulation (2) not be identical with or similar to, or liable to lead to confusion with a mark which enjoys the protection accorded thereto by the Trade Marks Act, 1963 (Act No. 62 of 1963); and
- (h) not be against public order or contrary to morality.

(2) Notwithstanding anything to the contrary contained in these regulations-

- (a) a mark referred to in sub-regulation (1)(g) may only be approved as a denomination for a variety if the applicant concerned submits documentary proof that the holder of the mark concerned renounces his or her right to such mark as from the date of filing an application for a plant breeder's right for the variety concerned; and
- (b) the denomination approved by the Registrar for a variety in respect of which protection has been granted, or an application for protection has been lodged with the appropriate authority in a convention country in accordance with the laws in force in that country, must be the same as the denomination thus protected or thus applied for in such country, on condition however that the provision of sub paragraph (a) is complied with and that a priority claim on such denomination is not proved by another person.

(3) If the Registrar finds that a proposed denomination does not satisfy the requirements of sub regulation (1), the Registrar must within 14 days of receipt of the application request the applicant in writing to propose an alternative denomination.

(4) The applicant must within 30 days from the date of request propose an alternative denomination using Form 4A obtainable from the office of the Registrar.

(5) The duly completed and signed form must be mailed, hand delivered or couriered to the office of the Registrar.

*Amendment of denomination*

16(1) A request for an amendment of the approved variety denomination in terms of section 24(3) must-

- (a) be in accordance to the provisions of regulation 15 above; and
- (b) be submitted to the Registrar by the applicant using a form obtainable from the office of the Registrar.

(2) A duly completed, signed original form, accompanied by the proof of payment for the fee specified in item 9 of Table 1 must be mailed, hand delivered or couriered to the office of the Registrar.

(3) If the Registrar intends to approve the amendment of the denomination, the particulars specified in Table 3 in respect thereof must be published in accordance with regulation 25.

(4) The documentation for the objection of an approved variety denomination in terms of section 24(5) may be sent electronically or mailed, hand delivered or couriered to the office of the Registrar, and such an objection must:

- (a) be lodged with the Registrar in writing within 60 days from the date on which the particulars thereof were published in terms of section 40 of the Act;
- (b) state the name and address of the person objecting;
- (c) state the kind of plant and the denomination of the variety in question;
- (d) state the publication date of the Plant Variety Journal in which the particulars of the application of the variety concerned were published.;
- (e) state the grounds for the objection, substantiated by such proof as may be deemed necessary; and
- (f) be accompanied by the proof of payment for the fee specified in item 10 of Table 1.

(5) The Registrar must within 14 days of the receipt of an objection -

- (a) notify the applicant concerned in writing of the objection, and
- (b) provide the applicant with a copy of the objection.

(6) The applicant may lodge with the Registrar a counter statement against the objection within 30 days of receipt of the notification.

(7) In considering the objection, the Registrar may request that further information be furnished by either party as may be deemed necessary.

(8) After considering all the evidence, the Registrar must make a decision and thereafter, in writing, inform the person objecting and the applicant concerned of his or her decision and of the grounds on which it is based.

(9) If an objection is upheld, the applicant must propose another denomination and if approved, the Registrar must publish particulars thereof in accordance with section 40.

(10) If no objection was lodged against an approved variety denomination or in cases where an objection lodged was not upheld, the variety denomination published in terms of subregulation (3) will be considered an approved denomination for the variety concerned.

#### *Marking of labels and containers*

17 (1) Any propagating material of a variety in respect of which a plant breeder's right has been granted, which is being sold for the purposes of propagation or for any other purpose must on each container have a clear and legible label in terms of section 25 and such label must contain the:

- (a) scientific and common names of the kind of plant concerned;
- (b) denomination (name) of the variety approved in terms of the Act for the variety concerned;
- (c) words "protected by plant breeders' rights", followed by the registration number, if the variety concerned has already been granted a plant breeder's right;
- (d) words "application for a plant breeder's right", followed by an application number if the variety concerned has an application submitted and pending the Registrar's decision for the granting of a plant breeder's right; and
- (e) trade name and/or registered trademark where applicable

(2) Labels for harvested material sold for any purpose other than propagation must at least contain the approved variety denomination and an indication on whether the variety is an application for, or protected by a plant breeder's right as reflected in subregulation (1)(c) and (d).

## EXAMINATION OF VARIETY AND GRANT OF A PLANT BREEDER'S RIGHT

### *Submission of material and payment of examination fees for tests and trials*

18 (1) An applicant or agent must provide material for tests and trials in accordance to section 26 to the Registrar in the following manner:

- (a) in the case of potatoes, trees and vines, the required amount of plant material must be made available for tests and trials within 5 years from the filing date and the applicant or agent must deliver the material to the office of the Registrar or inform the Registrar of the location of the material as applicable;
- (b) in the case of all other crops, the required amount of plant material must be delivered to the office of the Registrar within 24 months from the filing date; and
- (c) The specific of amounts of material to be submitted is obtainable from the office of the Registrar.

(2) The examination fees payable in terms of section 16 is payable in the year that the material is made available for tests and trials and the fee payable is specified in Item 11 of Table 1.

(3) Upon payment of examination fees, the applicant or agent must submit proof of payment to the office of the Registrar.

(4) The examination fees paid for the tests and trials are non-refundable where:

- a) the variety concerned was subsequently refused for granting of a plant breeder's right in terms of section 27; and
- b) the applicant or an agent withdraws an application at any point before the conclusion of tests and trials for the variety concerned.

(5) In cases where a variety has been approved for National Listing in terms of the Plant Improvement Act, 2018 (Act No. 11 of 2018), and an application for a plant breeder's right for the same variety is submitted by the same applicant in terms of section 16 within one year of approval for National Listing, the Registrar may take over results of DUS test and trials conducted for National Listing.

(6) If the Registrar takes over results of DUS test and trials for National Listing in terms of subregulation (5), no examination fees are payable by the applicant in terms of this Act.

(7) In cases where DUS results for tests and trials are taken over from a Plant Breeders' Rights authority of another country in accordance with section 50, the applicant or agent must:

- (a) pay the examination fee to the Plant Breeders' Rights authority of the providing country and furnish the Registrar with proof of payment thereof;
- (b) furnish the Registrar with propagating material of the variety concerned where applicable and upon request by the Registrar.

*Application for extension to submit material for tests and trials*

19.(1) An applicant or agent who did not furnish the Registrar with material for tests and trials within the prescribed period in accordance to section 26 must:

(a) apply to the Registrar for an extension not exceeding the initial period stipulated in sub section 18(1) above on a form obtainable from the Registrar; and

(b) in the event of imported material, the application must be accompanied with import and shipping documents or a sworn affidavit as proof that the plant material has been imported into the Republic.

(2) A duly completed and signed form, accompanied by the sworn affidavit where applicable, must be sent electronically, mailed, hand delivered or couriered to the office of the Registrar.

## OBJECTIONS

### *Hearing of an objection*

20.(1) The procedure at the hearing of an objection in terms of section 29 is as follows:

- (a) parties must submit their evidence to the Registrar and exchange same between themselves within seven days of the date of receipt of notification of the hearing from the Registrar.
- (b) at the hearing, the Registrar or their representative will chair the proceedings, and provide the Secretariat services for the recording thereof.
- (c) all parties or their representatives will be allowed to call witnesses during the hearing and to cross-examine other witnesses;
- (d) the onus rests with each party to notify his or her witnesses of the date, place and time of the hearing and to ensure their presence at the hearing;
- (e) the person who lodged the objection or their representative will be allowed to present his or her case first and to call witnesses; and
- (f) the person who holds the plant breeder's right against which an objection is lodged, or their representative, will then be allowed to present his or her case and to call witnesses.

(2) The Registrar may when considering the matter at the hearing utilize one or more of the persons contemplated in section 42 to assist and advise with regard to the hearing of the objection.

(3) After hearing all the evidence, the Registrar must within 21 days consider the evidence and reach a decision, and in writing advise all parties concerned of his or her decision and of the grounds on which it is based.

(4) The Registrar must make copies of the proceedings to the parties concerned within 14 days of the finalisation of the matter.

(5) If the decision of the Registrar requires any amendment to the application of a plant breeder's right or of any matter published in accordance to section 40 such amendments must be duly published.



## OBLIGATIONS OF THE HOLDER OF A PLANT BREEDER'S RIGHT

### *Payment of annual fees*

21 (1) An applicant or agent must, upon receipt of an annual fee invoice from the Registrar, pay annual fees in accordance to section 30 for a plant breeder's right that has been granted in terms of section 28.

(2) The annual fees payable are specified in item 14 of Table 1, and the proof of payment thereof must be sent electronically or mailed, hand delivered or couriered to the office of the Registrar.

(3) An annual fee for each plant breeder's right granted is payable for the duration of the plant breeder's right in question, failure of which will lead to the cancellation of that plant breeder's right in accordance with section 38 (1)(d)(ii).

## LICENCES

### *Application for compulsory licences*

22 (1) An application for the issuing of a compulsory licence in terms of section 35 of the Act must be submitted to the Registrar on a form obtainable from the office of the Registrar.

(2) A duly completed and signed form accompanied by the proof of payment for the fee specified in item 15 of Table 1 must be sent electronically or mailed, hand delivered or couriered to the office of the Registrar.

### *Hearing of application for compulsory licence*

23 .(1) The procedure at the hearing of a compulsory licence in terms of section 36 of the Act must be as follows:

- (a) parties must submit their evidence to the Registrar and exchange same between themselves within seven days of the date of receipt of notification of the hearing from the Registrar.
- (b) at the hearing, the Registrar or their representative will chair the proceedings, and provide the Secretariat for the recording thereof.
- (c) all parties or their representatives will be allowed to call witnesses during the hearing and to cross-examine other witnesses;
- (d) the onus rests with each party to notify his or her witnesses of the date, place and time of the hearing and to ensure their presence at the hearing;
- (e) the person who applied for the compulsory license or their representative will be allowed to present his or her case first and to call witnesses; and



(f) the person who holds the plant breeder's right of which a compulsory license is sought, or their representative, will then be allowed to present his or her case and to call witnesses.

(2) The Registrar may when considering the matter at the hearing utilize one or more of the persons contemplated in section 42 to assist and advise with regard to the hearing of the objection.

(3) After hearing all the evidence, the Registrar must within 21 days consider the evidence and reach a decision, and in writing advise all parties concerned, of his or her decision and of the grounds on which it is based.

(4) The Registrar must make copies of the proceedings to the parties concerned within 14 days of the finalisation of the matter.

(5) If the decision of the Registrar requires any amendment to the application of a plant breeder's right or of any matter published in accordance to section 40 of the Act, such amendments must be duly published.

## TERMINATION OF A PLANT BREEDER'S RIGHT

### *Voluntary surrender of a plant breeder's right*

24 (1) A notice by the holder of a plant breeder's right of a surrender of their plant breeder's right in terms of section 39 must be submitted to the Registrar on a form obtainable from the office of the Registrar.

(2) A duly completed and signed form, accompanied by the original certificate issued in respect of the plant breeder's right concerned, must be mailed, hand delivered or couriered to the office of the Registrar.

## PLANT VARIETY JOURNAL

### *Matters to be published in the Plant Variety Journal*

25 (1) The Registrar must publish the particulars specified in Table 3 in respect of the following in the Plant Variety Journal referred to in section 40-

- (a) registration of an application for the grant of a Plant Breeder's Right;
- (b) withdrawal, lapsing and rejection of an application for a Plant Breeder's Right;
- (c) decisions relating to the granting or refusal of a Plant Breeder's Right;
- (d) amendment of applicant;
- (e) amendment of agent;

- (f) transfer of a Plant Breeder's Right;
- (g) intention to amend an approved variety denomination;
- (h) amendment of an approved variety denomination;
- (i) expiry of a Plant Breeder's Right;
- (j) cancellation of a Plant Breeder's Right;
- (k) surrender of a Plant Breeder's Right; and
- (l) any other matter as deemed necessary

(2) The Registrar must publish the Plant Variety Journal on a quarterly basis, within 30 days of the end of the quarter :

- (a) by notice in the Government Gazette
- (b) publication on the website of the Department;
- (c) electronic circulation to relevant stakeholders; and
- (d) as applicable, by notice in at least two (2) newspapers circulating nationally or through other means of effective communication.

(3) A Special Edition of the Plant Variety Journal, listing only valid Plant Breeders' Rights, must be published on an annual basis as in subregulation 2(a), (b), (c) and (d) with the following particulars:

- (a) kind of plant
- (b) variety denomination
- (c) name of applicant
- (d) name of agent
- (e) grant number
- (f) grant date
- (g) expiry date

(4) A publication date of the Plant Variety Journal is the date on which the notification thereof is published in the Government Gazette in terms of subregulation 2(a).

## APPEALS

### *Right to appeal*

26 (1) An appeal in terms of sections 41, 42, 43 and 44 must –

- (a) be lodged through the Director-General in writing within 60 days from the publication of the decision or action concerned in terms of regulation 25;
- (b) state the Plant Variety Journal number and the publication date thereof;

- (c) state the kind of plant, the variety denomination and the application number or registration number of the variety for which such a decision or action was taken;
- (d) state the grounds on which the appeal is based; and
- (e) be accompanied by the fee specified in item 16 of Table 1.

(2) The contact details of the Director-General, to which the appeal documentation must be mailed, hand delivered or couriered, may be obtained upon request from the office of the Registrar located within the department.

## REMUNERATION OF PERSONS APPOINTED IN TERMS OF THE ACT

27 (1) A person who is appointed in terms of :

- a) section 29 (3) of the Act, for hearing of an objection;
- b) section 36 (2) of the Act, for hearing of application for and issue of a compulsory licence; and
- c) section 42 (1) of the Act for consideration of an appeal,

and who is not employed in the public service, must be remunerated according to the Manual for the Application of the System for the Administration of the Service Benefit Packages for Office-bearers of Certain Statutory and other Institutions.

(2) A member of the Advisory Committee appointed in terms of section 46 must receive subsistence and travelling allowance as determined by National Treasury regulations, and in accordance to the department's prescripts.

## GENERAL PROVISIONS

### *Request for DUS test and trials results by authority of another country*

28 (1) The Registrar may in terms of section 50 provide to an appropriate authority the DUS test results derived from tests and trials undertaken in terms of section 26 upon payment of the fee specified in item 17 of Table 1.

(2) The DUS tests and trials results will not be provided to any person other than the Plant Breeder's Right Authority of the requesting country.

TABLE 1

## FEES PAYABLE IN TERMS OF THE PLANT BREEDERS' RIGHTS ACT, 2018 (ACT NO. 12 OF 2018)

No.	Purpose	Amount  (will be determined upon consultation with the Minister of Finance)
1.	Inspection of the register of plant breeders' right [Reg. 2(2)]	
2.	Inspection of a document submitted to the registrar in connection with an application for the grant of a plant breeders' right [Reg. 3(1)(b)]	
3.	A copy of any particulars in the register or of a document submitted to the registrar in connection with an application for the grant of a plant breeders' right [Reg. 3(2)(b)]	
4.	Notice of the transfer of a plant breeders' right [Reg. 7(2)(b)]	
5.	An application for the grant of a Plant Breeder's Right [Reg. 9(3)]	
6.	A claim to give priority in terms of section 17 of the Act to an application for the grant of the plant breeders' right [Reg. 11(1)(a)]	
7.	Amendment of an application [Reg. 13(3)]	

8.	An objection to the grant of a plant breeder's right [Reg. 14(3)(e)]	
9.	An application for the alteration or supplementation of the denomination approved for a variety [Reg. 16(2)]	
10.	An objection against the intended approval of an alteration or supplementation of the denomination approved for a variety [Reg. 16(4)(f)]	
11.	Examination fee for a plant breeder's right: All kinds of plants [Reg.18(2)]	
12.	Examination fee for a variety of which a plant breeder's right application is submitted within one year of approval of the same variety for National Listing in terms of the Plant Improvement Act, 2018 (Act No. 11 of 2018) [Reg. 18(5)]	
13.	Obtaining of results of tests and trials in the event that such test and trials are undertaken by another appropriate authority in another country [Reg 18(7)]	
14.	Annual fee for a plant breeders' right [Reg. 21]]	
15.	An application for the issue of a compulsory licence in respect of a plant breeders' right [Reg. 22(2)]	
16.	Submission of appeal against any decision or action taken by the registrar in terms of the Act [Reg.26(1)(e)]	
17.	Provision of results of tests and trails undertaken by the registrar, to the appropriate authority in a requesting country [Reg 28(1)]	

TABLE 2

**DURATION OF PLANT BREEDERS' RIGHTS AND SOLE RIGHT PERIODS FOR FRUIT TREES AND VINES, UNDER THE PLANT  
BREEDERS' RIGHT ACT, 2018 (ACT NO. 12 OF 2018)**

1		2	3
Kind of plant			
Botanical name	Common name	Period of plant breeder's right (years)	Period of sole right (years)
<i>Actinidia Lindley</i> (All spp.)	Kiwifruit	30	8
<i>Ananas comosus</i> (L.) Merrill	Pineapple	30	8
<i>Carica papaya</i> L.	Pawpaw	30	8
<i>Carya illinoensis</i> (Wangenh.) K. Koch	Pecan nut	30	8
<i>Citrus</i> L. (All spp.)	Sweet orange, Lemon, Grapefruit, Loose skin citrus types, Other citrus (Bitter Seville, Lime) Pumelo	30	8
<i>Corylus</i> L. (All spp.)	Hazelnut	30	8
<i>Cydonia</i> Mill. (All spp.)	Quince	30	8
<i>Ficus</i> L.	Fig tree	30	8
<i>Fortunella</i> Swingle	Kumquat	30	8
<i>Fragaria x ananassa</i> Duchesne	Strawberry	30	8
<i>Hylocereus</i> (A. Berger) Britton & Rose (All spp.)	Dragon fruit	30	8
<i>Juglans</i> L. (All spp.)	Walnut	30	8
<i>Litchi chinensis</i> Sonn.	Litchi	30	8
<i>Macadamia</i> F. Mueller (All spp.)	Macadamia	30	8
<i>Malus</i> Mill. (All spp.)	Apple	30	8
<i>Mangifera indica</i> L.	Mango	30	8
<i>Musa acuminata</i> Colla	Banana	30	8
<i>Olea</i> L. (All spp.)	Olive	30	8
<i>Opuntia ficus indica</i> (L.) Mill. (only spineless cultivars, sweet prickly pear)	Sweet prickly pear	30	8
<i>Passiflora</i> L. (all spp. Excluding <i>P. caerulea</i> L., <i>P. mollissima</i> (Kunth) L.H. Bailey, <i>P. suberosa</i> L. and <i>P. subpeltata</i> Ortega)	Passion flower	30	8
<i>Persea americana</i> Mill.	Avocado	30	8
<i>Pistacia</i> L. (All spp.)	Pistachio	30	8

1		2	3
Kind of plant			
Botanical name	Common name	Period of plant breeder's right (years)	Period of sole right (years)
<i>Prunus amygdalus</i> Batsch. [See <i>Prunus dulcis</i> (Mill.) D. Webb]			
<i>Prunus armeniaca</i> L.	Apricot	30	8
<i>Prunus avium</i> (L.) L.	Sweet cherry	30	8
<i>Prunus cerasifera</i> Ehrh.	Cherry plum, Myrobalan plum	30	8
<i>Prunus cerasus</i> L.	Sour cherry	30	8
<i>Prunus domestica</i> L.	European plum	30	8
<i>Prunus dulcis</i> (Mill.) D. Webb (= <i>Prunus amygdalus</i> Batsch)	Almond	30	8
<i>Prunus laurocerasus</i> L.	Cherry laurel	30	8
<i>Prunus persica</i> (L.) Batsch	Peach	30	8
<i>Prunus persica</i> (L.) Batsch var. <i>nucipersica</i> Schneid.	Nectarine	30	8
<i>Prunus salicina</i> Lindl.	Japanese plum	30	8
<i>Psidium guajava</i> L.	Guava	30	8
<i>Punica granatum</i> L.	Pomegranate	30	8
<i>Pyrus</i> L. (All spp.)	Pear	30	8
<i>Ribes</i> L. (All spp.)	Currant, Gooseberry	30	8
<i>Rubus</i> L. (All spp.)	Bramble, Raspberry	30	8
<i>Sclerocarya birrea</i> (A. Rich.) Hochst. subsp. <i>caffra</i> (Sond.) Kokwaro	Marula	30	8
<i>Vaccinium</i> L. (All spp.)	Blueberry, Cranberry	30	8
<i>Vitis</i> L.	Table Grape	30	8
<i>Vitis vinifera</i> L.	Wine grape	30	8
<i>Ziziphus jujube</i> Mill.	Jujube	30	8

TABLE 3

**MATTERS TO PUBLISHED IN TERMS OF THE PLANT BREEDERS' RIGHTS ACT, 2018 (ACT  
NO. 12 OF 2018)**

No.	Subject of publication	Particulars to be published
1.	Change of ownership of an approved variety [sec 13, reg 25(1)(f)]	Kind of plant (scientific and common name)  Approval number  Approval date  Variety denomination or approved amendment thereof  Name of previous holder  Name of new holder  Name of agent  Portion transferred where applicable  Date of amendment
2.	Registration of an application for plant breeders' rights [sec 16; reg 9 ]	Kind of plant (scientific and common name)  Application number (PT number)  Approved variety Denomination  Name of applicant  Country of origin of the variety  Name of agent  Filing Date of application
3.	Rejection of an application for plant breeders' rights [sec 19; reg 25(1)(b)]	Kind of plant (scientific and common name)  Application number (PT number)  Name of applicant  Name of agent  Variety denomination or approved amendment thereof  Rejection date



4.	Amendment of the agent [sec 21; reg 13]	Kind of plant (scientific and common name)  Application or Approval number  Name of applicant  Variety denomination or approved amendment thereof  Name of previous agent  Name of new agent  Date of amendment
5.	Amendment of the applicant [sec 21; reg 25(1)(e)]	Kind of plant (scientific and common name)  Application number (PT number)  Application date  Variety denomination or approved amendment thereof  Name of previous applicant  Name of new applicant  Name of agent  Date of amendment
6.	Intention to amend an approved variety denomination [sec 24, reg 25(1)(g)]	Kind of plant (scientific and common name)  Application or Approval number  Name of applicant  Name of agent  Previous denomination  Proposed alternative denomination
7.	Approval or rejection of a request to amend a variety denomination [sec 24, reg 25(1)(h)]	Kind of plant (scientific and common name)  Application or Approval number  Name of applicant  Name of agent  Previous denomination

		Approved alternative denomination (if approved) denomination Date of amendment
8.	Refusal for plant breeders' rights [sec 27; reg 25(1)(c)]	Kind of plant (scientific and common name) Application number (PT number) Name of applicant Name of agent Variety denomination or approved amendment thereof Refusal date
9	Approval for plant breeders' rights [sec 28; reg 25(1)(c)]	Kind of plant (scientific and common name) Application number (PT number) Variety denomination or approved amendment thereof Name of applicant Name of agent Grant number Approval date
10.	Expiry of a plant breeder's right [sec 37, reg 25(1)(i)]	Kind of plant (scientific and common name) Grant number Grant date Variety denomination or approved amendment thereof Name of applicant Name of agent Expiry date
11.	Cancellation of a plant breeder's right [sec 38, reg 25(1)(j)]	Kind of plant (scientific and common name) Grant number Grant date Variety denomination or approved amendment thereof

		Name of applicant Name of agent Cancellation date
12.	Surrender of a plant breeder's right [sec 39, reg 25(1)(k)]	Kind of plant (scientific and common name) Grant number Grant date Variety denomination or approved amendment thereof Name of applicant Name of agent Surrender date
13.	Withdrawal of an application for plant breeders' rights [sec 40; reg 10]	Kind of plant (scientific and common name) Application number (PT number) Name of applicant Name of agent Variety denomination or approved amendment thereof Withdrawal Date
14.	Lapsing of an application for plant breeders' rights [sec 40; reg 25(1)(b)]	Kind of plant (scientific and common name) Application number (PT number) Name of applicant Name of agent Variety denomination or approved amendment thereof Lapsing date