

CHAPTER 18:16

PLANT BREEDERS RIGHTS ACT

Acts 53/1973, 39/1979, 11/2001, 22/2001 (s. 4).

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AN ACT to provide for the registration of plant breeders rights in respect of certain varieties of plants and the protection of the rights of persons who are registered as the holders of such rights; and to provide for matters incidental to or connected with the foregoing.

[Date of commencement: 1st October, 1974.]

PART I

PRELIMINARY

1 Short title

This Act may be cited as the Plant Breeders Rights Act [*Chapter 18:16*].

2 Interpretation

In this Act—

“approved”, in relation to the name of a plant, means approved by the Registrar in terms of section *nine*;

[Definition inserted by Act 11 of 2001]

“assignee”, in relation to a new variety, means—

- (a) a person who has derived his title to the new variety for Zimbabwe directly or indirectly from the breeder or owner thereof; or
(b) the legal representative of the person referred to in paragraph (a);

“breeder”, in relation to a new variety, means—

- (a) the person who directed the final breeding of the new variety or who developed or discovered the new variety; or
(b) the legal representative of the person referred to in paragraph (a);

“breeding line” means an assemblage of sexually reproducing individuals of uniform appearance propagated by seeds, the stability of which is maintained by selection to a standard;

“clone” means uniform material derived from a single individual and propagated entirely by vegetative means;

“Convention” means the International Union for the Protection of New Varieties of Plants, signed at Paris, France, on the 2nd December, 1961, and includes the revisions made in Geneva, Switzerland, on the 10th November, 1972, on the 23rd October, 1978, and on the 19th March, 1991;

[Definition inserted by Act 11 of 2001]

“cultivar” means an assemblage of cultivated individuals which is designated by any characteristics, morphological, physiological, chemical, genetic or others, significant for the purposes of agriculture, forestry or horticulture, and which, when reproduced sexually or asexually, retains its distinguishing features;

“date of application” means the effective date of an application for plant breeders rights in terms of subsection (4) or (5), as the case may be of section *seven*;

[Definition amended by Act 11 of 2001]

“farmer” means a person who normally derives his sole or principal means of livelihood from agriculture carried on by him in Zimbabwe;

[Definition inserted by Act 11 of 2001]

“foreign application” means an application made in terms of section *seven* in respect of a variety which has its origin outside Zimbabwe;

[Definition amended by Act 11 of 2001]

“hybrid” means the first generation progeny of a cross which is produced under controlled pollination with parents sufficiently uniform to permit repeated production of the hybrid without change in uniformity or stability;

“kind”, in relation to a plant, means all related species, subspecies and varieties of any plant which are known by the same common name;

“legal representative” means—

- (a) the liquidator or receiver of a company;
- (b) the representative recognized by law of any person who has died, become insolvent or bankrupt or assigned his estate, is an infant or a minor, is of unsound mind or is otherwise under a disability;

“Minister” means the Minister of Agriculture or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“multiline” means an assemblage of individual breeding lines in a stated proportion;

“new variety” means any variety of plant which is a new variety as described in subsection (2) of section *three*;

[Definition amended by Act 11 of 2001]

“officer” means the Registrar or any examiner or other officer appointed in terms of section *four*;

“plant” includes a fungus;

[Definition inserted by Act 11 of 2001]

“plant breeders rights” means plant breeders rights granted in terms of section *fourteen*;

“plant concerned” means the plant to which the application in terms of section *seven* relates and which is claimed by the applicant to be a new variety;

[Definition amended by Act 11 of 2001]

“reciprocating country” means—

- (a) any State which is a party to the Convention or any other treaty to which Zimbabwe is also a party and which provides for the protection of rights in plant varieties; or
- (b) any State which is not a party to the Convention or to a treaty referred to in paragraph (a) but which, in the Registrar’s opinion, effectively protects rights in plant varieties held by—
 - (i) individuals who are citizens or residents of Zimbabwe; or
 - (ii) companies or bodies corporate which carry on business in Zimbabwe or have their principal offices there;

[Definition inserted by Act 11 of 2001]

“Register” means the Register of Plant Breeders Rights kept in terms of section *five*;

“Registrar” means the Registrar of Plant Breeders Rights appointed in terms of section *four*;

“reproductive material” means a plant or part of a plant which is used to multiply the plant;

“sell” includes to offer, advertise, keep, expose, transmit, convey, deliver or prepare for sale or to exchange or to dispose of for any consideration whatsoever or to transmit, convey or deliver in pursuance of such a sale, exchange or disposal;

“stable”, in relation to a variety, means stable in the sense that its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle;

[Definition substituted by Act 11 of 2001]

“uniform” means uniform in the sense that any variations are describable, predictable and commercially acceptable;

“variety” means—

- (a) a botanical variety, cultivar, breeding line or clone which—
 - (i) is sufficiently homogeneous; and
 - (ii) can be differentiated from another of the same kind by one or more characteristics which are capable of definition and recognition; and
 - (iii) is reasonably uniform and stable after repeated propagation;
- or
- (b) a hybrid; or
- (c) a multiline.

PART IA

APPLICATION OF ACT

3 Plants in respect of which plant breeders rights may be granted

(1) The Registrar shall not grant plant breeders rights under this Act in respect of any plant unless it is a new variety of a prescribed kind.

(2) A plant shall be regarded as a new variety for the purposes of subsection (1) if—

- (a) it was not offered for sale or marketed—
 - (i) in Zimbabwe prior to the date of application; or
 - (ii) in any other country in respect of—
 - A. trees and grapevines, for longer than six years before the date of application; or
 - B. any other plant, for longer than four years before the date of application;
 - and
 - (b) it is distinct from any other variety the existence of which is a matter of common knowledge at the date of application; and
 - (c) it is sufficiently uniform in its relevant characteristics, subject to the variation that can be expected from the particular features of its propagation; and
 - (d) it is stable.
- (3) For the purposes of paragraph (b) of subsection (2)—
- (a) the filing of an application in a foreign country for—
 - (i) the granting of rights equivalent to plant breeders rights for a variety; or
 - (ii) the entering of a variety in an official register of varieties;shall be deemed to render that variety a matter of common knowledge from the date of the application, if the application leads to the granting of such rights or the entering of the variety in the official register, as the case may be;
 - (b) common knowledge of a variety shall be presumed if the variety is—
 - (i) already in cultivation or accepted for commercial purposes; or
 - (ii) included in any commercial or botanical reference collection; or
 - (iii) described precisely in any magazine, journal or other publication.

[Section substituted by Act 11 of 2001.]

3A Persons to whom plant breeders rights may be granted

The Registrar shall not grant plant breeders rights to any person except—

- (a) the State or the government of a reciprocating country; or
- (b) an individual who is a citizen or resident of Zimbabwe or a reciprocating country; or
- (c) a company or body corporate which carries on business or has its principal office in Zimbabwe or a reciprocating country;

where the State or that government, individual, company or body corporate, as the case may be, is a breeder of the new variety concerned.

[Section inserted by Act 11 of 2001.]

PART II

ADMINISTRATION

4 Registrar of Plant Breeders Rights and other officers

Subject to the Public Service Act [*Chapter 16:14*], there shall be—

- (a) an officer, to be styled the Registrar of Plant Breeders Rights, who shall exercise such functions as are conferred or imposed on the Registrar by this Act; and
- (b) such examiners and other officers as the Minister considers necessary for the better carrying out of the provisions of this Act.

[Section amended by Act 11 of 2001.]

5 Register of Plant Breeders Rights

- (1) The Registrar shall cause to be kept a Register of Plant Breeders Rights, in which shall be entered—
 - (a) particulars of plant breeders rights which are in force and of any licences issued in respect thereof; and
 - (b) notice of all matters which are required by or under this Act to be entered in the Register and of such other matters affecting the validity or ownership of plant breeders rights as the Registrar thinks fit.
- (2) The Register shall be *prima facie* evidence of any matters entered therein which are required or authorized by or under this Act to be entered therein.

PART III

APPLICATIONS FOR AND GRANT OF PLANT BREEDERS RIGHTS

6 Persons entitled to make application for plant breeders rights

- (1) Subject to subsection (2), an application for the grant of plant breeders rights in respect of a new variety may be made by or on behalf of any of the following persons—
 - (a) a breeder of the new variety or his assignee; or
 - (b) the Minister, where the State is the breeder of the new variety or the breeder's assignee; or
 - (c) the competent authority according to the laws of the country concerned, where the government of a reciprocating country is the breeder of the new variety or the breeder's assignee;and may be made by that person alone or jointly with anyone else who is a breeder of the new variety or his assignee.

- (2) An application for the grant of plant breeders rights shall be made only by a person to whom the rights may be granted in terms of section *three A*.

[Section substituted by Act 11 of 2001.]

7 Application for plant breeders rights and effective date thereof

- (1) An application for the grant of plant breeders rights shall be—
 - (a) made in the prescribed form; and
 - (b) lodged with the Registrar in the prescribed manner.
- (2) An assignee making or joining in an application shall furnish such proof of title or authority as the Registrar may require or as may be prescribed.
- (3) An application in terms of subsection (1) shall be lodged with the Registrar and—
 - (a) shall indicate the origins of the plant concerned and give the full name of the breeder; and
 - (b) where the applicant or one of the applicants is not the breeder of the plant concerned, shall contain a declaration that the applicant believes the person named as the breeder to be the breeder of the plant concerned; and
 - (c) shall specify any foreign country where an application for the grant of rights similar to plant breeders rights has been or is being made and, in relation to any such application, shall specify—
 - (i) its number or title; and
 - (ii) its effective date.

[Subsection substituted by Act 11 of 2001.]

- (4) Subject to subsection (5), the effective date of an application in terms of subsection (1) shall be the date on which the application is received by the Registrar.

[Subsection substituted by Act 11 of 2001.]

- (5) Where the person by or on whose behalf an application is made in terms of subsection (1) has filed an earlier application for rights in regard to the plant concerned in a State which is a party to the Convention, the effective date of his application in terms of subsection (1) shall be deemed to be the date on which that earlier application was filed or, where he has filed two or more such earlier applications, the date on which the earliest one was filed:

Provided that he shall not be entitled to the benefits of this subsection unless, in his application in terms of subsection (1), he claims the priority of his earlier application and, within three months after lodging his application with the Registrar in terms of subsection (1), submits to the Registrar a copy of the documents which constituted the earlier application, certified to be a true copy by the authority with which the earlier application was filed.

[Subsection substituted by Act 11 of 2001.]

8 Description and samples of new variety

- (1) An application in terms of section *seven* shall be accompanied by—

- (a) a complete description of the plant concerned; and
 - (b) samples of reproductive material necessary for the reproduction of the plant concerned in such quantities as the Registrar may require.
- (2) The description referred to in paragraph (a) of subsection (1) shall—
- (a) commence with a title naming the plant concerned or giving it a temporary designation until the grant of plant breeders rights; and
 - (b) contain or be accompanied by such other particulars as may be prescribed or required by the Registrar; and
 - (c) specify the procedure to be used for the maintenance and reproduction of the plant concerned.
- (3) The Registrar may require—
- (a) that the plant concerned or the plant or plants from which it originated be shown to him or to a person designated by him; and
 - (b) that any additional information or specimens which he considers necessary to determine whether or not the plant concerned constitutes a new variety be furnished to him.

9 Naming of plant concerned

(1) The name of the plant concerned shall be proposed by the person who applies for the grant of plant breeders rights but such name shall be subject to the approval of the Registrar.

(2) The Registrar may at any time before the grant of plant breeders rights, after considering any representations made by the applicant or an objector, reject any name proposed in terms of subsection (1) if, in the Registrar's opinion, the name proposed does not satisfy the requirements of subsection (3) or (4).

[Subsection substituted by Act 11 of 2001.]

(3) The name proposed in terms of subsection (1) shall be the generic name of the plant concerned and may consist of any word, combination of words, combination of words and figures or combination of letters and figures, with or without any meaning:

Provided that—

- (i) whatever combination is used, the name shall allow the plant concerned to be identified; and
- (ii) the name shall not affect the existing rights of any third party.

[Subsection substituted by Act 11 of 2001.]

(4) Where a name proposed in terms of subsection (1) has already been used for the plant concerned in Zimbabwe or in a State which is a party to the Convention, or is proposed or registered in such a State, the Registrar shall approve only that name.

[Subsection substituted by Act 11 of 2001.]

(5) An appeal shall lie from any decision of the Registrar under subsection (2).

[Subsection substituted by Act 11 of 2001.]

10 Refusal of application

(1) The Registrar may refuse any application made in terms of section *seven* if *prima facie* it appears to him that—

- (a) the application does not comply with the requirements of this Part; or
- (b) the plant in respect of which the application has been made is not a new variety of a prescribed kind; or
- (c) the applicant is not entitled in terms of this Act to make the application; or
- (d) the growing of the plant concerned, or the grant of plant breeders rights in respect of it, would be contrary to public order or morality; or

[Paragraph substituted by Act 11 of 2001.]

- (e) the production of the plant concerned would require the repeated use of the reproductive material of another plant variety for which plant breeders rights have been granted to or applied for by another person unless such reproductive material is used under a licence granted in terms of section *eighteen* or *nineteen*.

(2) An appeal shall lie from any decision of the Registrar under subsection (1).

11 Amendment of application

With the consent of the Registrar, a person who has made an application in terms of section *seven* may, at any time before the grant of plant breeders rights, add to or alter the description lodged with his application or the proposed name of the plant concerned.

12 Publication of application

(1) If, on consideration of an application in terms of section *seven*, it appears to the Registrar that the plant concerned is a new variety of a prescribed kind and the applicant is entitled to apply for plant breeders rights in respect of it, the Registrar shall publish a notice in the *Gazette* specifying the following particulars in relation to the application—

- (a) the name of the applicant; and
- (b) the date of the application; and

- (c) the proposed name of the plant concerned; and
 - (d) such particulars relating to the application and the plant concerned as may be prescribed or as the Registrar thinks appropriate.
- (2) An appeal shall lie from any decision of the Registrar under subsection (1).

[Section substituted by Act 11 of 2001.]

12A Rights of applicant for plant breeders rights

(1) Subject to subsection (2), an applicant for plant breeders rights shall have the sole right to sell, reproduce and multiply reproductive material of the plant concerned during the period from the publication of the notice in terms of section *twelve* until he is granted plant breeders rights or his application is refused or rejected in terms of this Act.

(2) After the publication of a notice in terms of section *twelve* and until the applicant is granted plant breeders rights in respect of the plant concerned or his application is refused or rejected in terms of this Act—

- (a) a person may use the plant concerned as an initial source of variation for the purpose of creating any other new variety;

Provided that this paragraph shall not apply where the plant concerned is repeatedly used for the reproduction or multiplication of another variety;

- (b) a person who has purchased the plant concerned, or reproductive material thereof, from the applicant or from a person authorised by the applicant may grow and resell the plant and any material harvested from it;

Provided that he shall not do so for the sole or primary purpose of reproducing or multiplying the plant concerned;

- (c) a farmer who cultivates less than ten hectares of land may use the harvest from any prescribed plant for the purpose of propagating the plant on that land, where the harvest was obtained by propagating the plant concerned on that land or by propagating another plant, which is essentially derived from the plant concerned, on that land;

- (d) a farmer who derives at least eighty *per centum* of his annual gross income from farming on communal land or on resettlement land as defined in section 2 of the Rural District Councils Act [*Chapter 29:13*] may—

- (i) multiply the seeds of any prescribed plant; and

- (ii) exchange with any other such farmer—

A. any prescribed plant which he has grown or reproduced on his land; and

B. any seeds from a plant referred to in subparagraph A;

and

- (iii) donate any plant or seed referred to in subparagraph (ii) to the State or a statutory body or to any other organisation which the Minister has authorised to seek such a donation;

and such conduct shall not be an infringement of the applicant's rights under subsection (1).

[Section inserted by Act 11 of 2001.]

13 Objection to grant of plant breeders rights

(1) Any person may, within three months of the publication of the notice in terms of subsection (1) of section *twelve*, lodge with the Registrar in writing an objection to the grant of plant breeders rights on any of the following grounds and no others—

- (a) that the application does not comply with this Part;
- (b) that the application is a fraud of the rights of the objector or of any person under or through whom he claims the rights;
- (c) that the applicant is not entitled to make the application;
- (d) that the application contains a material misrepresentation;
- (e) that the plant concerned is not a new variety;
- (f) that the plant concerned is not of a prescribed kind;
- (g) that the name proposed for the plant concerned should be rejected or altered in terms of section *nine*;
- (h) that the plant concerned has been reproduced by the repeated use of the reproductive material of a plant of another variety for which plant breeders rights have been granted to or applied for by a person other than the applicant, unless such reproductive material is used under a licence granted in terms of section *eighteen* or *nineteen*;
- (i) that the description of the plant concerned does not clearly describe the variety of the plant;
- (j)
- (k)

[Paragraphs (j) and (k) repealed by Act 11 of 2001]

(2) A notice of objection in terms of subsection (1) shall—

- (a) specify the grounds on which the objector objects to the grant of plant breeders rights; and

- (b) be accompanied by a statement setting out particulars of the facts alleged in support of the said grounds.

(3) The Registrar may require that a notice lodged in terms of this section be supported by an affidavit and such other proof as he thinks necessary.

(4) If the applicant for plant breeders rights wishes to contest the allegations of the objector, he shall, within three months, or such further period as the Registrar may allow, from the date he is furnished with a copy of the notice of objection, lodge with the Registrar a counter-statement setting out particulars of the grounds upon which he will contest the objection.

(5) The Registrar shall furnish—

(a) an applicant for plant breeders rights with a copy of any notice of objection lodged in terms of subsection (1);

(b) an objector with a copy of any counter-statement lodged in terms of subsection (4).

(6) An objection in terms of subsection (1) or counter-statement in terms of subsection (4) may be lodged by the Minister on behalf of the State.

(7) The Registrar shall, after hearing the parties if so required and considering the evidence, decide whether or not the objection should be upheld, and if he—

(a) upholds the objection and, in the case of an objection on the grounds referred to in paragraph (g) of subsection (1) the applicant does not alter the name of the plant concerned, the Registrar shall reject the application and shall—

(i) forthwith notify the applicant and the objector in writing of such rejection; and

(ii) within one month of such rejection, publish in the *Gazette* notice of such rejection:

Provided that if an appeal in terms of subsection (8) is lodged, the notice shall not be published until such time as the appeal has been determined;

(b) does not uphold the objection, he shall notify the applicant and the objector of his decision.

(8) An appeal shall lie from any decision of the Registrar under this section.

14 Refusal or grant of plant breeders rights

(1) On receipt of an application in terms of section *seven*, the Registrar shall, subject to sections *three A*, *ten* and *thirteen*, investigate or cause to be investigated such application in order to determine whether—

(a) the plant concerned should be regarded as a new variety of a prescribed kind; and

(b) the applicant is entitled in terms of this Act to make the application.

[Subsection amended by Act 11 of 2001.]

(2) Subject to subsection (4), if, after investigation in terms of subsection (1), the Registrar considers that the plant should be regarded as a new variety of a prescribed kind and that the applicant is entitled to apply for plant breeders rights in respect thereof, he shall—

(a) grant to the applicant plant breeders rights in respect of the plant; and

(b) note in the Register the prescribed particulars of the person to whom, and of the plant in respect of which, such rights have been granted; and

(c) issue or cause to be issued to the applicant a certificate of registration of plant breeders rights in respect of the plant.

[Paragraph inserted by Act 11 of 2001.]

(3) Within one month of the grant of plant breeders rights in terms of subsection (2) the Registrar shall publish in the *Gazette* a notice giving such particulars of the grant as he thinks fit.

(4) The Registrar shall grant plant breeders rights in terms of subsection (2) within a period of three years after the publication of the notice in terms of subsection (1) of section *twelve* or such longer period as the Minister may, by notice in writing, in any particular case authorize, unless the application has been—

(a) refused in terms of section *ten*; or

(b) rejected in terms of section *thirteen*; or

(c) refused on the ground that the applicant is not qualified for the grant of plant breeders rights in terms of section *three A*.

(5) If, after investigation in terms of subsection (1), the Registrar considers that—

(a) the application for plant breeders rights does not comply with the requirements of this Act; or

(b) the plant in respect of which the application has been made is not a new variety of a prescribed kind; or

(c) the applicant is not entitled to make the application;

the Registrar shall refuse the application and shall forthwith advise the applicant in writing of his decision and the grounds upon which it is based.

(6) An appeal shall lie from any decision of the Registrar under this section.

15 Cancellation of plant breeders rights

(1) Subject to subsection (4), Registrar shall declare a grant of plant breeders rights void if he is satisfied—

(a) that when the rights were granted, the plant concerned was not a new variety in that it did not meet the criteria specified in paragraph (a) or (b) of subsection (2) of section *three*; or

- (b) where the rights were granted on the basis of information and documents furnished by the applicant, that when the rights were granted the plant concerned was not a new variety, in that it did not meet the criteria specified in paragraph (c) or (d) of subsection (2) of section *three*; or
- (c) that the person to whom the rights were granted was not entitled to them, and the rights have not subsequently been transferred to the person entitled to them or to his assignee.

(2) The Registrar may make a declaration in terms of subsection (1) on his own motion or pursuant to an application in terms of subsection (3).

(3) Any person may apply to the Registrar in the prescribed manner for the making of a declaration in terms of subsection (1) in regard to any plant breeders rights, and any such application shall be accompanied by such deposit as may be prescribed.

(4) The Registrar shall not make a declaration in terms of subsection (1) unless he has—

- (a) informed the holder of the plant breeders rights concerned that he is considering making such a declaration and has provided the holder with a written statement of his reasons for considering it; and
- (b) given the holder of the plant breeders rights concerned a reasonable opportunity to make representations in the matter.

(5) A deposit paid with an application in terms of subsection (3)—

- (a) shall be refunded to the applicant if the Registrar makes a declaration in terms of subsection (1) pursuant to the application;
- (b) shall be forfeited to the State if no such declaration is made.

(6) Within one month after making a declaration in terms of subsection (1), the Registrar shall publish notice thereof in the *Gazette*.

(7) An appeal shall lie from any decision of the Registrar under this section.

[Section substituted by Act 11 of 2001.]

16 Duty of holder of plant breeders rights to maintain reproductive material

(1) A holder of plant breeders rights shall ensure that throughout the period for which the rights are exercisable he is in a position—

- (a) to produce to the Registrar reproductive material which is capable of producing the variety to which the rights relate with the morphological and physiological and other characteristics taken into account when those rights were granted in respect of that variety; and
- (b) to afford to the Registrar all such information and facilities as the Registrar may request for the purpose of satisfying himself that the holder of the plant breeders rights is fulfilling his duty under paragraph (a), including facilities for the inspection by or on behalf of the Registrar of the measures taken for the preservation of the variety concerned.

(2) If it appears to the Registrar that a holder of plant breeders rights—

- (a) is no longer in a position to provide the reproductive material referred to in paragraph (a) of subsection (1); or
- (b) has failed to comply with any request under paragraph (b) of subsection (1);

he may cancel those rights.

(3) An appeal shall lie from any decision of the Registrar under this section.

17 Rights of holder of plant breeders rights

(1) Subject to this section, during the period specified in section *seventeen A* a holder of plant breeders rights shall be entitled to prevent anyone else from selling, reproducing or multiplying reproductive material of—

- (a) the plant concerned; and
- (b) any other plant that is essentially derived from the plant concerned, as described in subsection (2), unless the plant concerned is itself essentially derived from another plant.

(2) For the purposes of subsection (1), a plant shall be deemed to be essentially derived from another plant if—

- (a) it is predominantly derived from—
 - (i) that other plant; or
 - (ii) a plant that is itself predominantly derived from that other plant; while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of that other plant; and
- (b) it is clearly distinguishable from that other plant by one or more characteristics which are capable of precise description; and
- (c) except for differences that result from the act of derivation, it conforms to that other plant in the expression of the essential characteristics that result from the genotype or combination of genotypes of that other plant;

whether the plant has been derived through the selection of a mutant or variant, or through crossing, genetic engineering or any other means.

(3) Notwithstanding that plant breeders rights subsist in relation to any plant—

- (a) a person may use the plant as an initial source of variation for the purpose of creating any other new variety:

Provided that this paragraph shall not apply where the plant is repeatedly used for the reproduction or multiplication of another variety;

- (b) a person who has purchased the plant, or reproductive material thereof, from the holder of plant breeders rights or from a person authorised by the holder may grow and resell the plant and any material harvested from it:

Provided that he shall not do so for the sole or primary purpose of reproducing or multiplying the plant;

- (c) a farmer who cultivates less than ten hectares of land may use the harvest from any prescribed plant for the purpose of propagating the plant on that land, where the harvest was obtained by propagating the plant on that land or by propagating another plant, which is essentially derived from the plant concerned, on that land;

- (d) a farmer who derives at least eighty *per centum* of his annual gross income from farming on communal land or on resettlement land as defined in section 2 of the Rural District Councils Act [*Chapter 29:13*] may—

(i) multiply the seeds of any prescribed plant; and

(ii) exchange with any other such farmer—

A. any prescribed plant which he has grown or reproduced on his land; and

B. any seeds from a plant referred to in subparagraph A;

and

(iii) donate any plant or seed referred to in subparagraph (ii) to the State or a statutory body or to any other organisation which the Minister has authorised to seek such a donation;

and such conduct shall not be an infringement of the holder's rights under subsection (1).

[Section substituted by Act 11 of 2001.]

17A Duration of plant breeders rights

(1) Subject to this Act, the term of the plant breeders rights shall be twenty years from the date on which they were granted.

(2) If the Registrar is satisfied, on application by a holder of plant breeders rights, that for reasons beyond the applicant's control the applicant has not been adequately remunerated by the grant of such rights, the Registrar may extend the term of the rights for such further period, being not more than five years, as the Registrar considers suitable in the circumstances, which extension may be made subject to such conditions, if any, as the Registrar considers to be desirable.

(3) An appeal shall lie from any decision of the Registrar under subsection (2).

[Section inserted by Act 11 of 2001.]

18 Issue of licences

(1) The holder of plant breeders rights may apply to the Registrar for the rights to be registered as rights in respect of which licences may be issued.

(2) On receipt of an application in terms of subsection (1), the Registrar shall cause to be entered in the Register notice that licences in respect of the rights concerned may be issued by the holder and thereafter, if the holder grants to any person a licence to sell, import, reproduce or multiply reproductive material of the variety concerned, he shall, within three months of granting such licence, notify the Registrar in writing of the grant of the licence and of any conditions, limitations or restrictions imposed in terms of subsection (3).

(3) In granting any licence referred to in subsection (2), the holder of the plant breeders rights may impose such conditions, limitations or restrictions as he thinks fit.

(4) Within one month of the entry being made in the Register, the Registrar shall publish in the *Gazette* a notice giving such particulars of the entry as he thinks fit.

(5) Where plant breeders rights are held by the State, the Minister may, on behalf of the State—

(a) make an application in terms of subsection (1); and

(b) grant licences referred to in subsection (2) to such persons and subject to such conditions, limitations or restrictions as he thinks fit.

19 Compulsory licences

(1) Subject to this section, any person interested who can show that he has been unable to obtain a licence referred to in section *eighteen* in respect of a variety in respect of which plant breeders rights have been granted may apply in the prescribed manner for a compulsory licence on the ground that the reasonable requirements of the public with respect to the variety concerned have not or will not be satisfied.

(2) An application in terms of subsection (1) shall—

(a) set out fully the nature of the applicant's interests, the facts on which he bases his case and the relief he seeks; and

(b) be accompanied by—

- (i) an affidavit verifying the facts set out in the application; and
- (ii) a certificate from the Minister stating that it is in the public interest that the variety concerned be made freely available to the public.

(3) An application in terms of subsection (1) shall be lodged with the Registrar who shall forthwith furnish the holder of the plant breeders rights with a copy of the application and the particulars accompanying the application.

(4) If the holder of the plant breeders rights wishes to contest the application, he shall, within one month or such further period as the Registrar may allow from the date he is furnished with a copy of the application, lodge with the Registrar a counter-statement setting out particulars of the grounds upon which he will contest the application, and the Registrar shall furnish the applicant with a copy of the counter-statement.

(5) On receipt of the counter-statement lodged in terms of subsection (4) or the expiration of the period specified in subsection (4), whichever is the earlier, the Registrar shall, unless the applicant withdraws his application, forward the application and the counter-statement, if any, to the Administrative Court, and the Administrative Court may order the holder of the plant breeders rights to grant a licence such as is referred to in section *eighteen* to the applicant subject to such conditions, limitations or restrictions as the Administrative Court may fix, and in fixing the conditions the Administrative Court shall fix—

- (a) the period of the licence; and
- (b) the amount and method of payment of royalties.

(6) No order shall be made under subsection (5) which would be at variance with the Convention or with any other international treaty or agreement to which Zimbabwe is a party.

[Subsection inserted by Act 11 of 2001.]

20 Surrender of plant breeders rights

(1) A holder of plant breeders rights who wishes to surrender such rights may apply, by notice in writing, to the Registrar for the surrender of such rights.

(2) Within one month of giving notice in terms of subsection (1), the holder of the plant breeders rights shall advertise in the *Gazette* that he intends to surrender such rights.

(3) Any person who is aggrieved by the proposed surrender of plant breeders rights in terms of this section may, within three months of the date of the advertisement in the *Gazette* in terms of subsection (2), give notice to the Registrar in writing of his opposition to the surrender, which notice shall specify the grounds for his opposition.

(4) If, after hearing the holder of the plant breeders rights and any opponent who wishes to be heard, the Registrar is satisfied that the holder of the plant breeders rights should be permitted to surrender such rights, he shall—

- (a) revoke the plant breeders rights; and
- (b) note in the Register that such rights have been revoked; and
- (c) call upon the holder to surrender the certificate of registration of plant breeders rights issued in terms of this Act:

Provided that where no notice of opposition has been given in terms of this section, it shall not be necessary for the Registrar to hear the holder of the plant breeders rights.

(5) Within one month of the revocation of plant breeders rights in terms of subsection (4), the Registrar shall publish in the *Gazette* notice of such revocation.

(6) An appeal shall lie from any decision of the Registrar under this section.

PART IV

APPEALS

21 Appeals from decision of Registrar

Where this Act provides for an appeal from a decision of the Registrar, such appeal shall be made to the Administrative Court in accordance with this Part and the Administrative Court Act [*Chapter 7:01*] and the rules made thereunder.

22 Assessors

For the purposes of considering any appeal in terms of section *twenty-one*, the Administrative Court may appoint any person with special expert knowledge to act as an assessor in an advisory capacity in any case where it appears to the Court that such knowledge is required for the proper determination of the case.

23 Time for appeals

An appeal referred to in section *twenty-one* shall be brought within one month after the date of the decision or order of the Registrar in question.

24 Right of Registrar to appear at appeal

In any appeal in terms of section *twenty-one*, the Registrar may appear with the leave of the Administrative Court.

25 References by Registrar to Administrative Court

(1) It shall be the duty of the Registrar to notify the Administrative Court forthwith of any appeal which has been lodged with him against any decision or order.

(2) Where any matter to be decided by the Registrar under this Act appears to him to be of unusual importance or complexity, he may refer that matter to the Administrative Court for decision and shall thereafter in relation to that matter act in accordance with the decision of the Administrative Court.

PART IVA

REMEDIES FOR INFRINGEMENT OF PLANT BREEDERS RIGHTS

[Part IVA inserted by Act 11 of 2001.]

25A Court that may hear proceedings for infringement of plant breeders rights

Proceedings for infringement of plant breeders rights may be instituted by the holder of the rights or his assignee or licensee—

- (a) in the High Court; or
- (b) in the Administrative Court; or
- (c) subject to the jurisdictional limits provided for in the Magistrates Court Act [*Chapter 7:10*], in a magistrates court.

25B Provisions applicable to proceedings for infringement of plant breeders rights

(1) Subject to any rules of court, the following provisions shall apply in connection with proceedings for infringement of plant breeders rights—

- (a) any ground upon which the registration of the rights may be cancelled in terms of section *fifteen* may be relied upon by way of defence;
- (b) the defendant or respondent may, by way of counterclaim in the proceedings, apply for the cancellation of the registration of the rights;
- (c) the plaintiff or applicant shall, with the documents instituting the proceedings or subsequently on the order of the court concerned, deliver full particulars of the infringement complained of;
- (d) the defendant or respondent shall, with his statement of defence or plea or replying affidavit or subsequently on the order of the court concerned, deliver particulars of any objections on which he relies;
- (e) except with the leave of the court concerned, at the hearing no evidence shall be admitted of any infringement or on any objection of which particulars have not been delivered in terms of paragraph (c) or (d).

(2) In any proceedings brought under this section by a licensee, the holder of the plant breeders rights concerned or his assignee shall be added as defendant or respondent, as the case may be, unless he is joined as plaintiff or applicant:

Provided that a person so added as defendant or respondent shall not be liable for any costs unless he takes part in the proceedings.

(3) If the holder of plant breeders rights or his assignee is the plaintiff or applicant in any proceedings under this section, he shall give notice of the proceedings to any licensee of the rights in question, and the licensee shall be entitled to intervene as a co-plaintiff or co-applicant, as the case may be, and to recover any damages he may have suffered as a result of the infringement.

25C Remedies available in proceedings for infringement

(1) Subject to this Act, in proceedings for infringement of plant breeders rights the plaintiff or applicant shall be entitled to any appropriate remedy, whether damages, interdict, attachment, the rendering of account, the delivery of infringing articles used or intended to be used for the purposes of the infringement or otherwise, that is available in respect of the infringement of any other proprietary right.

(2) Damages for infringement of plant breeders rights may, at the option of the person seeking them, be calculated on the basis of the amount that a licensee would reasonably have been expected to pay under the circumstances for his use of the rights concerned:

Provided that, if the person seeking damages intends to exercise this option, he shall give notice of his intention, in writing, to any licensee of the rights concerned.

(3) In determining the amount of damages in an action for infringement of plant breeders rights, the court concerned shall take the following factors into account, in addition to all other material considerations—

- (a) the extent and nature of the infringement; and
- (b) the market value of the rights concerned; and

- (c) the amount which could be payable to the holder of the rights or his assignee in respect of the use of the rights by some other person; and
- (d) any dilatory conduct on the part of the holder of the rights or the plaintiff in making the infringer aware that the rights were registered.

(4) If it is established, in proceedings for infringement of plant breeders rights, that an infringement was committed and the court, having regard to—

- (a) the flagrancy of the infringement; and
- (b) the market value of the rights concerned; and
- (c) any benefit shown to have accrued to the person responsible for the infringement as a result of it; and
- (d) the need to deter persons from committing further infringements;

is satisfied that effective relief would not otherwise be available to the plaintiff or applicant, the Tribunal or the court, as the case may be, shall have power to award such additional damages as it thinks fit.

(5) If it is established, in proceedings for an infringement of plant breeders rights, that an infringement was committed but that at the time of the infringement the person responsible for it was not aware and had no reasonable grounds for suspecting that he was not entitled to engage in the infringing activity, the plaintiff or applicant shall not be entitled under this section to any damages against that person in respect of the infringement.

25D Anton Piller orders

(1) If a person who has instituted or intends instituting proceedings for an infringement of plant breeders rights satisfies a court that, *prima facie*—

- (a) he has a cause of action against another person which he intends to pursue; and
- (b) the other person has in his possession documents or other things of whatsoever nature which constitute evidence of great importance in substantiation of that cause of action; and
- (c) there is a real and well-founded apprehension that the documents or other things may be hidden, destroyed or rendered inaccessible before discovery can be made in the usual way;

the court may make such order as it considers necessary or appropriate to secure the preservation of the documents or things as evidence.

(2) An order in terms of subsection (1) may be granted without notice to the person who is allegedly in possession of the documents or other things to which the order relates, and the court may sit *in camera* for the purpose of hearing an application for such an order:

Provided that the court shall not grant an order without such notice unless it is satisfied that there is a real possibility that the documents or things will be hidden, destroyed or rendered inaccessible if notice is given.

(3) An order in terms of subsection (1) may be granted on such conditions, including the giving of security by the applicant, as the court may fix.

(4) This section shall not be taken to limit any power a court may have under its ordinary jurisdiction to grant orders such as are referred to in this section.

25E Remedy for groundless threats of infringement proceedings

(1) Where any person, whether or not he is entitled to or interested in any plant breeders rights or an application for the registration of any such rights, threatens another person with proceedings for infringement of plant breeders rights, anyone who is aggrieved by the threat may bring proceedings against him in a court of competent jurisdiction for the relief referred to in subsection (2).

(2) In proceedings brought by virtue of subsection (1), the plaintiff or applicant shall be entitled to any one or more of the following remedies—

- (a) a declaration to the effect that the threats are unjustifiable;
- (b) an interdict against any continuation of the threats;
- (c) such damages, if any, as he has sustained in consequence of the threats;

unless the defendant or respondent proves that the acts in respect of which he threatened proceedings constitute or, if done, would constitute, an infringement of any registered plant breeders rights, the registration of which is not shown by the plaintiff or applicant to be invalid.

(3) The defendant or respondent in any proceedings brought in terms of subsection (1) may counter-claim for any relief to which he would be entitled in separate proceedings in respect of any infringement by the plaintiff or applicant of the plant breeders rights to which the threats relate.

(4) For the avoidance of doubt, it is declared that a mere notification that plant breeders rights are registered does not constitute a threat of proceedings within the meaning of subsection (1).

PART V

OFFENCES AND PENALTIES

26 Falsification of documents

Any person who—

- (a) makes or causes to be made a false entry in the Register, knowing the entry to be false; or
- (b) makes or causes to be made or produces or tenders or causes to be produced or tendered any document falsely purporting to be a copy of an entry in the Register, knowing the document to be false;

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Section as amended by Act 22 of 2001]

27 Failure to obey order of Appeal Board or giving false evidence

Any person who, without lawful excuse, fails to comply with an order of the Administrative Court under section *nineteen* or any other provision of this Act shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Section as amended by Act 22 of 2001]

28 Deceiving or improper influencing of officer

Any person who—

- (a) for the purpose of deceiving an officer in the execution of his duties under this Act; or
- (b) for the purpose of procuring or influencing the doing or omission of any thing by an officer in the execution of his duties under this Act;

makes or submits a statement or representation, whether orally or in writing, which he knows to be false or does not know or believe to be true shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Section as amended by Act 22 of 2001]

29 Unauthorized claim of plant breeders rights or use of authorized name

(1) Any person who falsely and without lawful excuse represents that—

- (a) any reproductive material of a plant sold or reproduced or exported by him is a plant in respect of which plant breeders rights have been granted; or
- (b) an application has been made in terms of this Act for the grant of plant breeders rights in respect of a plant sold by him;

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act 22 of 2001]

(2) Any person who, at the sale of a plant or the seed or a part of a plant for the purpose of reproduction or multiplication—

- (a) uses a name therefor which is different from the name registered in terms of this Act for that plant; or
- (b) uses the registered name of another plant of the same kind or uses a name which corresponds so closely to a registered name that it is misleading;

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act 22 of 2001]

30 Offences by officers

(1) Any officer who acquires, otherwise than in the course of his duties, or sells any reproductive material of a plant in respect of which plant breeders rights have been granted or applied for shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Section as amended by Act 22 of 2001]

(2) Any reproductive material acquired by an officer in contravention of the provisions of subsection (1) shall be forfeited to the State.

31...

[Section repealed by Act 22 of 2001]

PART VI

GENERAL

32

[Section repealed by Act 11 of 2001.]

33 Hearing before exercise of discretion of Registrar

Where any discretionary or other power is given by this Act to the Registrar, he shall not exercise that power adversely to the applicant for or holder of, as the case may be, plant breeders rights without giving to that applicant or holder an opportunity of being heard.

34

[Section repealed by Act 11 of 2001.]

35 Powers of Registrar to authorize corrections

(1) The Registrar may correct or authorize the correction of any clerical error or any omission or error in the description of a new variety which occurs in any application or other document lodged in terms of this Act or in the Register.

(2) A correction in terms of subsection (1) may be made either upon a request in writing or without such a request.

(3) Where the Registrar proposes to make or authorize a correction in terms of subsection (1) otherwise than upon a request in writing, he shall give notice of his intention to the applicant for, or holder of, the plant breeders rights, as the case may be, and to any other person who appears to him to be concerned.

(4) Any opposition to a proposal to correct or authorize the correction of a document or the Register in terms of subsection (1) shall be dealt with by the Registrar in such manner as he considers desirable in the interests of justice.

(5) An appeal shall lie from any decision of the Registrar under this section.

36 Rectification of Register

(1) On application by any person aggrieved, the Administrative Court may order the Registrar to rectify the Register by the making of any entry therein or the variation or deletion of any entry therein.

(2) An application in terms of subsection (1) shall be lodged with the Registrar and the Registrar shall—

- (a) give notice thereof to all interested parties; and
- (b) forward the application to the Administrative Court.

(3) At the hearing of an application in terms of subsection (1)—

- (a) the Registrar, the applicant and any other interested party shall be entitled to appear and be heard; and
- (b) the Administrative Court shall determine the question in such manner as it considers desirable in the interests of justice.

37 Prior knowledge or publication of new plant excused in certain circumstances

(1) Notwithstanding section *three* and subject to subsection (2), plant breeders rights shall not be refused or held to be invalid by reason only of the fact that the new variety in respect of which such rights have been applied for or granted, as the case may be, was made available to the public or was generally known prior to the date of application if the applicant for or holder of such rights, as the case may be, proves—

- (a) that the plant concerned was made available or the knowledge was acquired from him without his knowledge or consent; and
- (b) if he learned of the use or disclosure before the date of application, that he applied for the grant of plant breeders rights with all reasonable diligence after learning of the use or disclosure, as the case may be.

(2) Subsection (1) shall not apply in relation to an applicant for or holder of plant breeders rights where the variety concerned has been commercially grown in Zimbabwe prior to the date of application otherwise than for the purpose of field trials.

37A Use of approved name

(1) Where the approved name of any plant—

- (a) is still commercially exploited; or
- (b) has ceased to be commercially exploited, but the name has acquired a special significance in relation to that plant;

no person shall use, in relation to any other plant, a name which is identical to or may be confused with that approved name.

(2) Any person who sells—

- (a) a plant in respect of which plant breeders rights have been granted; or
 - (b) any seed or reproductive material of a plant in respect of which plant breeders rights have been granted;
- shall use the plant's approved name in connection with the sale, even if the plant breeders rights have expired:

Provided that he may use the name in association with a trade mark, trade name or other such mark or name, if the plant's approved name remains easily recognisable.

(3) Any contravention of this section shall be deemed to be an infringement of the plant breeders rights concerned for the purposes of Part IVA.

[Section inserted by Act 11 of 2001.]

38 Evidence of certain entries and documents

(1) A certificate purporting to be signed by the Registrar and certifying that any entry, the making of which is or was at the time authorized by or under this Act, has or has not been made or that any other thing which is or was at the time authorized to be done has or has not been done shall be *prima facie* evidence of the matters so certified.

(2) A copy of—

(a) an entry in the Register or of any document lodged in terms of this Act; or

(b) an extract from the Register or from any document lodged in terms of this Act;

which purports to be certified by the Registrar shall be admitted in evidence without further proof and without production of the original.

39 Inspection and provision of certified copies of entries in Register

The Register shall at all convenient times be open to inspection by the public on payment of the prescribed fee and a certified copy of any entry in the Register shall be given on payment of the prescribed fee to any person requiring it.

40 Preservation of secrecy

Save as otherwise provided in this Act, any person who discloses, except—

(a) to the Minister, the Administrative Court, the Registrar or any other person for the purposes of the performance of his functions under this Act; or

(b) to a police officer for the purposes of an investigation or 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;

any information acquired by him in the carrying out of any duty or the performance of any function under this Act in relation to any plant in respect of which an application for the grant of plant breeders rights has been made under this Act or to the business affairs of any other person shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Section as amended by Act 22 of 2001]

41 State to be bound and limitation of actions against State

(1) Plant breeders rights shall have the same effect against the State as they have against a subject.

(2) No fees such as are referred to in paragraph (f) or (i) of subsection (2) of section *forty-five* or deposit referred to in subsection (2) of section *fifteen* shall be payable by the State.

(3) No claim shall lie against the State, the Minister, the Registrar or any other officer for any thing done in good faith and without negligence under the powers conferred by this Act.

42 ...

[Section repealed by Act 11 of 2001.]

43 Particulars to be furnished

The Registrar shall publish in such manner as he thinks fit particulars relating to the application for or granting, cancellation or surrender of plant breeders rights and such other particulars relating to plant breeders rights as he thinks fit.

44 Assignments

(1) The rights granted to the holder of plant breeders rights shall be capable of assignment and of devolution by operation of law and of being mortgaged and pledged.

(2) Where any person becomes entitled by assignment, transmission or operation of law to any plant breeders rights or to a share in plant breeders rights or becomes entitled as mortgagee, licensee or otherwise to any other interest in plant breeders rights, he may apply to the Registrar in the prescribed manner for the registration in the Register of his title as proprietor or co-proprietor or, as the case may be, of notice of his interest and the Registrar shall, upon proof of such entitlement to his satisfaction, register such title or notice against the plant breeders rights accordingly.

(3) Except for the purposes of an application to rectify the Register under the provisions of this Act, a document in respect of which no entry has been made in the Register under subsection (2) shall not be admitted in any proceedings as evidence of the title of any person referred to in subsection (2) to plant breeders rights or a share of or interest in plant breeders rights unless the Administrative Court or a court of competent jurisdiction otherwise directs.

45 Regulatory powers

(1) The Minister may make regulations prescribing anything which under this Act is to be prescribed and generally for the better carrying out of the objects and purposes of this Act or to give effect to its provisions or for its better administration.

(2) Regulations in terms of subsection (1) may provide for—

- (a) the form of any application, description, drawing, objection, counter-statement or other document which may be lodged with the Registrar and the furnishing of copies of any such document;
- (b) the procedure to be followed in connection with any application or request to the Registrar or any proceedings before him, and the authorizing of the rectification of irregularities of procedure;
- (c) the information and facilities to be afforded by an applicant and the reproductive material and other plant material to be submitted at the time of application and subsequently;
- (d) the tests, trials, examinations and other steps to be taken by the applicant or the Registrar before plant breeders rights are granted and the time within which any such steps are to be taken;
- (e) requiring any person who has in his possession or under his control any reproductive material for sale, reproduction or export to keep records relating thereto in the form and manner specified and to render returns in the form and manner and at the times specified;
- (f) the fees to be paid in respect of—
 - (i) applications for or the grant of plant breeders rights;
 - (ii) the examination of samples of reproductive material or any plant grown therefrom;
 - (iii) the inspection of the Register or the provision of a certified copy of any entry therein;
- (g) the rights and duties of the holder of a licence granted under section *eighteen* or *nineteen* and of the holder of the plant breeders rights concerned in connection with the institution of actions for infringement of the plant breeders rights where the holder thereof fails or refuses to institute such an action;
- (h) preventing the use of false or misleading statements in any advertisement of plant breeders rights.