



Intellectual Property Information Sheet

Plant Variety Rights

What are Plant Variety Rights?

Plant Variety Rights ("PVR") (also known as Plant Breeders Rights) offer protection to plant breeders for sui generis i.e., one of a kind varieties of plants, under the Plant Varieties Act 1997 ("the Act"). All types of plant (generic and specific) can be protected. As the holder of PVR protection, a plant breeder is entitled to prevent anyone from doing the following without authorisation:-

- production or reproduction;
- conditioning for the purpose of propagation;
- offering for sale;
- selling or other marketing;
- exporting;
- importing;
- stocking for any of the purposes mentioned above; and
- any other act that may be prescribed by the Act.

PVRs granted under the Act provide the plant breeder with protection of his/her plant variety in the UK. It is also possible to obtain a Community Plant Variety Right ("CPVR"), covering the European Union. However, an applicant should consider from the outset whether they require its plant variety to be protected in the UK or the European Union, as CPVRs (explained in more detail below) and PVRs cannot exist simultaneously. It would therefore prove to be a costly and unnecessary process to obtain protection in the UK and then subsequently apply for EU-wide protection shortly afterwards, if EU-wide protection had originally been sought at the outset.

The Criteria for obtaining a PVR

For a plant variety to qualify for protection, the Act states that it must be:-

- **New** – the plant variety must not have been commercially exploited (i.e. sold or disposed of) in the UK within one year, or four years in any other territory (increased to six years for trees and vines), prior to the application for registration.
- **Distinct** – a plant variety is deemed distinctive if it is clearly distinguishable by one or more characteristics which are capable of a precise description from any other variety whose

existence is a matter of common knowledge at the time of the application.

A variety is commonly known if:

1. it is, or has been, the subject of a plant variety right in any country;
 2. it is, or has been, entered in an official register (i.e. National List) of plant varieties in any country; or
 3. a successful application for Plant Breeders' Rights or entry in an official register.
- **Uniform** - Uniformity is determined on the basis of the occurrence of the characteristics that make a variety distinct. This is subject to an allowance for variations in those characteristics caused by external factors.
 - **Stable** – the distinctive quality in the plant remains unchanged when the plant is repeatedly propagated.

Registration Procedure

The first step is to file an application with the relevant office. In the UK this is the UK Plant Variety Office ("PVRO") in Cambridge.

The application includes:-

- The name of the breeder.
- The botanical taxon of the variety.
- A provisional designation of the variety.
- A suggested permanent name of the variety.
- A technical description of the variety.
- The geographical origin of the variety.
- Details of any previous commercialisation.
- Information about other applications for registration concerning the variety.
- A colour photograph if colour is a distinctive characteristic.
- The application fee. The application fee is dependent upon the variety of plant submitted to the PVRO. For more information see www.defra.gov.uk.

Once the application is received, seed/plant material of the variety will be requested for official tests designed to assess whether it meets the criteria for registration as set out above. This is known as a "DUS Test".

The DUS tests are carried out by a number of organisations and in most cases will take one year for ornamental varieties, a minimum of three years for herbage varieties and trees, and two years for other species. The applicant will be notified if difficulties arise resulting in test taking longer than anticipated.

You must supply an approved name for the variety with the application, if a name is not submitted within the time specified; the PVRO is not obliged to take any further steps in relation to the application until a name is proposed.

Who owns a PVR?

The person who bred or discovered and developed the variety is the person entitled to the PVR (i.e. the owner). If a person breeds a variety, or discovers and develops it in the course of his employment, then the employer is entitled to the grant of rights. The breeder may however assign, (i.e. transfer), the rights in the variety to another person or company and thus forfeit any future claim on the variety. If rights are assigned to another person or company, written evidence of the transfer of the PVR from the breeder is required.

Duration of a PVR

PVRs are granted for a term of 25 years for all species except trees, vines and potatoes, which have a period of 30 years.

Community Plant Variety Rights

Protection for PVRs granted under the Act only extends to within the UK. CPVRs were created by Council Regulation (EC) No 2100/94 and have, since 1995, afforded plant breeders protection for their rights throughout the European Union.

The protection offered under a CPVR is identical to that for PVRs (stated above) and the criteria for granting the right is very similar.

Application Process

Applications for CPVRs can be made either directly to the Community Plant Variety Office ("CPVO") in Angers, France or it can be submitted via the PVRO. If an application is made using the latter option, the PVRO will simply act as a 'letter box' for the application process and will not actually become involved in the application process.

The application process is largely similar to obtaining a PVR with the identity of the breeder, a proposed denomination, the submission of a technical questionnaire (which the applicant may request be treated as confidential) and the submission of a colour photograph being required amongst other things. There is also an application fee (currently a flat fee of €900) which must accompany the application.

As with PVRs, the next step in the application process is for the CPVO to conduct official tests to ascertain whether the seed/plant material meets the criteria for registration and, as with PVRs, the duration of such tests will vary depending on the variety of plant/seed material being submitted for registration.

The cost of these tests is to be met by the applicant and varies in price (currently €1,200 - €2,500) depending on the variety of plant/seed. It is worth noting that if a CPVR is applied for while a PVR application is ongoing, the CPVO may 'take over' the testing process from the PVRO. Additionally if a PVR has recently been obtained, the CPVO may use the results from the PVR test as opposed to conducting their own tests. In this case, the sum payable to the CPVO for the testing process will be significantly less (currently €240), however the applicant will already have had to make payment to the PVRO for the testing process as part of the PVR application.

Upon the successful conclusion of the testing process, a CPVR will be granted which will last for 25 years for all species except trees, vines and potatoes which have a period of 30 years.



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