PLANT BREEDERS' RIGHTS ACT 15 OF 1976

[ASSENTED TO 15 MARCH 1976] [DATE OF COMMENCEMENT: 1 NOVEMBER 1977]

(English text signed by the State President)

as amended by

Plant Breeders' Rights Amendment Act 5 of 1980
Plant Breeders' Rights Amendment Act 14 of 1981
Plant Breeders' Rights Amendment Act 38 of 1983
Transfer of Powers and Duties of the State President Act 97 of 1986
Plant Breeders' Rights Amendment Act 15 of 1996
Abolition of Restrictions on the Jurisdiction of Courts Act 88 of 1996

Regulations under this Act

PLANT BREEDERS' RIGHTS REGULATIONS (GN R1186 in *GG* 18266 of 12 September 1997)

ACT

To provide for a system whereunder plant breeders' rights relating to varieties of certain kinds of plants may be granted and registered; for the requirements which have to be complied with for the grant of such rights; for the protection of such rights and the grant of licences in respect of the exercise thereof; and to provide for incidental matters.

[Long title substituted by s. 30 of Act 15 of 1996.]

1 Definitions

Cases

In this Act, unless the context indicates otherwise-

'advertise' means to distribute to members of the public or to bring to their notice in any manner whatsoever any written, illustrated, visual or other descriptive material, oral statement, communication, representation or reference with the intention to promote the sale of any plants or any propagating material of a variety referred to in section 2 or to encourage the use thereof or to draw attention to the nature, properties, advantages or uses thereof or to the manner in which or the conditions on which it may be purchased or otherwise be acquired;

[Definition of 'advertise' substituted by s. 1 *(a)* of Act 15 of 1996.]

'agent' means a person, resident in the Republic, who has been duly authorized by an applicant, breeder or holder to act on his behalf in connection with any matter regarding this Act, who is for such purpose recognized by the registrar in the prescribed manner if he complies with the prescribed requirements and in respect of whom the registrar has not been

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notified in the prescribed manner that such authorization has been terminated;

[Definition of 'agent' substituted by s. 1 *(a)* of Act 5 of 1980.]

'agreement country' means a country, including any colony, protectorate or territory subject to the authority or under the suzerainty of any other country and any territory over which a mandate or trusteeship is exercised, which the State President by proclamation in the *Gazette* declares to be an agreement country with a view to the fulfilment of a bilateral agreement concerning plant breeders' rights between the Republic and such country;

'applicant' means a person referred to in section 6 who applies in terms of section 7 for a plant breeders' right;

[Definition of 'applicant' substituted by s. 1 *(b)* of Act 5 of 1980.]

'board' means the board referred to in section 42;

'breeder' in relation to a variety referred to in section 2, means-

(a) the person who bred, or discovered and developed, the variety;

(b) the employer of the person referred to in paragraph *(a)*, if that person is an employee whose duties are such that the variety was bred, or discovered and developed, in the performance of such duties; or

(c) the successor in title of the person referred to in paragraph *(a)* or the employer referred to in paragraph *(b)*;

[Definition of 'breeder' substituted by s. 1 *(b)* of Act 15 of 1996.]

'convention country' means a country, including any colony, protectorate or territory subject to the authority or under the suzerainty of any other country and any territory over which a mandate or trusteeship is exercised, which has signed and ratified, accepted or approved or has acceded to the International Convention for the Protection of New Varieties of Plants;

[Definition of 'convention country' substituted by s. 1 *(c)* of Act 5 of 1980.]

'denomination', in relation to a variety in respect of which a plant breeder's right has been granted, means the generic name for the variety;

[Definition of 'denomination' substituted by s. 1 *(c)* of Act 15 of 1996.]

'department' means the Department of Agriculture;

[Definition of 'department' substituted by s. 1 *(a)* of Act 14 of 1981 and by s. 1 *(a)* of Act 38 of 1983.]

'essential characteristics' means the essential characteristics of a variety of a plant as expressed by means of a test or trial or any other acknowledged means of determining the

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characteristics of a variety of a plant;

[Definition of 'essential characteristics' inserted by s. 1 *(d)* of Act 15 of 1996.]

'holder', in relation to a plant breeder's right, means the person to whom such a right has been granted in terms of section 20, or who, according to an entry in the register, is the owner of such a right;

'kind of plant' means all related genera, species and subspecies of a plant which are known by the same common name;

'mark' means a mark as defined in section 2 of the Trade Marks Act, 1963 (Act 62 of 1963);

'Minister' means the Minister of Agriculture;

[Definition of 'Minister' substituted by s. 1 *(b)* of Act 14 of 1981 and by s. 1 *(b)* of Act 38 of 1983.]

'new variety' .....

[Definition of 'new variety' deleted by s. 1 *(e)* of Act 15 of 1996.]

'officer' means an officer or an employee as defined in section 1 of the Public Service Act, 1957 (Act 54 of 1957);

[Definition of 'officer' substituted by s. 1 *(c)* of Act 38 of 1983.]

'plant' includes any part of a plant;

[Definition of 'plant' substituted by s. 1 *(f)* of Act 15 of 1996.]

'plant breeder's right' means a plant breeder's right granted in terms of section 20;

'prescribed' means prescribed by regulation;

'propagating material' means any material of a plant that can be used for the propagation of a plant;

[Definition of 'propagating material' substituted by s. 1 *(d)* of Act 5 of 1980 and by s. 1 *(g)* of Act 15 of 1996.]

'protected variety' means a variety of a plant in respect of which a plant breeder's right has been granted;

[Definition of 'protected variety' inserted by s. 1 *(h)* of Act 15 of 1996.]

'register' means the register kept in terms of section 4;

'registrar' means the officer designated as Registrar of Plant Breeders' Rights in terms of

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section 3;

[Definition of 'registrar' substituted by s. 1 *(d)* of Act 38 of 1983.]

'regulation' means a regulation made under this Act;

'sell' includes agree to sell, or to offer, advertise, keep, expose, transmit, send, convey or deliver for sale, or to exchange or to dispose of to any person in any manner for a consideration; and **'sold'** and **'sale'** have corresponding meanings;

'this Act' includes the regulations;

'variety' means any plant grouping within a single botanical taxon of the lowest known classification, which grouping, irrespective of whether or not the conditions for the grant of a plant breeder's right are fully met, can be-

(a) defined by the expression of the characteristics resulting from a given genotype or combination of genotypes;

(b) distinguished from any other plant grouping by the expression of at least one of the said characteristics; and

(c) considered as a unit with regard to its suitability for being propagated unchanged.

[Definition of 'variety' substituted by s. 1 *(i)* of Act 15 of 1996.]

2 Application of Act

Cases

(1) This Act shall apply in relation to every variety of any prescribed kind of plant if it is new, distinct, uniform and stable.

(2) A variety referred to in subsection (1) shall be deemed to be-

(a) new if propagating material or harvested material thereof has not been sold or otherwise disposed of by, or with the consent of, the breeder for purposes of exploitation of the variety-

(i) in the Republic, not more than one year; and

(ii) in a convention country or an agreement country, in the case of-

(aa) varieties of vines and trees, not more than six years; or

(bb) other varieties, not more than four years,

prior to the date of filing of the application for a plant breeder's right;

(b) distinct if, at the date of filing of the application for a plant breeder's right, it is

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clearly distinguishable from any other variety of the same kind of plant of which the existence on that date is a matter of common knowledge;

(c) uniform if, subject to the variation that may be expected from the particular features of the propagation thereof, it is sufficiently uniform with regard to the characteristics of the variety in question;

(d) stable if the characteristics thereof remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

(3) If the application of this Act is extended to a kind of plant to which this Act, or any law repealed by it, did not previously apply, the registrar may deem a variety of such a kind of plant which existed at the time of the extension to be new for the purposes of subsection (2) *(a)*, notwithstanding the fact that propagating material or harvested material thereof was sold or disposed of prior to the periods of time referred to in that subsection.

(4) If an application, in any country, for the grant of a plant breeder's right in respect of, or for the entering in the official register of varieties of, a variety in fact leads to the grant of a plant breeder's right in respect of, or to the entry in the official register of, that variety in the country in question, the existence of that variety shall, as from the date of the application, for the purposes of subsection (2) *(b)*, also be deemed to have been a matter of common knowledge.

[S. 2 amended by 2 of Act 5 of 1980 and substituted by s. 2 of Act 15 of 1996.]

3 Designation of registrar

(1) The Minister shall designate an officer in the department as the Registrar of Plant Breeders' Rights, who shall be the authority to whom the protection of varieties is entrusted, and who shall exercise the powers and carry out the duties assigned to or imposed upon the registrar under this Act.

[Sub-s. (1) substituted by s. 3 of Act 15 of 1996.]

(2) The registrar shall exercise his or her powers and carry out his or her duties subject to any instructions issued by the Minister.

[Sub-s. (2) substituted by s. 3 of Act 15 of 1996.]

(3) *(a)* The registrar may authorize any officer, or with the approval of the Minister any person who is not an officer, to exercise or carry out any power or duty of the registrar.

(b) Any decision made or order given by any such officer or any such person, may be withdrawn or amended by the registrar, and shall, until it has been so withdrawn or amended, be deemed, except for the purposes of this paragraph, to have been made by the registrar.

[Sub-s. (3) substituted by s. 3 of Act 15 of 1996.]

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(4) The officer designated as registrar in terms of section 3 (1) of the Plant Breeders' Rights Act, 1964 (Act 22 of 1964), shall be deemed to have been designated as Registrar of Plant Breeders' Rights in terms of this section.

4 Register of plant breeders' rights

(1) The registrar shall keep a register in which the prescribed particulars in respect of plant breeders' rights granted in terms of this Act shall be entered.

[Sub-s. (1) substituted by s. 3 of Act 5 of 1980.]

(2) The register shall, upon payment of the prescribed fee, be open for inspection at the office of the registrar during office hours.

(3) The registrar shall furnish, at the request of any person and upon payment of the prescribed fee, a copy of any particulars in the register or a certificate in respect thereof.

(4) The register kept in terms of section 4 of the Plant Breeders' Rights Act, 1964 (Act 22 of 1964), shall be incorporated in and form part of the register to be kept under this section, and any document supplied to the registrar under that Act in terms of any provision thereof, shall be deemed to have been furnished to the registrar under the corresponding provision of this Act.

5 Register to be evidence

(1) The register shall be *prima facie* evidence of all matters directed or authorized by this Act to be noted therein.

(2) A certificate by the registrar to the effect that an entry has or has not been made in the register or that any other thing authorized by this Act to be done, has or has not been done, shall be *prima facie* evidence of the matters specified in that certificate.

(3) A copy of an entry in the register or an extract from the register, certified by the registrar, shall be admitted in evidence in any court without further proof or production of the register.

5A Entering into of certain agreements by registrar

The registrar may, with the approval of the Minister, granted with the concurrence of the Minister of Foreign Affairs and Information and the Minister of Finance, enter into an agreement with the appropriate authority in a convention country or an agreement country in terms of which the registrar may-

(a) obtain results of tests and trials undertaken by any such authority with a variety referred to in section 19 (2) of this Act, from such authority;

(b) furnish the results of tests and trials-

(i) undertaken by him in terms of section 19 (2) *(a)* of this Act with a

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variety referred to in that section; or

(ii) undertaken by him with a variety in respect of which the appropriate authority concerned has submitted propagating material to him for such purpose,

to the authority concerned, if an application for the protection of the variety has been made in that other country in accordance with the laws in force in the country concerned; and

(c) submit propagating material of a variety in respect of which application for a plant breeders' right has been made to him, to the authority concerned in order to have the necessary tests and trials undertaken therewith and to furnish the results thereof to him,

against payment of the fees mentioned in the agreement.

[S. 5A inserted by s. 2 of Act 38 of 1983.]

6 Persons who may apply for plant breeders' rights

(1) An application for the grant of a plant breeder's right may be made by the breeder of a variety of a kind of plant referred to in section 2.

[Sub-s. (1) substituted by s. 4 of Act 15 of 1996.]

(2) An application referred to in subsection (1) may only be made by a person who-

(a) is a citizen of, or is domiciled in, the Republic or a convention country or an agreement country; or

(b) in the case of a juristic person, has a registered office in the Republic or a convention country or an agreement country.

[Sub-s. (2) added by s. 2 of Act 14 of 1981.]

[S. 6 substituted by s. 4 of Act 5 of 1980.]

7 Application for plant breeder's right

Cases

(1) An application for the grant of a plant breeder's right shall be made in the prescribed manner, be accompanied by the prescribed application fee and documents, and contain an address in the Republic to which any notice or communication may be sent.

(2) An application under subsection (1) by a person who is not resident in the Republic or, in the case of a juristic person, which does not have a registered office in the Republic, shall be submitted only through an agent.

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[Sub-s. (2) substituted by s. 3 of Act 14 of 1981.]

(3) The registrar may require-

(a) that plants of the variety in question, or of the variety from which it originated, be shown to him; and

(b) that such additional information or specimens as he or she may deem necessary to determine whether or not the variety concerned constitutes a variety referred to in section 2, be furnished to him or her.

[Para. *(b)* substituted by s. 5 of Act 15 of 1996.]

[S. 7 substituted by s. 5 of Act 5 of 1980.]

8 Priority and redating of applications

(1) The effective date of an application in terms of section 7 shall be the date on which it is received by the registrar, and if more than one application in respect of the same variety is received, priority shall be given by the registrar in accordance with the regulations.

[Sub-s. (1) substituted by s. 6 of Act 5 of 1980.]

(2) If an application in terms of section 7 is preceded by an application by or on behalf of the same applicant for protection of the same variety in a convention country or an agreement country and the last-mentioned application has been deposited in accordance with the laws in force in that country, the registrar shall, notwithstanding the provisions of subsection (1) of this section, give priority to the first-mentioned application if-

(a) it is submitted to the registrar in the prescribed manner within a period of 12 months of the date on which such preceding application was duly deposited in a convention country or an agreement country;

[Para. *(a)* substituted by s. 6 *(b)* of Act 15 of 1996.]

(b) it is accompanied by a claim in respect of the priority thereof; and

(c) it is accompanied by the prescribed application fee.

[Sub-s. (2) substituted by s. 6 of Act 5 of 1980 and amended by s. 6 *(a)* of Act 15 of 1996.]

(3) A claim referred to in subsection (2) *(b)* shall within the prescribed period, which shall not be less than three months, of the date on which it was submitted to the registrar, be confirmed by lodging with the registrar a copy, certified as correct by the appropriate authority in the convention country or agreement country in question, of each document which constituted the relevant preceding application.

[Sub-s. (3) substituted by s. 6 *(c)* of Act 15 of 1996.]

(4) An application given priority under subsection (2) shall, within the prescribed period,

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which shall not be less than two years, reckoned from the date on which the period of 12 months contemplated in subsection (2) expired, be confirmed by supplementing it in any respect necessary in order to comply with the requirements of this Act.

[Sub-s. (4) substituted by s. 6 *(c)* of Act 15 of 1996.]

(5) If two or more applications for the protection of the same variety have been deposited on different dates in different convention countries or agreement countries, the period referred to in subsection (2) *(a)* shall be calculated from the date on which the earliest of such applications was deposited with the appropriate authority.

[Sub-s. (5) substituted by s. 6 *(c)* of Act 15 of 1996.]

(6) If the registrar has given priority to an application under subsection (2), no matter referred to in section 2 (4) which occurs within the period referred to in subsection (2) *(a)* of this section, shall constitute a ground of objection to such application.

(7) Any priority given to an application under subsection (2) shall lapse if any document referred to in subsection (3) or (4) is not submitted within the relevant period.

(8) Where an application for a plant breeder's right has been received by the registrar and a new application in respect of any part of the subject-matter of the first-mentioned application is made by the same applicant before a plant breeder's right has been granted, the registrar may direct that the new application be antedated to a date not earlier than the date on which such first-mentioned application was received by him.

(9) Where an application received by the registrar is amended otherwise than by way of explanation or correction before the application is published in terms of section 13, the registrar may direct that the date of the application shall be the date on which it is amended or, if it has been returned to the applicant, the date on which it is again received by the registrar.

9 .....

[S. 9 repealed by s. 7 of Act 5 of 1980.]

10 Denomination of variety

(1) The denomination of a variety referred to in section 2 shall comply with the prescribed requirements and be proposed by the person who applies for the grant of a plant breeder's right in respect thereof, and such denomination shall be subject to the approval of the registrar.

[Sub-s. (1) substituted by s. 7 *(b)* of Act 15 of 1996.]

(2) No denomination, other than the approved denomination of a variety, may at any time, whether before or after the expiry of the term of the plant breeder's right granted in respect thereof, be used in connection with such variety.

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(3) The provisions of subsection (2) shall not be construed so as to prohibit the proprietor or other registered user of a mark to use such mark in conjunction with the denomination in respect of which a plant breeder's right has been granted.

(4) A variety shall be submitted to the registrar under the same denomination as the denomination by which it is known in any other country, unless the registrar considers the denomination unacceptable in which case the applicant shall submit an alternative denomination.

[Sub-s. (4) added by s. 7 *(c)* of Act 15 of 1996.]

[S. 10 substituted by s. 8 of Act 5 of 1980 and amended by s. 7 *(a)* of Act 15 of 1996.]

11 Rejection of application

(1) The registrar may reject an application made to him under section 7 if it appears to him-

(a) that the application does not comply with any provision of this Act;

(b) that the variety in respect of which the application is made-

(i) is not a variety referred to in section 2;

[Sub-para. (i) substituted by s. 8 *(a)* of Act 15 of 1996.]

(ii) does not comply with any provision of this Act; or

(iii) does not belong to a prescribed kind of plant;

[Sub-para. (iii) substituted by s. 9 *(a)* of Act 5 of 1980.]

(c) that the applicant is not under this Act entitled to make the application;

(d) that the application contains a material misrepresentation;

(e) that the application fraudulently affects the rights of the holder of a plant breeder's right or of the person to whom provisional protection has been granted in terms of section 14;

(f) that the applicant refuses or has failed or is not able to propose an acceptable denomination;

(g) that the propagation of the variety in question would require repeated use of propagating material of another variety for which plant breeders' rights have been granted to or applied for by another person, unless such propagating material is used under a licence issued in terms of section 25 or 27;

(h) that the description submitted does not clearly describe the variety;

(i) that, where such application has been preceded by an application by or on

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behalf of the same applicant for protection of the same variety in a convention country or an agreement country, the description submitted to him or her differs from the description submitted in such preceding application or that the description in such preceding application does not describe a variety referred to in section 2; or

[Para. *(i)* substituted by s. 9 *(b)* of Act 5 of 1980 and by s. 8 *(b)* of Act 15 of 1996.]

(j) that the provisions of section 19 have not been complied with at the filing of the application.

[Para. *(j)* added by s. 8 *(c)* of Act 15 of 1996.]

(2) If the registrar rejects an application in terms of subsection (1) he shall in writing advise the person who applied for the grant of a plant breeder's right, of his decision and of the grounds on which it is based.

12 Amendment of application

(1) A person who has made an application under section 7 for the grant of a plant breeder's right, may at any time before such application is published under section 13, add to or alter the description which accompanied his application, or the proposed denomination of the variety in question.

(2) If an application is made for such addition or alteration after the said publication, the registrar may, if he is of the opinion that the addition or alteration is of material importance, direct that the date of the application for the addition or alteration shall be a date not earlier than the date of the relevant application under section 7, or that the date of the application under section 7 shall be a date not later than the date of the application for the addition or alteration, and the registrar shall in either case republish the application under section 7 in amended form.

13 Publication of application

Cases

(1) If the registrar does not reject an application under section 11, he shall by notice in the *Gazette* publish such particulars relating to the application as may be prescribed.

(2) If an application published under subsection (1) is withdrawn before a plant breeder's right in respect thereof is granted or refused in terms of this Act, the registrar shall publish the fact of such withdrawal by notice in the *Gazette*.

14 Grant of provisional protection

Cases

(1) The registrar may, at the request of a person whose application for the grant of a plant breeder's right is to be published under section 13 (1), issue a protective direction to such

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person in respect of the variety in question.

(2) Such protective direction shall be issued only-

(a) if the registrar is satisfied that such information, facilities and material as he may require to enable him to consider the application for the grant of a plant breeder's right, have been furnished to him; and

(b) if the applicant has given a written undertaking to the registrar that, subject to the provisions of subsection (3), he shall not, while the protective direction is in force, sell or consent to sell in the Republic any reproductive material of the variety in question.

(3) *(a)* The holder of a protective direction shall, notwithstanding an undertaking referred to in subsection (2) *(b)*, be entitled to sell or offer for sale reproductive material of the variety in question for the purposes of multiplication or testing.

(b) All the reproductive material produced, directly or indirectly, during such multiplication or testing, as well as any unused reproductive material, shall become or remain the property of the holder of the protective direction.

15 Effect of provisional protection

Cases

While a protective direction is in force, the variety in respect of which it was issued shall be protected as if a plant breeder's right had been granted in respect thereof, and anything that would constitute an infringement of a plant breeder's right or would be actionable in proceedings by the holder of such right, shall, if it is done with reference to a variety so protected, be actionable.

16 Termination of provisional protection

(1) A protective direction issued under section 14 shall, subject to the provisions of subsection (2), cease to be of force on the date on which the registrar finally allows or refuses the application for a plant breeder's right in respect of the variety for which the protective direction was issued.

(2) A protective direction-

(a) may be withdrawn at an earlier date by the registrar if, in his opinion, circumstances justify the withdrawal; and

(b) shall be withdrawn at an earlier date by the registrar if he is satisfied that the holder thereof-

(i) has failed to fulfil the terms of an undertaking referred to in paragraph *(b)* of section 14 (2); or

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(ii) has given an undertaking, whether enforceable by law or not, to another person in terms whereof such holder is deprived of the right to institute an action referred to in section 47, or an action for damages in respect of an infringement of a plant breeders' right.

[Sub-s. (2) substituted by s. 10 of Act 5 of 1980.]

17 Objection to grant of plant breeder's right

(1) Any person may within the prescribed period, in the prescribed manner and on payment of the prescribed fee, lodge an objection with the registrar to the grant of a plant breeder's right in pursuance of an application in terms of section 7.

(2) The applicant may within the prescribed period and in the prescribed manner lodge with the registrar a counter-statement against such objection.

[S. 17 substituted by s. 11 of Act 5 of 1980.]

18 Hearing of an objection

(1) An objection under section 17 shall be heard on the date and at the place and time fixed by the registrar, who shall advise the person objecting and the person who applied for the relevant plant breeder's right, in writing thereof.

(2) The registrar may in his discretion appoint one or more persons who, in his opinion, have experience in the administration of justice or skill in any matter which may be considered at the hearing, to assist and advise him with regard to the hearing of the objection, and the remuneration of any such person shall be as prescribed and shall be borne by the State.

(3) The registrar may, for the purposes of the hearing of an objection-

(a) summon any person who, in his opinion, may give material information concerning the subject of the hearing or who he believes has in his possession or custody or under his control any document which has any bearing upon the subject of the hearing, to appear before him at a time and place specified in the summons, to be interrogated or to produce that document, and the registrar may retain for examination any document so produced;

(b) administer an oath to or accept an affirmation from any person called as a witness at the hearing; and

(c) call any person present at the hearing as a witness and interrogate him and require him to produce any document in his possession or custody or under his control.

(4) The procedure at the hearing of an objection shall be as prescribed.

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[Sub-s. (4) substituted by s. 9 of Act 15 of 1996.]

(5) The person objecting and the person who applied for the plant breeder's right in question may, if he or she appears before the registrar at the hearing of an objection, be represented by an advocate or an attorney or by a patent agent registered under section 20 of the Patents Act, 1978 (Act 57 of 1978).

[Sub-s. (5) substituted by s. 9 of Act 15 of 1996.]

(6) The registrar shall, after the hearing of an objection, in writing advise the person objecting and the person who applied for the grant of the relevant plant breeder's right, of his decision and of the grounds on which it is based.

(7) An application in respect of which the registrar upholds an objection shall lapse, and the registrar shall by notice in the *Gazette* publish such particulars relating to the lapsing as may be prescribed.

19 Consideration and examination of applications

Cases

(1) *(a)* The registrar shall consider every application for the grant of a plant breeder's right published under section 13 (1) and all documents and any other proof submitted to him in connection therewith, in order to ascertain whether the application complies with the requirements of this Act.

(b) Where an objection has been lodged under section 17, or an undertaking or a guarantee is required in terms of subsection (4) *(b)*, the registrar shall delay considering the relevant application until the objection has been disposed of or the required undertaking or guarantee has been furnished.

[Para. *(b)* substituted by s. 3 *(a)* of Act 38 of 1983.]

(2) The registrar shall, in order to enable him or her to determine whether a variety qualifies for the grant of a plant breeder's right under section 2-

(a) undertake or cause to be undertaken such tests and trails as he or she may deem necessary with a variety in respect of which an application is being considered under subsection (1); or

(b) use the results of tests and trails obtained from the appropriate authority in a convention country or an agreement country in terms of an agreement referred to in section 5A.

[Sub-s. (2) substituted by s. 3 *(b)* of Act 38 of 1983 and by s. 10 *(a)* of Act 15 of 1996.]

(3) The person whose application is being considered shall, for the purposes of such tests and trials and at such a time and place as the registrar may determine-

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(a) pay, subject to the provisions of subsection (4), the appropriate prescribed examination fee; and

[Para. *(a)* substituted by s. 3 *(c)* of Act 38 of 1983.]

(b) furnish the registrar-

(i) with the propagating material which he may require;

(ii) with such specimens of plants of the variety or of parts of such plants as he may require; and

(iii) with such information in connection with the variety as he may require.

(4) *(a)* The costs involved in obtaining the results referred to in subsection (2) *(b)* shall be paid to the registrar by the person whose application is being considered at the time and place determined by the registrar.

(b) The registrar may require that a person whose application for a plant breeders' right is being considered, furnish him with a written undertaking or a suitable guarantee regarding a payment referred to in paragraph *(a)*, before he takes steps to obtain the results of tests and trials with the variety concerned in terms of an agreement referred to in section 5A.

[Sub-s. (4) substituted by s. 12 *(a)* of Act 5 of 1980 and by s. 3 *(d)* of Act 38 of 1983.]

(5) The person whose application for the grant of a plant breeder's right is being considered shall furnish the registrar within 12 months from the lodging of the application with everything required by the registrar at the examination of the application, including, where applicable-

(a) plant material for the undertaking of tests and trials;

(b) documents or other proof;

(c) written undertakings or suitable guarantees for the reimbursement of costs;

(d) information required by the registrar; and

(e) any additional plant material, documents, proof, information, undertakings or guarantees required by the registrar in order to enable him or her to do a proper examination.

[Sub-s. (5) substituted by s. 12 *(b)* of Act 5 of 1980, deleted by s. 3 *(e)* of Act 38 of 1983 and inserted by s. 10 *(b)* of Act 15 of 1996.]

(6) *(a)* The registrar may in writing on application grant extension from compliance with subsection (5) for a specified period of time.

(b) An application for extension shall be submitted to the registrar in writing and shall set

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out reasons for the granting of extension.

[Sub-s. (6) substituted by s. 12 *(c)* of Act 5 of 1980, deleted by s. 3 *(e)* of Act 38 of 1983 and added by s. 10 *(b)* of Act 15 of 1996.]

20 Grant of plant breeder's right

Cases

(1) The registrar shall, after considering an application in terms of section 19 and examining the results of any tests or trials conducted with the variety in question, grant a plant breeder's right in respect of a variety if-

(a) the application conforms to the requirements of this Act;

(b) the applicant is entitled under this Act to make the application;

(c) the variety is a variety referred to in section 2 and it conforms to the requirements of this Act; and

(d) no moneys are due by the applicant in terms of section 19.

[Sub-s. (1) amended by s. 4 of Act 38 of 1983 and substituted by s. 11 of Act 15 of 1996.]

(2) The registrar shall in respect of each plant breeder's right granted-

(a) issue a certificate of registration in respect thereof to the person who applied for the grant of the right;

(b) enter the applicable particulars referred to in section 4 (1) in the register; and

(c) by notice in the *Gazette* publish such particulars relating to the grant of such right as may be prescribed.

(3) *(a)* If the registrar refuses the grant of a plant breeder's right, he shall in writing advise the person who applied for the right of his decision and of the grounds on which it is based, and shall, subject to the provisions of paragraph *(b)*, by notice in the *Gazette* publish such particulars relating to the refusal as may be prescribed.

(b) The grounds on which the decision is based shall not be published in the said notice nor be open for inspection except by order of a court.

21 Period of plant breeder's right

A plant breeder's right shall be granted for a period of-

(a) 25 years, in the case of vines and trees; and

(b) 20 years, in all other cases,

calculated from the date on which a certificate of registration is issued under paragraph *(a)* of

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section 20 (2).

[S. 21 substituted by s. 13 of Act 5 of 1980 and by s. 12 of Act 15 of 1996.]

22 Payment of annual fee

(1) A person to whom a plant breeder's right has been granted shall, during the currency of such right, annually pay to the registrar the annual fee prescribed in respect of such right.

(2) *(a)* The first such annual fee shall be payable on or before 1 January of the year following the date on which a plant breeder's right is granted, and any subsequent annual fee shall be paid before 1 January of each year.

(b) The registrar shall, subject to the payment of such additional fees as may be prescribed, upon application extend the time for the payment of an annual fee for a period not exceeding 6 months or for periods the aggregate of which does not exceed 6 months.

23 Rights of holder of plant breeder's right

(1) The effect of the protection given under this Act by the grant of a plant breeder's right shall be that prior authority shall during the currency of the plant breeder's right be obtained by way of licence under section 25 or 27 by any person intending to undertake the-

(a) production or reproduction (multiplication);

(b) conditioning for the purpose of propagation;

(c) sale or any other form of marketing;

(d) exporting;

(e) importing;

(f) stocking for any of the purposes referred to in paragraphs *(a)* to *(e)*,

of-

(i) propagating material of the relevant variety; or

(ii) harvested material, including plants, which was obtained through the unauthorised use of propagating material of the relevant variety.

(2) The Minister may by notice in the *Gazette* extend the effect of the protection contemplated in subsection (1) to products made directly from harvested material contemplated in subsection (1) (ii).

(3) The provisions of subsections (1) and (2) shall not apply if the breeder has had reasonable opportunity to exercise his or her right in respect of the propagating material of the protected variety.

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(4) *(a)* The provisions of subsections (1), (2) and (3) shall also apply to varieties-

(i) which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety;

(ii) which are not distinguishable from the protected variety as contemplated in section 2 (2) *(b)*; or

(iii) the production of which requires the repeated use of the protected variety.

(b) For the purposes of paragraph *(a)* (i) a variety shall be deemed to be essentially derived from another variety if-

(i) it is predominantly derived from that other variety, or from a variety that is itself predominantly derived from that other variety, while retaining the essential characteristics of that other variety; and

(ii) it is clearly distinguishable from that other variety; and

(iii) except for the differences which result from the process of derivation, it conforms to that other variety in respect of the essential characteristics.

(5) Notwithstanding the provisions of subsection (1), the holder of a plant breeder's right shall during the period which the Minister may prescribe as a period for the exercise of sole rights in terms of section 25 (4) in respect of the kind of plant to which such a variety belongs, have the sole right to undertake with regard to the relevant variety any activity referred to in subsection (1) or to have such activity undertaken by any other person.

(6) Notwithstanding the provisions of section 23A *(a)*, a person who procured any propagating material of a variety in a legitimate manner shall not infringe the plant breeder's right in respect of the variety if he or she-

(a) resells that propagating material;

(b) subject to the provisions of subsection (2), sells any plant, reproductive material or product derived from that propagating material for purposes other than the further propagation or multiplication thereof;

(c) uses or multiplies that propagating material in the development of a different variety;

(d) uses that propagating material for purposes of *bona fide* research;

(e) uses that propagating material for private or non-commercial purposes; or

(f) is a farmer who on land occupied by him or her uses harvested material obtained on such land from that propagating material for purposes of propagation: Provided that harvested material obtained from the replanted propagating material shall not be used for purposes of propagation by any

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person other than that farmer.

(7) Notwithstanding the provisions of subsection (6) *(b)*, an ornamental plant in respect of which a plant breeder's right has been granted and any part thereof which is normally sold for purposes other than the multiplication thereof, shall enjoy the protection of such right when it is used commercially as propagating material in the production of such ornamental plant or of a cut flower.

(8) A notice in terms of subsection (2) shall, in any case where the holder of the plant breeder's right in question is a citizen of, or is domiciled in, a convention country or an agreement country or, in the case of a juristic person, has a registered office in a convention country or an agreement country, be issued only if such holder can in terms of the laws of such country obtain corresponding protection in that country.

[S. 23 amended by s. 14 of Act 5 of 1980 and by ss. 46 and 47 of Act 97 of 1986 and substituted by s. 13 of Act 15 of 1996.]

23A Infringement of plant breeder's right

A plant breeder's right shall be infringed by any person who-

(a) not being the holder of the plant breeder's right, performs, or causes to be performed, an act contemplated in section 23 (1) without a licence obtained under section 25 or 27;

(b) has obtained a licence under section 25 or 27 but fails to comply with any term or condition thereof;

(c) uses the approved denomination of a protected variety in relation to plants or propagating material of any other variety for any purpose whatsoever; and

(d) sells plants or propagating material of a protected variety under any other denomination than the approved denomination of that variety.

[S. 23A inserted by s. 14 of Act 15 of 1996.]

24 Maintenance of reproductive material

(1) The holder of a plant breeder's right shall ensure that he is in a position during the currency of the right-

(a) to furnish the registrar on request with propagating material of the variety in respect of which the right was granted and which is capable of reproducing the said variety in such a manner that the characteristics thereof correspond with those described at the time of the grant of the relevant right;

[Para. *(a)* substituted by s. 15 of Act 5 of 1980.]

(b) on request to give to the registrar the information and to accord him the

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facilities deemed necessary by him to satisfy himself that such holder is maintaining propagating material which conforms to the requirements referred to in paragraph *(a)*.

(2) The registrar may undertake any inspection in connection with any matter referred to in subsection (1) which he may deem necessary.

24A Power to enter premises, carry out inspections, take samples and seize certain articles

(1) The registrar, an officer in the department or a person referred to in section 3 (3) *(a)* may, on the authority of a warrant issued under subsection (3), at any reasonable time-

(a) enter and inspect any place, premises or vehicle in or upon which any plant, propagating material, substance or other article in respect of which this Act applies, is or is upon reasonable grounds suspected to be produced, reproduced, bred, cultivated, processed, treated, prepared, tested, examined, analysed, classified, prepackaged, marked, labelled, held, kept, packed, removed, transported, exhibited or sold;

(b) direct a person in control of or employed at such place, premises or vehicle to-

(i) deliver any book, record or other document that pertains to that plant, propagating material, substance or other article and which is in the possession or under the control of that person;

(ii) furnish such information as he or she has with regard to that plant, propagating material, substance or other article;

(iii) render such assistance as the registrar, officer or person requires to enable him or her to perform his or her functions in terms of this Act;

(c) inspect any book, record or other document and make copies thereof or excerpts therefrom;

(d) seize any plant, propagating material, substance, book, record or other document or article which is or may be relevant to a prosecution under this Act and keep it in his or her custody: Provided that the person from whose possession or control any book, record or document has been taken, may, at his or her own expense and under the supervision of the registrar, officer or person concerned make copies thereof or excerpts therefrom;

(e) take samples of any plant, propagating material, substance or other article used or intended for use in the production, reproduction, breeding, cultivation, processing, treatment, preparation, testing, examining, analysing, classification, prepackaging, marking, labelling, holding, keeping, packing, removal, transport, exhibition or sale thereof, and of any plant, propagating material, substance or other article seized in terms of paragraph *(d)*, and

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examine, analyse or classify such samples.

(2) Any sample taken in terms of subsection (1) *(e)* or (6)-

(a) shall consist of the quantity or mass determined by the registrar, taken in accordance with the methods determined by him or her;

(b) shall be taken in the presence of the person in charge of, or the owner or custodian of, such plant, propagating material, substance or other article, or, if such person, owner or custodian is not available, in the presence of any other witness, and the form determined by the registrar shall be completed in respect thereof;

(c) shall, if necessary, be packed and identified in such manner as the nature thereof permits; and

(d) shall with all convenient speed be tested, examined or analysed in accordance with the methods which the registrar may determine or which may be prescribed, and the result of such test, examination or analysis shall be entered on the form determined by the registrar.

(3) A warrant referred to in subsection (1) shall be issued by a judge of the Supreme Court or by a magistrate who has jurisdiction in the area where the place or premises in question are situated, or where the vehicle is or will be, and shall only be issued if it appears to the judge or magistrate from information on oath that there are reasonable grounds for believing that an article mentioned in subsection (1) *(a)* and *(b)* is upon or in such place, premises or vehicle, and shall specify which of the acts mentioned in subsection (1) may be performed thereunder by the person to whom it is issued.

(4) A warrant issued in terms of this section shall be executed by day unless the person who issues the warrant authorizes the execution thereof by night at times which shall be reasonable, and entry upon and search of any place, premises or vehicle specified in such warrant shall be conducted with strict regard to decency and order, including-

(a) a person's right to, respect for and the protection of his or her dignity;

(b) the right of a person to freedom and security; and

(c) the right of a person to his or her personal privacy.

(5) The registrar, officer or person executing a warrant in terms of this section shall immediately before commencing with the execution-

(a) identify himself or herself to the person in control of the place, premises or vehicle, if such person is present, and hand to such person a copy of the warrant or, if such person is not present, affix such copy to a prominent place on the place, premises or vehicle;

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(b) supply such person at his or her request with particulars regarding his or her authority to execute such a warrant.

(6) The registrar, an officer in the department or a person referred to in section 3 (3) *(a)* may without a warrant enter any place, premises or vehicle, and search for, seize, take samples of and remove any article referred to in subsection (1) if the person who is competent to do so consents to such entry, search, seizure, taking of samples and removal.

(7) *(a)* The registrar, officer or person who may on the authority of a warrant issued in terms of subsection (3) enter and search any place, premises or vehicle, may use such force as may be reasonably necessary to overcome resistance to such entry or search.

(b) No person may enter upon and search any place, premises or vehicle unless he or she has audibly demanded admission to the place, premises or vehicle and has notified the purpose of his or her entry, unless such person is upon reasonable grounds of the opinion that any article may be destroyed if such admission is first demanded and such purpose is first notified.

(8) If, during the execution of a warrant or the conducting of a search in terms of this section, a person claims that an article found on or in the place, premises or vehicle in question contains privileged information and refuses the inspection or removal of such article, the person executing the warrant or conducting the search shall, if he or she is of the opinion that the article contains information which is relevant to the investigation and that such information is necessary for the investigation or hearing, request the registrar of the Supreme Court which has jurisdiction, or his or her delegate, to seize and remove that article for safe custody until a court of law has made a ruling on the question whether or not the information in question is privileged.

(9) A warrant issued in terms of this section may be issued on any day and shall be of force until-

(a) it is executed; or

(b) it is cancelled by the person who issued it or, if such person is not available, by any person with similar authority; or

(c) the expiry of one month from the day of its issue; or

(d) the purpose for which the warrant was issued, no longer exists,

whichever may occur first.

(10) If no criminal proceedings are instituted in connection with any plant, propagating material, substance, book, record or other article or document seized in terms of subsection (1) or (6), or if it appears that such plant, propagating material, substance, book, record or other article or document is not required at the trial for the purposes of evidence or an order of court, that plant, propagating material, substance, book, record or other article or document

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shall be returned to the person from whom it was seized.

[S. 24A inserted by s. 15 of Act 15 of 1996.]

25 Licences

(1) The holder of a plant breeder's right may at the request in writing of another person grant to such person a licence in terms of which such person may be authorized to undertake any activity referred to in section 23.

[Sub-s. (1) substituted by s. 16 of Act 5 of 1980.]

(2) The licence may include conditions regarding-

(a) the quantity of propagating material of the relevant variety to be supplied to the holder of the licence, and the price thereof;

(b) the royalties payable in respect of the exploitation of the licence;

(c) the information to be furnished to the holder of the relevant plant breeder's right regarding the extent to which the licence is being exploited;

(d) the period of validity of the licence, which shall not exceed the term of the relevant breeder's right;

(e) the transfer thereof;

(f) the punitive measures applicable with reference to any condition which is not complied with; and

(g) any other matter which the parties may agree to.

(3) The holder of a plant breeder's right shall within the prescribed period notify the registrar in the prescribed manner of each licence issued by him or her under this section, and shall furnish the registrar with a copy of each such licence.

[Sub-s. (3) substituted by s. 16 of Act 15 of 1996.]

(4) During the period which the Minister prescribes under section 23 (5) as a period for the exercise of sole rights in respect of the kind of plant to which a variety belongs, the registrar shall not issue a compulsory licence in respect of that variety in terms of section 27.

[Sub-s. (4) substituted by s. 16 of Act 15 of 1996.]

26 Application for compulsory licence

(1) Any person who is of the opinion that the holder of a plant breeder's right unreasonably refuses to grant him a licence under section 25, or that such a holder is imposing unreasonable conditions for the issue of such a licence, may in the prescribed manner and upon payment of the prescribed fee apply to the registrar for the issue to him of a

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compulsory licence in respect of the relevant plant breeder's right.

[Sub-s. (1) substituted by s. 17 *(a)* of Act 5 of 1980.]

(2) and (3) .....

[Sub-ss. (2) and (3) deleted by s. 17 *(b)* of Act 5 of 1980.]

(4) The holder of such plant breeder's right may within the prescribed period and in the prescribed manner lodge a counter-statement with the registrar in which are set out the particulars of any ground upon which he contests the application in question.

[Sub-s. (4) substituted by s. 17 *(c)* of Act 5 of 1980.]

(5) The holder of such plant breeder's right shall serve a copy of the counter-statement on the person who made the application and shall furnish the registrar with proof of the service thereof.

(6) If the person who made the application and the holder of the relevant plant breeder's right at any stage after the application has been lodged with the registrar, reach an agreement with regard to the issue of a licence, the person who made the application shall inform the registrar of the agreement, whereupon the application shall lapse.

27 Grant of compulsory licence

(1) An application under section 26 shall be heard on the date and at the place and time fixed by the registrar, who shall advise the person who made the application and the holder of the plant breeder's right in writing thereof.

(2) The provisions of sections 18 (2), (3), (4), (5) and (6) shall *mutatis mutandis* apply with reference to the hearing of the application.

(3) If the registrar is satisfied that the holder of a plant breeder's right is unreasonably refusing a licence under section 25 or imposing unreasonable conditions for the issue thereof, and is satisfied that, as a result of such refusal or such conditions, the reasonable requirements of the public with regard to the variety in question are not being satisfied or will not be satisfied, he or she may issue a compulsory licence-

(a) which shall include the conditions referred to in paragraph *(a)* up to and including *(f)* of section 25 (2), and such other conditions as the registrar may determine;

(b) which may at any time be reviewed by the registrar by reason of representations made to him for the amendment or withdrawal thereof.

[Sub-s. (3) amended by s. 17 of Act 15 of 1996.]

(4) In settling the terms of a compulsory licence the registrar shall endeavour to ensure that propagating material of the variety in question shall be available to the public at

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reasonable prices consistent with the holder of a plant breeder's right deriving a reasonable advantage therefrom.

(5) *(a)* A compulsory licence may be granted to any person whether or not the holder of the relevant plant breeder's right has granted a licence under section 25 to any other person.

(b) The issue of a compulsory licence shall not prevent the holder of the plant breeder's right from granting additional licences in terms of section 25.

28 Joint holders of plant breeder's right

(1) Where a plant breeder's right is, after the commencement of this Act, granted to two or more persons jointly, each such person shall, subject to any written agreement to the contrary between them, be entitled-

(a) to an equal share in such right;

(b) to undertake in connection therewith for his own benefit any activity referred in section 23, if he discloses any such activity to the other joint holders; and

[Para. *(b)* substituted by s. 18 of Act 5 of 1980.]

(c) to institute any action in respect of any infringement of that right.

(2) A joint holder of a plant breeder's right shall not without the consent of the other joint holders be entitled-

(a) to grant a licence under section 25; or

(b) to transfer the whole or any part of his interest in such right.

(3) Where an action is founded on the sale of any propagating material by a joint holder of a plant breeder's right, such joint holder shall for the purposes of the action be deemed to be the sole holder of the plant breeder's right.

(4) The court may upon the application of any joint holder of a plant breeder's right and after giving to any other joint holder of the right an opportunity of being heard, give any direction with regard to the transfer of the right or any part thereof, or with regard to the grant of any licence in respect of the right, or with regard to the use and development of the right, as appears just and expedient, and each joint holder shall give effect to any such direction.

(5) If any person who is required to give effect to any direction under subsection (4) fails, within the period determined by the court or, failing such a determination, after being requested in writing to do so by any joint holder of the relevant right, to execute any instrument or to do any act or thing required to give effect to the direction, the court may empower any person to execute the instrument in question or to do the act or thing in question in the name of and on behalf of the person so failing.

29 Transfer of plant breeder's right

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(1) The holder of a plant breeder's right under this Act or the Plant Breeders' Rights Act, 1964 (Act 22 of 1964), shall, within the prescribed period after such right or any part thereof has been transferred to another person in the prescribed manner and upon payment of the prescribed fee-

(a) inform the registrar of the name and address of the person to whom the right or part thereof has been transferred; and

(b) furnish the registrar with proof that a notice of such transfer has been served on every person licensed in respect of that right.

[Sub-s. (1) amended by s. 18 *(a)* of Act 15 of 1996.]

(2) A person to whom a plant breeder's right or any part thereof has been transferred shall, if he or she appoints an agent with respect to such right, within the prescribed period and in the prescribed manner inform the registrar of the name and address of such agent.

[Sub-s. (2) substituted by s. 18 *(b)* of Act 15 of 1996.]

(3) The registrar shall by notice in the *Gazette* publish such particulars relating to a transfer of a plant breeder's right of which he is informed under this section, as may be prescribed.

30 State bound by plant breeder's right

(1) Subject to the provisions of subsection (2), a plant breeder's right shall in all respects bind the State in the same way as it binds any other person.

(2) No fees payable under this Act shall be payable by the State.

31 State may take over plant breeder's right

(1) *(a)* The Minister may after consultation with the Minister of Finance by notice in the *Gazette* take over on behalf of the State the plant breeder's right in any variety of a kind of plant from a date determined by him or her and published in the same or later notice in the *Gazette*.

[Para. *(a)* substituted by s. 19 of Act 5 of 1980 and by s. 19 of Act 15 of 1996.]

(b) As from the date determined under paragraph *(a)* all rights and liabilities pertaining to the said plant breeder's right shall be deemed to have been transferred to the State, and such rights shall as from that date vest in the Minister on behalf of the State.

(2) The Minister shall pay the person who was the holder of the plant breeder's right in question immediately prior to the date referred to in subsection (1) *(a)*, such compensation as may be agreed upon or, failing agreement, as may be settled by arbitration.

32 Alteration of denomination

(1) The denomination approved in respect of a variety may be altered or supplemented by

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the registrar-

(a) if ordered by the court on the application of a person who in law has a preferent claim to the use of the designation in question;

(b) on the application of the holder of a plant breeder's right in that variety;

(c) if the information submitted to the registrar in the application for the approval of, or in connection with, the denomination in question was incorrect and the registrar is of the opinion that such denomination would not have been approved had he known that such information was incorrect; or

(d) if information comes to light which, if discovered earlier, would in the opinion of the registrar have resulted in the refusal of such denomination.

[Sub-s. (1) amended by s. 20 *(a)* of Act 15 of 1996.]

(2) An application referred to in subsection (1) *(b)* shall be made to the registrar in the prescribed manner and shall be accompanied by the prescribed application fee.

[Sub-s. (2) substituted by s. 20 *(b)* of Act 15 of 1996.]

(3) If an alteration or supplementation becomes necessary on a ground referred to in paragraph *(c)* or *(d)* of subsection (1), the registrar shall in writing inform the holder of the relevant plant breeder's right thereof and give the grounds on which the alteration or supplementation is deemed necessary, and such holder shall submit proposals for an alteration or supplementation within 60 days from the date of the notice to him.

(4) If the register intends approving any proposal for the alteration or supplementation of a denomination under subsection (1) *(b)* or (3), he shall by notice in the *Gazette* publish such particulars relating to the intended alteration or supplementation as may be prescribed.

(5) Any person may within the prescribed period, on payment of the prescribed fee, in the prescribed manner lodge an objection to the grant of such alteration or supplementation.

[Sub-s. (5) substituted by s. 20 of Act 5 of 1980.]

(6) The registrar may, after considering any objection lodged under subsection (5), approve the proposed alteration or supplementation, and shall by notice in the *Gazette* publish the prescribed particulars relating to an alteration or supplementation so approved.

(7) The registrar shall forthwith publish by notice in the *Gazette* the prescribed particulars relating to an alteration or supplementation ordered under subsection (1) *(a)*.

33 Termination of plant breeder's right

Cases

(1) A plant breeder's right shall terminate upon the expiry of the relevant period

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contemplated in section 21.

[Sub-s. (1) substituted by s. 21 of Act 15 of 1996.]

(2) The registrar may terminate a plant breeder's right prior to the expiry of the plant breeder's right if-

(a) any information submitted to him or her in the application for such a right or in connection with such an application, was incorrect and if such a right would not have been granted if he or she had known that the information was incorrect;

(b) information has come to light which, if discovered earlier, would have resulted in the plant breeder's right being refused;

(c) priority should be given under section 8 to any other application for the grant of a plant breeder's right in the same variety;

(d) the holder of the plant breeder's right refuses or has failed or is not in a position to furnish the registrar with propagating material of the relevant variety which conforms to the requirements of paragraph *(a)* of section 24 (1);

(e) the holder of the plant breeder's right has failed to comply with any request under paragraph *(b)* of section 24 (1), or he or she has prevented the registrar from undertaking an inspection referred to in section 24 (2)

(f) the holder of the plant breeder's right refuses or has failed or is not in a position to submit a proposal for an alteration or a supplementation of a denomination after having been requested to do so under section 32 (3);

(g) the annual fee in terms of section 22 was not paid within the period referred to in that section;

(h) the plant breeder's right has been granted to a person who is not entitled thereto, unless it is transferred to the person who is entitled thereto; or

(i) the holder of the plant breeder's right is ordered to terminate the plant breeder's right by an order of court.

[Sub-s. (2) substituted by s. 21 of Act 15 of 1996.]

(3) The registrar shall in writing advise the holder of the plant breeder's right in question and the holder of any licence issued under section 27 or with respect to which a notification has been given under section 25 (3), of his intention to terminate a plant breeder's right under subsection (2) and of the grounds therefor.

(4) Any holder referred to in subsection (3) may, within the prescribed period, in the prescribed manner and on payment of the prescribed fee lodge an objection against the

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intended termination of a plant breeder's right.

[Sub-s. (4) substituted by s. 21 of Act 5 of 1980.]

(5) The provisions of sections 18 (1), (2), (3), (4), (5) and (6) shall *mutatis mutandis* apply with reference to such an objection.

[Sub-s. (5) substituted by s. 21 of Act 5 of 1980.]

(6) The registrar shall publish the termination under subsection (1) or (2) of a plant breeder's right by notice in the *Gazette*.

(7) A certificate of registration issued under paragraph *(a)* of section 20 (2) shall, within the prescribed period, be returned to the registrar by the holder thereof when the relevant plant breeder's right terminates or is terminated under this section.

34 Voluntary surrender of plant breeder's right

(1) The holder of a plant breeder's right may at any time notify the registrar in the prescribed manner and upon payment of the prescribed fee that he is surrendering such right, and such holder shall furnish the registrar with proof that a copy of such notification has been served on any person licensed with respect to that right and on any other interested person.

(2) The registrar shall by notice in the *Gazette* publish such particulars relating to the surrender as may be prescribed.

35 Marking of labels or containers

Cases

(1) If any propagating material of a variety in respect of which a plant breeder's right has been granted is sold for purposes of propagation, the denomination of that variety shall clearly and legibly appear on a label attached thereto, or, if it is packed, on the container.

(2) If a mark is used in conjunction with the name of the relevant variety, such mark and name shall be clearly distinguishable.

[Sub-s. (2) added by s. 22 of Act 5 of 1980.]

36 Correction of errors

Cases

(1) The registrar may authorize-

(a) the correction of any clerical error or error in translation appearing in any plant breeder's right, the application for such a right or any document filed in pursuance of such an application, or the register;

(b) the amendment of any document for the amendment of which no express

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provision is made in this Act;

(c) the condonation or correction of any irregularity in procedure in any proceedings before him, if such condonation or correction is not detrimental to the interests of any person.

(2) The registrar may exercise the authority under subsection (1) *mero motu* or upon request in writing.

(3) Where the registrar intends exercising his authority under subsection (1) *mero motu*, he shall give notice of his intention to the holder of the plant breeder's right or the applicant for such right, as the case may be, and to any other person who appears to him to have an interest in the matter, and shall give such holder, applicant or person an opportunity of being heard before exercising his authority.

37 Discretionary power of registrar

(1) *(a)* Whenever any discretionary power is given to the registrar by this Act he shall not exercise that power in a manner adverse to an applicant or an objector or other person who according to the register appears to be an interested party, without giving such applicant, objector or interested person an opportunity of being heard within the time prescribed or, if no time has been prescribed, within such reasonable period as shall be fixed by the registrar.

(b) An applicant, objector or other interested person referred to in paragraph *(a)* may waive the right to be heard.

(2) Whenever by this Act any time is specified within which any act or thing is to be done, the registrar may, save where it is expressly otherwise provided, extend the time either before or after its expiration.

38 Defect in form not to invalidate documents

Cases

A defect in the form of any document which is in terms of any law required to be executed in a specific manner, or in a notice issued in terms of this Act, shall not render unlawful an administrative action executed in respect of the matter to which such document or notice relates, and shall not be a ground for exception to any legal procedure which may be taken in respect of such matter, if the requirements and meaning thereof are substantially and intelligibly set forth.

39 Preservation and proof of documents

(1) All documents lodged with the registrar in connection with plant breeder's rights and any application for such rights shall, subject to the provisions of subsection (3), be preserved for the prescribed period.

(2) Any document referred to in subsection (1) which in the opinion of the registrar may lie for inspection by the public, shall upon payment of the prescribed fees be open for

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inspection during office hours at the office of the registrar, and copies thereof shall on request and upon payment of the prescribed fees be furnished to any person.

(3) Where an application for the grant of a plant breeder's right has been withdrawn, the registrar shall return all the papers submitted in connection with the application, to the applicant at the address indicated in the application or, if this is not practicable, destroy them after expiry of the prescribed period.

(4) The provisions of section 5 (3) shall *mutatis mutandis* apply with reference to all documents lodged with the registrar.

40 Secrecy

(1) No person shall, except-

(a) in so far as it is necessary for the proper application of the provisions of this Act; or

(b) for purposes of legal proceedings under this Act or any other law; or

(c) when required to do so by any court or under any law; or

(d) when authorized thereto by the Minister,

disclose any information acquired by him or her in the exercising of his or her powers or the performance of his or her duties in terms of this Act.

(2) Notwithstanding the provisions of subsection (1), the registrar may furnish to the holder of a plant breeder's right or to the person to whom a licence was granted under section 25, any information he or she has acquired pertaining to any action which constitutes an infringement of the plant breeder's right in question.

[S. 40 amended by s. 23 of Act 5 of 1980 and substituted by s. 5 of Act 38 of 1983 and by s. 22 of Act 15 of 1996.]

41 .....

[S. 41 repealed by s. 24 of Act 5 of 1980.]

42 Appeal against decision or action of the registrar

(1) A person who feels aggrieved by any decision or action taken by the registrar in terms of this Act may, within the period and in the manner prescribed and upon payment of the prescribed fees, appeal to the Minister against the decision or action in question.

(2) *(a)* The Minister shall refer the appeal for investigation and decision to a board the members of which shall be appointed by the Minister and which shall consist of-

(i) one person designated as chairman on account of his knowledge of law;

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(ii) two persons who in the opinion of the Minister have expert knowledge of the subject of the appeal.

(b) A person appointed under subparagraph (ii) of paragraph *(a)* shall be disqualified as a member of the board if he has any direct or indirect personal interest in the outcome of the appeal.

(3) *(a)* An appeal under subsection (1) shall be heard on the date and at the time and place fixed by the chairperson and he or she shall advise the person appealing and any other party that has an interest in the appeal, in writing thereof.

(b) The chairperson may, for the purposes of the hearing of an appeal-

(i) summon any person who may give material information concerning the subject of the hearing or who has in his or her possession or custody or under his or her control any document which has any bearing upon the subject of the hearing, to appear before him or her at a time and place specified in the summons, to be interrogated or to produce that document, and the registrar may retain for examination any document so produced;

(ii) administer an oath to or accept an affirmation from any person called as a witness at the hearing; and

(iii) call any person present at the hearing as a witness and interrogate him or her and require him or her to produce any document in his or her possession or custody or under his or her control.

(c) The procedure at the hearing of an appeal shall be as prescribed.

(d) The person appealing and the registrar shall be entitled to be represented at an appeal by an advocate or an attorney or by a patent agent registered under section 20 of the Patents Act, 1978 (Act 57 of 1978).

[Sub-s. (3) substituted by s. 23 of Act 15 of 1996.]

(4) If a person appointed under subsection (2) *(a)*-

(a) dies during the investigation of the appeal or so soon before the commencement of the investigation that the vacancy cannot be filled in time;

(b) is unable to act and another person cannot be appointed in time; or

(c) is, after the investigation has commenced, unable to continue therewith,

the parties may agree that the investigation be continued by the remaining members, in which event, where the member who has died or has become incapacitated was or is the chairman of the board, the Minister shall designate one of the remaining members to act as chairman.

(5) *(a)* If the parties do not agree under subsection (4), the investigation shall be

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adjourned in order that the Minister may appoint a member, in accordance with the requirements of subsection (2) *(a)*, in the place of the member who has died or has become incapacitated.

(b) Where an appointment has been made under paragraph *(a)*, the investigation shall, if the parties so agree, be continued as from the stage at which the investigation was interrupted by the death or incapacitation of a member, or shall, if the parties do not so agree, be commenced *de novo*.

(6) The board may after investigation of the appeal-

(a) confirm, set aside or vary the relevant decision or action of the registrar;

(b) order the registrar to execute the decision of the board in connection therewith.

(7) *(a)* The decision of the board shall be in writing, and a copy thereof shall be furnished to the registrar, the appellant and any other party.

(b) .....

[Para. *(b)* deleted by s. 59 of Act 88 of 1996.]

(8) If the board sets aside any decision or action by the registrar, the prescribed fees paid by the appellant in respect of the appeal in question shall be refunded to him, or, if the board varies any such decision or action, it may in its discretion direct that the whole or any part of such fees be refunded to the appellant.

43 .....

[S. 43 repealed by s. 24 of Act 15 of 1996.]

44 Regulations

(1) The Minister may make regulations-

(a) prescribing any certificate or other document or form to be issued or used for the purposes of this Act;

(b) prescribing the fees payable in respect of any application, matter or document;

(c) prescribing the scale of remuneration which shall be paid to a person appointed in terms of section 18 (2);

(d) prescribing the scale of remuneration which shall be paid to any member of a board appointed in terms of section 42 (2);

(e) prescribing the information and facilities to be provided to the registrar by an applicant for a plant breeder's right, and the reproductive material to be submitted at the time of an application and thereafter;

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(f) prescribing the tests, trials, examinations and other steps to be taken by an applicant or the registrar before a plant breeder's right may be granted, and the time within which they are to be taken;

(g) prescribing the records relating to reproductive material for sale, multiplication or export to be kept by any person who has such material in his possession or under his control, the form and manner in which they are to be kept, and how and to whom they shall be available for inspection;

(h) concerning any matter which in terms of this Act is required or permitted to be prescribed; and

(i) concerning, generally, any matter which he considers necessary or expedient to prescribe in order that the objects and purposes of this Act may be better achieved, the generality of the powers conferred by this paragraph not being limited by the provisions of the preceding paragraphs.

(2) Different regulations may be made in terms of this section in respect of different classes or groups of plants or in respect of different kinds of plants or in such other respects as the Minister may determine.

(3) The regulations may in respect of any contravention thereof or failure to comply therewith prescribe a penalty-

(a) in the case of a first conviction, of a fine or imprisonment for a period not exceeding six months; and

(b) in the case of a second or subsequent conviction, of a fine or imprisonment for a period not exceeding one year.

[Sub-s. (3) substituted by s. 25 of Act 15 of 1996.]

(4) A regulation prescribing any fees shall be made only after consultation with the Minister of Finance.

45 Offences and penalties

(1) Any person-

(a) who makes a false entry in the register or causes it to be made therein, or who makes a writing or causes a writing to be made which falsely purports to be a copy of an entry in the register or a document lodged with the registrar, or who produces or tenders or causes to be produced or tendered as evidence any such entry or any such copy;

(b) who makes a false statement or representation, or who furnishes false information, knowing it to be false;

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[Para. *(b)* substituted by s. 26 *(a)* of Act 15 of 1996.]

(c) who obstructs or hinders the registrar, an officer or a person referred to in section 3 (3) *(a)* in the exercise of his or her powers or the carrying out of his or her duties under this Act;

[Para. *(c)* substituted by s. 26 *(a)* of Act 15 of 1996.]

(d) who, having been duly summoned to appear at any proceedings under this Act, fails without lawful excuse so to appear;

(e) who, having appeared as a witness at any proceedings under this Act, refuses without lawful excuse to be sworn or to make affirmation or to produce any document or answer any question which he may be lawfully required to produce or answer;

(f) who falsely represents that propagating material sold by him for the purpose of propagation or multiplication is propagating material of a variety in respect of which a plant breeder's right has been granted under this Act, or that the propagating material originates from such a variety;

(g) who, at the sale of propagating material for the purpose of propagation or multiplication, uses a denomination therefor which is different from the denomination registered in terms of this Act for the variety in question or uses the registered denomination of another variety of the same kind of plant or uses a denomination which corresponds to closely to a registered denomination that it is misleading;

(h) who fails to comply with an undertaking referred to in paragraph *(b)* of section 14 (2) or fails to carry out an order referred to in section 24A (1) *(b)*;

[Para. *(h)* substituted by s. 26 *(b)* of Act 15 of 1996.]

(i) who, except in the circumstances referred to in section 40, discloses information acquired by him in the course of his duties or in the performance of his functions under this Act,

shall be guilty of an offence and liable on conviction-

(i) in the case of a first conviction of an offence referred to in paragraph *(a)* or *(b)* to a fine or to imprisonment for a period not exceeding two years;

[Para. (i) substituted by s. 26 *(c)* of Act 15 of 1996.]

(ii) in the case of a second or subsequent conviction of an offence referred to in paragraph *(a)* or *(b)* to a fine or to imprisonment for a period not exceeding four years;

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[Para. (ii) substituted by s. 26 *(c)* of Act 15 of 1996.]

(iii) in the case of a first conviction of an offence referred to in paragraph *(c)*, *(d)*, *(e)*, *(f)*, *(g)*, *(h)* or *(i)* to a fine or to imprisonment for a period not exceeding one year; or

[Para. (iii) added by s. 26 *(d)* of Act 15 of 1996.]

(iv) in the case of a second or subsequent conviction of an offence referred to in paragraph *(c)*, *(d)*, *(e)*, *(f)*, *(g)*, *(h)* or *(i)* to a fine or to imprisonment for a period not exceeding two years.

[Para. (iv) added by s. 26 *(d)* of Act 15 of 1996.]

(2) Notwithstanding anything to the contrary in any other law, a magistrate's court shall have jurisdiction to impose any penalty prescribed by this Act.

46 Prohibition of trafficking by officers

(1) The registrar, or an officer who under the delegation, control or direction of the registrar exercises the powers and carries out the duties assigned to or imposed upon the registrar under this Act, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year-

(a) if he buys, sells, acquires or traffics in any plant breeder's right or an interest therein;

(b) if he acquires, otherwise than in the course of his duties, or sells any propagating material of a variety in respect of which a plant breeder's right has been granted or applied for.

[Sub-s. (1) amended by s. 27 *(a)* of Act 15 of 1996.]

(2) Any purchase, sale, acquisition or assignment of any plant breeder's right by or to the registrar or any such officer shall be of no force and effect.

(3) Any reproductive material acquired by the registrar or such an officer shall be forfeited to the State.

(4) Nothing in this section contained shall apply to the person who bred, or discovered and developed, a variety of a plant or to any acquisition by inheritance.

[Sub-s. (4) substituted by s. 27 *(b)* of Act 15 of 1996.]

47 Compensation in respect of infringement of plant breeder's right

(1) The holder of a plant breeder's right may upon proof of an infringement of that right and without proof of damages which might arise from such infringement, recover by action in any competent court from the person who infringed the plant breeder's right compensation in

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respect of such infringement in an amount not exceeding R10 000.

[Sub-s. (1) substituted by s. 28 *(a)* of Act 15 of 1996.]

(2) An action under subsection (1) shall be available to the holder in lieu of any action for damages in any amount which might arise from the relevant infringement.

(3) An action referred to in subsection (1) or (2) shall not be instituted while the relevant plant breeder's right or variety is the subject of-

(a) an objection which in terms of this Act is to be determined by the registrar; or

(b) an appeal which in terms of section 42 is to be decided by the board.

(4) The holder of a plant breeder's rights or any person to whom a licence has been granted under section 25 or 27 may institute a claim for damages suffered by such holder or such person due to the infringement of that plant breeder's right.

[Sub-s. (4) added by s. 28 *(b)* of Act 15 of 1996.]

(5) In the case of proceedings referred to in subsection (4) instituted by a person to whom a licence has been granted under section 25 or 27, the holder of the relevant plant breeder's right shall be joined as a party to those proceedings.

[Sub-s. (5) added by s. 28 *(b)* of Act 15 of 1996.]

(6) In addition to any other remedy, a competent court may, in proceedings due to the infringement of a plant breeder's right, make an order in respect of the custody, surrender or disposal of any book, document, plant, propagating material, product, substance or other article.

[Sub-s. (6) added by s. 28 *(b)* of Act 15 of 1996.]

48 Assignment of powers and duties by Minister

The Minister may either generally or in any particular case or in relation to particular property assign to any officer of the department any power conferred or duty imposed upon him under this Act, other than a power referred to in section 31 or 44.

49 Limitation of liability

No compensation shall be payable by the State, the Minister, the registrar or an officer in respect of any act done in good faith under this Act.

50 .....

[S. 50 repealed by s. 29 of Act 15 of 1996.]

51 Plant breeder's rights granted in terms of Act 22 of 1964

(1) A final or provisional plant breeder's right granted in terms of the provisions of the

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Plant Breeders' Rights Act, 1964, before the commencement of this Act, shall be deemed to be a plant breeder's right granted under this Act, and every provision of this Act, other than the provisions of section 22, shall *mutatis mutandis* apply with reference to any such plant breeder's right.

(2) Any application for a plant breeder's right which was received by the registrar before the commencement of this Act but in respect of which a final plant breeder's right was not granted under section 15 of the Plant Breeder's Rights Act, 1964, before such commencement, shall be dealt with in all respects as if this Act had commenced on the date of receipt of such application.

52 Repeal of laws

The Plant Breeders' Rights Act, 1964 (Act 22 of 1964), and the Plant Breeders' Rights Amendment Act, 1969 (Act 72 of 1969), are hereby repealed.

53 Short title and commencement

This Act shall be called the Plant Breeders' Rights Act, 1976, and shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette.*

PLANT BREEDERS' RIGHTS AMENDMENT ACT 5 OF 1980

[ASSENTED TO 18 MARCH 1980] [DATE OF COMMENCEMENT: 2 JANUARY 1981]

(English text signed by the State President)

ACT

To amend the provisions of the Plant Breeders' Rights Act, 1976, relating to the definitions; the application of the Act; entries in the register of plant breeders' rights; the persons who may apply for plant breeders' rights; applications for plant breeders' rights; priority of applications; the description and samples of new varieties; the designation of new varieties; the rejection of applications; the termination of provisional protection; objections to the granting of plant breeders' rights; the consideration and examination of applications; the period of plant breeders' rights; the rights of holders of plant breeders' rights; the maintenance of reproductive material; the granting of licences by the holders of plant breeders' rights; applications for compulsory licences; the rights of joint holders of plant breeders' rights; the taking over of plant breeders' rights by the State; the alteration of the denomination of a variety; the termination of a plant breeder's right; the marking of labels or containers; and secrecy; and to provide for incidental matters.

1 Amends section 1 of the Plant Breeders' Rights Act 15 of 1976, as follows: paragraph *(a)* substitutes the definition of 'agent'; paragraph *(b)* substitutes the definition of 'applicant'; paragraph *(c)* substitutes the definition of 'convention country'; and paragraph *(d)* substitutes the definition of 'propagating material'.

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2 Amends section 2 of the Plant Breeders' Rights Act 15 of 1976, as follows: paragraph *(a)* substitutes subsections (1) and (2); and paragraph *(b)* deletes subsections (3) and (4).

3 Amends section 4 of the Plant Breeders' Rights Act 15 of 1976 by substituting subsection (1).

4 and 5 Substitute respectively sections 6 and 7 of the Plant Breeders' Rights Act 15 of 1976.

6 Amends section 8 of the Plant Breeders' Rights Act 15 of 1976 by substituting subsections (1) and (2).

7 Repeals section 9 of the Plant Breeders' Rights Act 15 of 1976.

8 Substitutes section 10 of the Plant Breeders' Rights Act 15 of 1976.

9 Amends section 11 (1) of the Plant Breeders' Rights Act 15 of 1976, as follows: paragraph *(a)* substitutes paragraph *(b)* (iii); and paragraph *(b)* substitutes paragraph (i).

10 Amends section 16 of the Plant Breeders' Rights Act 15 of 1976 by substituting subsection (2).

11 Substitutes section 17 of the Plant Breeders' Rights Act 15 of 1976.

12 Amends section 19 of the Plant Breeders' Rights Act 15 of 1976, as follows: paragraph *(a)* substitutes subsection (4); paragraph *(b)* substitutes subsection (5); and paragraph *(c)* substitutes subsection (6).

13 Substitutes section 21 of the Plant Breeders' Rights Act 15 of 1976.

14 Amends section 23 of the Plant Breeders' Rights Act 15 of 1976, as follows: paragraph *(a)* substitutes subsection (1); paragraph *(b)* inserts subsection (1A); paragraph *(c)* amends subsection (3) by adding the proviso to paragraph *(b)*; and paragraph *(d)* adds subsection (5).

15 Amends section 24 (1) of the Plant Breeders' Rights Act 15 of 1976 by substituting paragraph *(a)*.

16 Amends section 25 of the Plant Breeders' Rights Act 15 of 1976 by substituting subsection (1).

17 Amends section 26 of the Plant Breeders' Rights Act 15 of 1976, as follows: paragraph *(a)* substitutes subsection (1); paragraph *(b)* deletes subsections (2) and (3); and paragraph *(c)* substitutes subsection (4).

18 Amends section 28 (1) of the Plant Breeders' Rights Act 15 of 1976 by substituting paragraph *(b)*.

19 Amends section 31 (1) of the Plant Breeders' Rights Act 15 of 1976 by substituting paragraph *(a)*.

20 Amends section 32 of the Plant Breeders' Rights Act 15 of 1976 by substituting

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subsection (5).

21 Amends section 33 of the Plant Breeders' Rights Act 15 of 1976 by substituting subsections (4) and (5).

22 Amends section 35 of the Plant Breeders' Rights Act 15 of 1976 by adding subsection (2), the existing section becoming subsection (1).

23 Amends section 40 of the Plant Breeders' Rights Act 15 of 1976 by substituting the words following upon paragraph *(c)*.

24 Repeals section 41 of the Plant Breeders' Rights Act 15 of 1976.

25 Short title and commencement

(1) This Act shall be called the Plant Breeders' Rights Amendment Act, 1980, and shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette*.

(2) Different dates may in terms of subsection (1) be fixed in respect of different provisions of this Act.

PLANT BREEDERS' RIGHTS AMENDMENT ACT 14 OF 1981

[ASSENTED TO 10 FEBRUARY 1981] [DATE OF COMMENCEMENT: 25 FEBRUARY 1981]

(English text signed by the State President)

ACT

To amend the Plant Breeders' Rights Act, 1976, so as to redefine the expressions 'department' and 'Minister'; and to limit applications for a plant breeder's right to certain persons; and to provide for incidental matters.

1 Amends section 1 of the Plant Breeders' Rights Act 15 of 1976, as follows: paragraph *(a)* substitutes the definition of 'department'; and paragraph *(b)* substitutes the definition of 'Minister'.

2 Amends section 6 of the Plant Breeders' Rights Act 15 of 1976 by adding subsection (2), the existing section becoming subsection (1).

3 Amends section 7 of the Plant Breeders' Rights Act 15 of 1976 by substituting subsection (2).

4 Short title

This Act shall be called the Plant Breeders' Rights Amendment Act, 1981.

PLANT BREEDERS' RIGHTS AMENDMENT ACT 38 OF 1983

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[ASSENTED TO 13 APRIL 1983] [DATE OF COMMENCEMENT: 20 APRIL 1983]

(English text signed by the State President)

ACT

To amend the Plant Breeders' Rights Act, 1976, so as to substitute certain definitions; to authorize the entering into of certain agreements in connection with the exchange of the results of tests and trials with new varieties; to further regulate the consideration and examination of applications for plant breeders' rights; to make the payment of certain fees a prerequisite for the granting of plant breeders' rights; and to further regulate the prohibition of the disclosure of certain information; and to provide for incidental matters.

1 Amends section 1 of the plant Breeders' Rights Act 15 of 1976, as follows: paragraph *(a)* substitutes the definition of 'department'; paragraph *(b)* substitutes the definition of 'Minister'; paragraph *(c)* substitutes the definition of 'officer'; and paragraph *(d)* substitutes the definition of 'registrar'.

2 Inserts section 5A in the Plant Breeders' Rights Act 15 of 1976.

3 Amends section 19 of the Plant Breeders' Rights Act 15 of 1976, as follows: paragraph *(a)* substitutes subsection (1) *(b)*; paragraph *(b)* substitutes subsection (2); paragraph *(c)* substitutes subsection (3) *(a)*; paragraph *(d)* substitutes subsection (4); and paragraph *(e)* deletes subsections (5) and (6).

4 Amends section 20 (1) of the Plant Breeders' Rights Act 15 of 1976 by substituting the words immediately following upon paragraph *(c)*.

5 Substitutes section 40 of the Plant Breeders' Rights Act 15 of 1976.

6 Short title

This Act shall be called the Plant Breeders' Rights Amendment Act, 1983.

PLANT BREEDERS' RIGHTS AMENDMENT ACT 15 OF 1996

[ASSENTED TO 16 APRIL 1996] [DATE OF COMMENCEMENT: 19 APRIL 1996]

(Afrikaans text signed by the President)

ACT

To amend the Plant Breeders' Rights Act, 1976, so as to insert certain definitions and to substitute or delete others; to further regulate the varieties to which the Act applies; to further regulate the delegation of functions by the Registrar of Plant Breeders' Rights; to further regulate applications for plant breeders' rights; to make further provision for the denomination of varieties; to make further provision for the rejection of applications for plant breeders' rights; to make further provision for the hearing of an

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objection to the grant of a plant breeder's right; to make further provision for the consideration and examination of an application for a plant breeder's right; to prescribe anew the period for which a plant breeder's right shall be granted; to further regulate the rights of a holder of a plant breeder's right; to define the infringement of a plant breeder's right; to further regulate the termination of a plant breeder's right; to make further provision for the secrecy of certain information; to further regulate the appeal against a decision of or action by the registrar; to further regulate offences and to increase penalties; to further regulate compensation for the infringement of a plant breeder's right; and to delete certain obsolete provisions; to provide that the Plant Breeders' Rights Act, 1976, shall apply throughout the Republic; to repeal certain laws; and to provide for matters connected therewith.

1 Amends section 1 of the Plant Breeders' Rights Act 15 of 1976, as follows: paragraph *(a)* substitutes the definition of 'advertise'; paragraph *(b)* substitutes the definition of 'breeder'; paragraph *(c)* substitutes the definition of 'denomination'; paragraph *(d)* inserts the definition of 'essential characteristics'; paragraph *(e)* deletes the definition of 'new variety'; paragraph *(f)* substitutes the definition of 'plant'; paragraph *(g)* substitutes the definition of 'propagating material'; paragraph *(h)* inserts the definition of 'protected variety'; and paragraph *(i)* substitutes the definition of 'variety'.

2 Substitutes section 2 of Plant Breeders' Rights Act 15 of 1976.

3 Amends section 3 of the Plant Breeders' Rights Act 15 of 1976 by substituting subsections (1), (2) and (3).

4 Amends section 6 of the Plant Breeders' Rights Act 15 of 1976 by substituting subsection (1).

5 Amends section 7 (3) of the Plant Breeders' Rights Act 15 of 1976 by substituting paragraph *(b)*.

6 Amends section 8 of the Plant Breeders' Rights Act 15 of 1976, as follows: paragraph *(a)* substitutes in subsection (2) the words preceding paragraph *(a)*; paragraph *(b)* substitutes subsection (2) *(a)*; and paragraph *(c)* substitutes subsections (3), (4) and (5).

7 Amends section 10 of the Plant Breeders' Rights Act 15 of 1976, as follows: paragraph *(a)* substitutes the heading; paragraph *(b)* substitutes subsection (1); and paragraph *(c)* adds subsection (4).

8 Amends section 11 (1) of the Plant Breeders' Rights Act 15 of 1976, as follows: paragraph *(a)* substitutes paragraph *(b)* (i); paragraph *(b)* deletes the word 'or' at the end of paragraph *(h)* and substitutes paragraph *(i)*; and paragraph *(c)* adds paragraph *(j)*.

9 Amends section 18 of the Plant Breeders' Rights Act 15 of 1976 by substituting subsections (4) and (5).

10 Amends section 19 of the Plant Breeders' Rights Act 15 of 1976, as follows: paragraph

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(a) substitutes subsection (2); and paragraph *(b)* adds subsections (5) and (6).

11 Amends section 20 of the Plant Breeders' Rights Act 15 of 1976 by substituting subsection (1).

12 and 13 Substitute respectively sections 21 and 23 of the Plant Breeders' Rights Act 15 of 1976.

14 and 15 Insert respectively sections 23A and 24A in the Plant Breeders' Rights Act 15 of 1976.

16 Amends section 25 of the Plant Breeders' Rights Act 15 of 1976 by substituting subsections (3) and (4).

17 Amends section 27 (3) of the Plant Breeders' Rights Act 15 of 1976 by substituting the words preceding paragraph *(a)*.

18 Amends section 29 of the Plant Breeders' Rights Act 15 of 1976, as follows: paragraph *(a)* substitutes in subsection (1) the words preceding paragraph *(a)*; and paragraph *(b)* substitutes subsection (2).

19 Amends section 31 (1) of the Plant Breeders' Rights Act 15 of 1976 by substituting paragraph *(a)*.

20 Amends section 32 of the Plant Breeders' Rights Act 15 of 1976, as follows: paragraph *(a)* substitutes in subsection (1) the words preceding paragraph *(a)*; and paragraph *(b)* substitutes subsection (2).

21 Amends section 33 of the Plant Breeders' Rights Act 15 of 1976 by substituting subsections (1) and (2).

22 Substitutes section 40 of the Plant Breeders' Rights Act 15 of 1976.

23 Amends section 42 of the Plant Breeders' Rights Act 15 of 1976 by substituting subsection (3).

24 Repeals section 43 of the Plant Breeders' Rights Act 15 of 1976.

25 Amends section 44 of the Plant Breeders' Rights Act 15 of 1976 by substituting subsection (3).

26 Amends section 45 (1) of the Plant Breeders' Rights Act 15 of 1976, as follows: paragraph *(a)* substitutes paragraphs *(b)* and *(c)*; paragraph *(b)* substitutes paragraph *(h)*; paragraph *(c)* substitutes paragraphs (i) and (ii); and paragraph *(d)* adds paragraphs (iii) and (iv).

27 Amends section 46 of the Plant Breeders' Rights Act 15 of 1976, as follows: paragraph *(a)* substitutes in subsection (1) the words preceding paragraph *(a)*; and paragraph *(b)*

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substitutes subsection (4).

28 Amends section 47 of the Plant Breeders' Rights Act 15 of 1976, as follows: paragraph *(a)* substitutes subsection (1); and paragraph *(b)* adds subsections (4), (5) and (6).

29 Repeals section 50 of the Plant Breeders' Rights Act 15 of 1976.

30 Substitutes the long title of the Plant Breeders' Rights Act 15 of 1976.

31 Repeal of laws

The laws mentioned in the second column of the Schedule are hereby repealed as indicated in the third column of the Schedule, to the extent that such laws were in force immediately prior to the commencement of the Constitution in the various territories of the national territory of the Republic as set out it [sic] the fourth column of the Schedule.

32 Extension of application of Act 15 of 1976

The principal Act shall apply throughout the Republic.

33 Short title

This Act shall be called the Plant Breeders' Rights Amendment Act, 1996.

Schedule
LAWS REPEALED BY SECTION 30

Number and year of law	Short title	Extent of repeal	Area in respect of which law is repealed
Act 22 of 1964	Plant Breeders' Rights Act, 1964	The whole	The territory of the former Republic of Transkei
Act 72 of 1969	Plant Breeders' Rights Amendment Act, 1969	The whole	The territory of the former Republic of Transkei
Act 15 of 1976	Plant Breeders' Rights Act, 1976	The whole	The territories of the former Republics of Bophuthatswana, Venda and Ciskei and the territories of the former self-governing territories of Lebowa, Gazankulu, Qwaqwa, KwaZulu, KwaNdebele and KaNgwane
Act 5 of 1980	Plant Breeders' Rights Amendment Act, 1980	The whole	The territory of the former Republic of Ciskei and the territories of the former self-governing territories of Lebowa, Gazankulu, Qwaqwa, KwaZulu, KwaNdebele and KaNgwane

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Act 14 of 1981	Plant Breeders' Rights Amendment Act, 1981	The whole	The territory of the former Republic of Ciskei and the territories of the former self-governing territories of Lebowa, Gazankulu, Qwaqwa, KwaZulu, KwaNdebele and KaNgwane
Act 38 of 1983	Plant Breeders' Rights Amendment Act, 1983	The whole	The territories of the former self-governing territories of Lebowa, Gazankulu, Qwaqwa, KwaZulu, KwaNdebele and KaNgwane

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