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STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

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DEPARTEMENT VAN DIE EERSTE MINISTER

DEPARTMENT OF THE PRIME MINISTER

No. 473.

24 Maart 1976.

No. 473.

24 March 1976.

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring gegee het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 15 van 1976: Wet op Planttelersregte, 1976.

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 15 of 1976: Plant Breeders' Rights Act, 1976.

PLANT BREEDERS' RIGHTS ACT, 1976

Act No. 15, 1976

ACT

To provide for a system whereunder rights relating to new varieties of certain kinds of plants may be granted and registered; for the protection of such rights and the grant of licences in respect of the exercise thereof; and to provide for incidental matters.

(English text signed by the State President.)

(Assented to 15 March 1976.)

BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:—

1. In this Act, unless the context indicates otherwise—

Definitions.

- (i) "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 propagating material of a new variety 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; (i)
- (ii) "agent" means the person duly authorized by an applicant, breeder or holder to act on his behalf in connection with any matter regarding this Act and who is for such purpose recognized by the registrar in accordance with the prescribed requirements; (ii)
- (iii) "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; (xiii)
- (iv) "applicant" means a person referred to in section 6; (iii)
- (v) "board" means the board referred to in section 42; (xvi)
- (vi) "breeder", in relation to a new variety, means the person who directed the breeding of the new variety, or who developed or discovered it; (xxi)
- (vii) "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 the State President by proclamation in the *Gazette* declares to be a convention country with a view to the fulfilment of a convention concerning plant breeders' rights which has been signed and ratified by the Republic and such country; (ix)

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- (viii) "denomination", in relation to a new variety in respect of which a plant breeder's right has been granted, means the generic name for the new variety; (v)
- (ix) "department" means the Department of Agricultural Technical Services; (vi)
- (x) "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; (viii)
- (xi) "kind of plant" means all related genera, species and subspecies of a plant which are known by the same common name; (xx)
- (xii) "mark" means a mark as defined in section 2 of the Trade Marks Act, 1963 (Act 62 of 1963); (x)
- (xiii) "Minister" means the Minister of Agriculture; (xi)
- (xiv) "new variety" means a variety which complies with the requirements of section 2; (xii)
- (xv) "officer" means an officer as defined in section 1 of the Public Service Act, 1957 (Act 54 of 1957); (iv)
- (xvi) "plant" means any tree, shrub or vegetation, and includes any live part thereof, but does not include any propagating material or a derivative thereof which is used for a purpose other than the propagation or multiplication of the plant; (xiv)
- (xvii) "plant breeder's right" means a plant breeder's right granted in terms of section 20; (xv)
- (xviii) "prescribed" means prescribed by regulation; (xxiv)
- (xix) "propagating material" means any plant or any bulb, tuber, rhizome, shoot, bud or other vegetative part of a plant which reproduces asexually, and includes the seed of a plant; (xxv)
- (xx) "register" means the register kept in terms of section 4; (xvii)
- (xxi) "registrar" means the officer designated as Registrar of Plant Breeders' Rights in terms of section 3, and includes an officer acting under a delegation from or under the control or direction of the registrar; (xviii)
- (xxii) "regulation" means a regulation made under this Act; (xix)
- (xxiii) "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; (xxiii)
- (xxiv) "this Act" includes the regulations; (vii)
- (xxv) "variety" means any cultivar, clone, breeding line or hybrid of a kind of plant which can be cultivated. (xxii)

2. (1) A plant breeder's right, the content and mode of exercise of which are as determined in this Act, may be granted in respect of any new variety of any kind of plant which the Minister by notice in the *Gazette* declares to be a kind for the purposes of this Act. Application of Act.

(2) A variety of a plant referred to in subsection (1) shall be deemed to be a new variety if—

- (a) it is not available in the Republic to the public in the trade or otherwise at the time of the application for the relevant plant breeder's right or has at such time not been available elsewhere for more than 4 years;
- (b) it is not generally known at the time of the application for the relevant plant breeder's right;
- (c) it is by reason of any important characteristic clearly distinguishable from any other variety of the same kind of plant the existence of which is a matter of common knowledge at the time of the application for

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the relevant plant breeder's right, whatever the origin, artificial or natural, of the initial variation from which it resulted may be;

(d) it is sufficiently homogeneous having regard to the particular features of the sexual reproduction or vegetative propagation thereof; and

(e) it is stable with regard to the essential characteristics thereof and remains true to the description thereof after repeated reproduction or propagation or, where the breeder has defined a particular cycle of reproduction or multiplication, at the end of each cycle.

(3) A characteristic referred to in subsection (2) (c) may be of a morphological or physiological or any other nature and shall be such that it is clearly recognizable and precisely describable.

(4) For the purposes of paragraphs (b) and (c) of subsection (2), a variety shall be deemed to be generally known and the existence of a variety shall be deemed to be a matter of common knowledge, as the case may be, if the variety, at the time of the relevant application for a plant breeder's right—

(a) was entered in an official list of varieties, or an application for such entry is under consideration;

(b) is included in a reference collection accessible to the public;

(c) has been precisely described in a publication which is accessible to the public; or

(d) has otherwise come to the knowledge of the public.

3. (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 new plant varieties is entrusted, and who shall exercise the powers, perform the functions and carry out the duties conferred upon, assigned to or imposed upon the registrar under this Act. Designation of registrar.

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

(3) (a) Any power conferred upon, function assigned to or duty imposed upon the registrar may be exercised, performed or carried out by the registrar personally or by an officer under the delegation, control or direction of the registrar.

(b) Any decision made or order given by any such officer 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.

(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. (1) The registrar shall keep a register of plant breeders' rights granted in terms of this Act, in which shall be entered— Register of plant breeders' rights.

(a) the kind of plant to which each new variety belongs;

(b) the denomination of each new variety and any approved change thereof;

(c) the principal morphological, physiological and other characteristics of each new variety, and, where varieties are produced by a cross between certain hereditary components, the principal morphological and physiological characteristics of such components;

(d) the full name and address of the original breeder of each new variety;

(e) the name and address of the holder of the plant breeder's right in each new variety and the name and address of each person to whom such right has been transferred;

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- (f) the name and address of the person who has been appointed as the agent of any person referred to in paragraph (e);
- (g) the date of inception of the plant breeder's right in each new variety;
- (h) the date on which a plant breeder's right ceases to exist and the reason therefor;
- (i) the name and address of each person to whom a licence has been issued in terms of section 25 for the use of the plant breeder's right;
- (j) the name and address of each person to whom a compulsory licence has been issued in terms of section 27 for the use of the plant breeder's right; and
- (k) such other particulars as the registrar may, subject to the provisions of this Act, deem necessary.

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

(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.

6. (1) An application under section 7 for the grant of a plant breeder's right may be made by— Persons entitled to apply for plant breeder's right.

(a) the breeder of a new variety of a kind of plant referred to in section 2 (1): Provided that where the breeder is an employee and his duties are such that they involve plant breeders' activities relating to the kind of plant in question, the application shall be made by the employer of the breeder, irrespective of whether or not such breeder is paid a salary; or

(b) the successor in title of a person who under paragraph (a) may submit an application.

(2) An application by a person referred to in subsection (1) 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 who is resident in the Republic.

(3) An application referred to in subsection (2) shall be considered only if the applicant concerned is a citizen of the Republic or 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 the Republic or a convention country or an agreement country.

7. (1) Application may be made by any person referred to in section 6 for the grant of a plant breeder's right in a new variety of a kind of plant referred to in section 2 (1). Application for a plant breeder's right.

(2) An application under subsection (1) shall be made to the registrar in the form and manner prescribed, be accompanied

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by the prescribed application fee and contain an address in the Republic to which any notice or communication may be sent.

(3) A legal representative or an agent making an application shall furnish such proof of his title or authority as the registrar may require or as may be prescribed.

(4) The name and address of an agent of a person applying for the grant of a plant breeder's right and of the agent of a holder of such a right, shall be furnished to the registrar in writing and shall be deemed valid until the registrar is notified in writing of any change.

(5) A change referred to in subsection (4) shall be submitted to the registrar in the prescribed form and manner.

8. (1) The effective date of an application in terms of section 7 shall be the date on which the application is received by the registrar, and if more than one application in respect of the same variety is received, priority shall be given to the application first received by the registrar. Priority and redating of applications.

(2) If an application referred to in section 6 (2) is preceded by an application for protection of the same new 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 form within the prescribed period of the date on which such preceding application was duly deposited in a convention country or an agreement country;

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

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

(3) A claim referred to in subsection (2) (b) shall within the prescribed period 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.

(4) An application given priority under subsection (2) shall, within the prescribed period, which shall not exceed 4 years, reckoned from the date on which the prescribed period contemplated in subsection (3) expired, be confirmed by supplementing it in any respect necessary in order to comply with the requirements of this Act.

(5) If two or more applications for the protection of the same new 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.

(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.

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(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. (1) An application referred to in section 7 shall be accompanied by— Description and samples of new varieties.

(a) a description, in the form required by the registrar, of a typical plant of the variety in question; and

(b) such coloured illustrations of a typical plant of the new variety as are required by the registrar.

(2) The description referred to in subsection (1) (a)—

(a) shall indicate the denomination of the variety concerned;

(b) shall be accompanied by such other particulars as may be prescribed or required by the registrar; and

(c) shall specify the procedure to be used for the maintenance and reproduction of the variety concerned.

(3) The registrar may require—

(a) that plants of the variety concerned or of the variety from which it originated be shown to him;

(b) that such additional information or specimens as he deems necessary to determine whether or not the variety concerned constitutes a new variety, be furnished to him.

10. (1) The denomination of a new variety shall 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. Denomination of a new variety.

(2) Subject to the provisions of subsection (5), the registrar may, at any time before a plant breeder's right is granted, reject a denomination proposed under subsection (1) if he considers it unsuitable, and direct the applicant to submit a translation thereof or some other suitable denomination.

(3) A denomination—

(a) shall be suitable to identify a variety;

(b) shall not be such as to be liable to mislead or to lead to confusion concerning the characteristics, value or identity of the variety in question, or the identity of the breeder thereof;

(c) shall be different from every denomination which designates existing varieties of the same or a closely related kind of plant;

(d) shall, subject to the provisions of subsection (4), not be identical with or similar to, or liable to lead to confusion with, a designation which enjoys the protection accorded to a mark within the meaning—

(i) in the Republic, of the Trade Marks Act, 1963 (Act 62 of 1963); or

(ii) in a convention country or an agreement country, of the laws relating to trade marks in that country, and which applies to propagating material or the use in connection therewith or in connection with a product thereof;

(e) shall not be inimical to public order or contrary to morality; and

(f) shall comply with such further requirements as the registrar may determine.

(4) If the denomination of a new variety proposed by an applicant in terms of subsection (1) is a designation in respect of which he enjoys the protection referred to in subsection (3) (d), the registrar shall not approve such denomination unless

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the applicant in writing renounces his right to the mark in question as from the date on which a plant breeder's right in the new variety is granted.

(5) The denomination approved by the registrar for a new variety in respect of which protection has been granted by, or an application for protection has been lodged with, the appropriate authority in a convention country or an agreement country in accordance with the laws in force in that country, shall be the same as the denomination thus protected or thus applied for in such country, if the provisions of subsections (3) and (4) have been complied with and a preferent claim thereto by another person has not been established.

(6) 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 in respect thereof, be used in connection with such variety.

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

Rejection of application.

- (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 new variety;
 - (ii) does not comply with any provision of this Act; or
 - (iii) does not belong to a kind of plant which the Minister has declared to be a kind in terms of section 2;
- (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; or
- (i) that, where such application has been preceded by an application for protection of the same variety in a convention country or an agreement country, the description submitted to him differs from the description submitted in such preceding application or that the description in such preceding application does not describe a new variety referred to in section 2.

(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. (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.

Amendment of application.

(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 appli-

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cation 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. (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. Publication of application.

(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. (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 person in respect of the variety in question. Grant of provisional protection.

(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. 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. Effect of provisional protection.

16. (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. Termination of provisional protection.

(2) A protective direction may be withdrawn at an earlier date by the registrar if, in his opinion, circumstances justify the withdrawal, and shall be withdrawn at an earlier date by the registrar if he is satisfied that the holder thereof has failed to fulfil the terms of an undertaking referred to in paragraph (b) of section 14 (2), or that he 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 48 or an action for damages in respect of an infringement of a plant breeder's right.

17. (1) Any person may within 6 months from the date on which the particulars relating to an application for a plant breeder's right have been published in the *Gazette* under section Notice and grounds of objection.

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13 (1), on payment of the prescribed fee, lodge an objection with the registrar to the grant of a plant breeder's right in pursuance of such application.

(2) Such objection may be based only on a ground referred to in section 11 (1).

(3) Such objection shall be in writing and the registrar may direct that it be substantiated by such proof as he may deem necessary.

(4) The person objecting shall serve a copy of any document and other proof lodged with the registrar in terms of subsections (1) and (3) on the person who applied for the grant of the relevant plant breeder's right, and shall furnish the registrar with proof of the service thereof.

(5) The applicant may within 60 days from the date of the receipt of the documents and other proof referred to in subsection (4), or within such further time as the registrar may allow, lodge a counter-statement with the registrar in which are set out the particulars of any ground upon which he contests any allegation of the person objecting.

(6) The applicant shall serve a copy of such counter-statement on the person objecting and shall furnish the registrar with proof of the service thereof.

18. (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. Hearing of an objection.

(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 determined by the registrar.

(5) The person objecting and the person who applied for the plant breeder's right in question may, if he 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 89 of the Patents Act, 1952 (Act 37 of 1952).

(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

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the *Gazette* publish such particulars relating to the lapsing as may be prescribed.

19. (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. Consideration and examination of applications.
- (b) Where an objection has been lodged under section 17, the registrar shall delay considering the relevant application until the objection has been disposed of.
- (2) The registrar shall undertake such tests and trials as he may deem necessary with a variety in respect of which an application is being considered under subsection (1) or have such tests and trials undertaken in terms of subsection (6), in order to enable him to determine whether such a variety is a new variety.
- (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—
- (a) pay the appropriate prescribed examination fee; and
- (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) Notwithstanding the provisions of subsection (2), the registrar may, if he can obtain acceptable results of tests and trials with the variety in question from the appropriate authority in a convention country or an agreement country, in his discretion decide not to undertake any tests or trials with a variety in respect of which an application is being considered under subsection (1).
- (b) The costs involved in obtaining the results under paragraph (a) shall be paid to the registrar by the person whose application is being considered.
- (5) Different examination fees may be prescribed in respect of tests and trials with different kinds of plants.
- (6) The registrar may submit propagating material of a variety in respect of which application for a plant breeder's right has been made to him, to the appropriate authority in a convention country or an agreement country in order to have the necessary tests and trials undertaken therewith, and the registrar shall accept the results of any such tests or trials which such authority may furnish to him.

20. (1) If the registrar, after considering an application in terms of section 19 and examining the results of any tests or trials conducted with the variety in question, is of the opinion— Grant of plant breeder's right.
- (a) that the application conforms to the requirements of this Act;
- (b) that the applicant is entitled under this Act to make the application; and
- (c) that the variety is a new variety and that it conforms to the requirements of this Act,
- he shall grant a plant breeder's right in respect of such new variety.

- (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.

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- (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. (1) A plant breeder's right shall, subject to earlier termination under this Act, be granted for the period prescribed in respect of the kind of plant in question, which period shall—

Limitation of plant breeder's right.

- (a) in the case of a fruit tree or any root-stock thereof, any ornamental tree, any vine or any root-stock thereof or any forest tree, be not less than 18 years and not more than 25 years; and
- (b) in the case of any other kind of plant, be not less than 15 years and not more than 20 years.

(2) The period referred to in subsection (1) shall be calculated from the date on which a certificate of registration is issued under paragraph (a) of section 20 (2).

22. (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.

Payment of annual fee.

- (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. (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 right be obtained by way of licence under section 25 or 27 by any person—

Rights of holder of plant breeder's right.

- (a) to undertake the production, sale, import into or export from the Republic of propagating material of the relevant new variety; and
- (b) to use the new variety in question in developing a hybrid or a different variety of that kind of plant.

(2) 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 respect of the kind of plant to which such new variety belongs, have the sole right to undertake with regard to the relevant new variety any activity referred to in that subsection or to have such activity undertaken by any other person.

(3) It shall not be an infringement of a plant breeder's right if a person who procured any propagating material of a new variety in a manner which does not infringe any right of the holder of the relevant plant breeder's right—

- (a) resells it;
- (b) sells any plant, propagating material or product derived therefrom for purposes other than the further propagation or multiplication thereof; or
- (c) uses or multiplies it in the development of a hybrid or a different variety or for purposes of any other *bona fide* research: Provided that the repeated use, without the necessary authority, of the relevant propagating

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material for the commercial production of a different variety, shall constitute an infringement of a plant breeder's right.

(4) Notwithstanding the provisions of subsection (3) (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 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.

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

Maintenance of reproductive material.

(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 morphological, physiological and other characteristics thereof correspond with those described at the time of the grant of the relevant right;

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

25. (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 (1).

Licences.

(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 such form and manner as may be prescribed; of each licence issued by him under this section, and shall furnish the registrar with a copy of each such licence.

(4) During the period which the Minister prescribes under section 23 (2) as a period for the exercise of sole rights in respect of the kind of plant to which a new variety belongs, the registrar shall not issue a compulsory licence in respect of that variety in terms of section 27.

26. (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 upon payment of the prescribed fee apply to the registrar for the issue to him of a compulsory licence in respect of the relevant plant breeder's right on the ground that the reasonable requirements of the public with regard to the new variety in question are not being satisfied or will not be satisfied.

Application for compulsory licence.

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(2) An application made in terms of subsection (1) shall set out the reasons why the person concerned considers the refusal or conditions contemplated in subsection (1) to be unreasonable, and the registrar may require the application to be substantiated by such proof as he may deem necessary.

(3) A person making such application shall serve a copy of any document and other proof lodged with the registrar in terms of subsections (1) and (2) on the holder of the relevant plant breeder's right, and shall furnish the registrar with proof of the service thereof.

(4) The holder of such plant breeder's right may within 60 days from the date of the receipt of the documents and other proof referred to in subsection (3), or within such further time as the registrar may allow, 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.

(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. (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.

Grant of
compulsory
licence.

(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 new variety in question are not being satisfied or will not be satisfied, he may issue a compulsory licence—

(a) which shall include the conditions referred to in paragraphs (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 on the basis of representations made to him for the amendment or withdrawal thereof.

(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 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. (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—

Joint holders of
plant breeder's
right.

(a) to an equal share in such right;

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(b) to undertake in connection therewith for his own benefit any activity referred to in section 23 (1), if he discloses any such activity to the other joint holders; and

(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. (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 and in the form and manner prescribed and upon payment of the prescribed fee—

Transfer of plant breeder's right.

(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.

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

(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. (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.

State bound by plant breeder's right.

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

31. (1) (a) The Minister may by notice in the *Gazette* declare that the plant breeder's right in any new variety of a kind of plant shall, as from a date determined by him and published in the same or a later notice in the *Gazette*, be taken over by the State.

State may take over plant breeder's right.

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(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. (1) The denomination approved in respect of a new variety may be altered or supplemented by the registrar— Alteration of denomination.

(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.

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

(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 registrar 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 3 months from the date of the publication of particulars under subsection (4) and on payment of the prescribed fee, lodge with the registrar a written objection to the grant of the alteration or supplementation in question, and the registrar may require the objection to be substantiated by such proof as he may deem necessary.

(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. (1) A plant breeder's right shall terminate upon the expiry of the period prescribed in respect thereof under section 21. Termination of plant breeder's right.

(2) The registrar may terminate a plant breeder's right prior to the termination contemplated in subsection (1), if he is satisfied—

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

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- (b) that information has come to light which, if discovered earlier, would have resulted in the right being refused;
- (c) that 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) that the holder of the 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) that the holder of the right has failed to comply with any request under paragraph (b) of section 24 (1), or that he has prevented the registrar from undertaking an inspection referred to in section 24 (2);
- (f) that the holder of the 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) that the annual fee under section 22 was not paid within the time referred to in that section.

(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 60 days from the date of the advice under that subsection or within such further time as the registrar may allow, upon payment of the prescribed fee lodge with the registrar an objection against the intended termination of the plant breeder's right in question.

(5) The provisions of sections 17 (3) and 18 (1), (2), (3), (4), (5) and (6) shall *mutatis mutandis* apply with reference to such an objection.

(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. (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. Voluntary
surrender of
plant breeder's
right.

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

35. 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. Marking of
labels or
containers.

36. (1) The registrar may authorize—

- (a) the correction of any clerical error or error in translation appearing in any plant breeder's right, the Correction of
errors.

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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 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. (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.

Discretionary power of 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. 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.

Defect in form not to invalidate documents.

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

Preservation and proof of documents.

(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 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.

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40. No person shall, except—

Secrecy.

- (a) to the Minister, the board, the registrar or any other person for the purpose of carrying out his duties or the performance of his functions under this Act;
- (b) to a police official for the purpose of an inquiry relating to the enforcement of the provisions of this Act; or
- (c) when required to do so by any court or under any law, disclose any information acquired by him in the carrying out of his duties or the performance of his functions under this Act in relation to any new variety for which an application for the grant of a plant breeder's right has been made, or in relation to the business affairs of an applicant.

41. The proprietor or other registered user of a trade mark registered in terms of the Trade Marks Act, 1963 (Act 62 of 1963), may, on the conditions prescribed, use such mark in conjunction with the denomination of a new variety in respect of which a plant breeder's right has been granted in terms of this Act.

Trade marks.

42. (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.

Appeal against decision or action of the registrar.

- (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;
 - (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) The provisions of sections 18 (1), (3), (4) and (5) shall *mutatis mutandis* apply with reference to an appeal.
- (b) 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 89 of the Patents Act, 1952 (Act 37 of 1952).
- (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 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

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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) No appeal shall lie against the decision of the board.

(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. (1) The grant of a plant breeder's right shall not be refused and such right shall not be terminated prior to the expiry thereof if the applicant for or the holder of such right, in pursuance of allegations that the new variety in respect of which such right has been applied for or granted was at the time of the application for the grant of such right generally known or that the existence thereof was a matter of common knowledge, proves—

Common knowledge of new variety in certain circumstances not to frustrate plant breeder's right.

(a) that the cultivation of the new variety had been undertaken only for the purposes of tests and trials with a view to the technical evaluation thereof;

(b) that the inclusion of such variety in an official list of varieties or an application for such inclusion which is under consideration or the inclusion of such variety in a reference collection, arises from the results of tests and trials referred to in paragraph (a);

(c) that the exhibition thereof at an exhibition or a reading of a paper in connection therewith before an audience or the publication of such paper or other technical information in connection therewith, arises from the results of tests and trials referred to in paragraph (a); or

(d) that anything referred to in paragraph (a), (b) or (c) was done by another person without his prior authority or consent.

(2) Notwithstanding the provisions of subsection (1), the registrar may reject the proof referred to in that subsection if he is satisfied that the applicant or holder in question failed to take all reasonable steps to protect his rights within a reasonable time—

(a) in the case of the cultivation referred to in subsection (1) (a), after the commencement of such cultivation; or

(b) in the case of subsection (1) (d), after the act in question by such other person was first brought to his notice.

44. (1) The Minister may make regulations—

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);

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- (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;
- (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 not exceeding a fine of two hundred rand or imprisonment for a period not exceeding six months.

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

45. (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 of 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, for the purpose of deceiving the registrar or any officer in the administration of any provision of this Act, or who, for the purpose of procuring or influencing the doing or omission of anything in relation to this Act or any matter thereunder, makes a false statement or representation knowing it to be false;
- (c) who obstructs or hinders the registrar or any officer in the exercise of his powers or the carrying out of his functions under this Act;
- (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

Offences and penalties.

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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 so 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);
- (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 contravention referred to in paragraph (a) or (b), to a fine not exceeding one thousand rand or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment; or
- (ii) in the case of a contravention referred to in paragraph (c), (d), (e), (f), (g), (h) or (i), to a fine not exceeding five hundred rand or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(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. (1) The registrar, or an officer who under the delegation, control or direction of the registrar exercises the powers, performs the functions 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 not exceeding five hundred rand or to imprisonment for a period not exceeding one year—

Prohibition of trafficking by officers.

- (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.

(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 breeder of a new variety of a plant or to any acquisition by bequest or devolution in law.

47. (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 right compensation in respect of such infringement in an amount not exceeding five hundred rand.

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

(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.

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48. 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.

Assignment of powers and duties by Minister.

49. 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.

Limitation of liability.

50. (1) A patent granted with reference to a plant under the Patents Act, 1952, before the commencement of this Act shall not be liable to revocation except upon some ground on which it would have been liable to be revoked in terms of the provisions of that Act and shall, unless it is so revoked, expire on the date on which it would have expired in terms of the provisions of that Act if the said provisions had continued to be applicable to plants, and all fees payable in respect of any such patent shall continue to be payable as if this Act had not been passed.

Patents granted in respect of plants under Act 37 of 1952.

(2) Any application for a patent in respect of a plant which was received by the registrar of patents before the commencement of the Plant Breeders' Rights Act, 1964 (Act 22 of 1964), but which was not disposed of prior to the commencement of that Act, or any such application which was received by the registrar of patents within 12 months after the coming into operation of that Act and to which the provisions of section 95 of the Patents Act, 1952, are applicable, shall be dealt with in all respects as if this Act had not been passed, and the provisions of subsection (1) shall *mutatis mutandis* apply with reference to any plant patent granted in respect of any such application.

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

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

(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 Breeders' 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. 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.

Repeal of laws.

53. 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*.

Short title and commencement.