

PLANT IMPROVEMENT ACT, 1976 (ACT NO. 53 OF 1976)

[ASSENTED TO 29 MARCH, 1976]

[DATE OF COMMENCEMENT: 1 JUNE, 1980]

(except ss. 23 and 24 on 1 December, 1983 and except s. 42, in so far as it relates to a Seed Certification Scheme or an Export Seed Scheme introduced under s. 14 of Act No. 28 of 1961, on 1 November, 1985.)

(English text signed by the State President)

as amended by

Plant Improvement Amendment Act, No. 10 of 1979

Agricultural Pests Act, No. 36 of 1983

Plant Improvement Amendment Act, No. 39 of 1983

Plant Improvement Amendment Act, No. 17 of 1991

Plant Improvement Amendment Act, No. 25 of 1996

Abolition of Restrictions on the Jurisdiction of Courts Act, No. 88 of 1996

[with effect from 22 November 1996]

ACT

To provide for the registration of premises from which the sale of certain plants or the cleansing, packing and sale of certain propagating material may be undertaken; to prescribe the conditions subject to which such plants or propagating material may be sold for the purposes of cultivation; to provide for the recognition of certain varieties of plants; for a system of certification of plants and propagating material with the object of maintaining the quality of certain plants and propagating material, and ensuring the usefulness of the products thereof for agricultural and industrial purposes; and for the control of the import and export of certain plants and propagating material; and to provide for incidental matters.

[Long title substituted by s. 29 of Act No. 25 of 1996.]

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1. Definitions.—

In this Act, unless the context indicates otherwise—

“advertise” means to distribute to members of the public or to bring to their notice in any manner whatsoever any written, illustrated, visual or other descriptive material, oral statement, communication, representation or reference with the intention to promote the sale of any plant or propagating material, 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;

“authorized person” means a person (other than an officer) authorized in terms of section 3 (3) (a);

[Definition of “authorized person” inserted by s. 1 (a) of Act No. 39 of 1983.]

“board” means the board referred to in section 32;

“business” means the business of—

(a) the sale of plants;

[Para. (a) substituted by s. 1 (a) of Act No. 25 of 1996.]

(aA) the cultivation of plants for sale;

[Para. (aA) inserted by s. 1 (b) of Act No. 25 of 1996.]

(b) the cleansing of propagating material for sale;

(c) the prepacking of propagating material for sale;

(d) the sale of propagating material; or

(e) the running of a test laboratory;

[Para. (e) substituted by s. 1 (a) of Act No. 17 of 1991 and by s. 1 (c) of Act No. 25 of 1996.]

[Definition of “business” inserted by s. 1 (a) of Act No. 10 of 1979 and substituted by s. 1 (c) of Act No. 39 of 1983]

“calendar year” means a year from 1 January to 31 December;

[Definition of “calendar year” inserted by s. 1 (b) of Act No. 39 of 1983.]

“certified” means certified in terms of a scheme;

“cleansing” means the treatment or processing of propagating material, either manually or mechanically, in order to improve the general quality thereof;

“cultivate” means grow plants and care for plants with a view to the propagation or multiplication of plants or propagating material; and “cultivation” has a corresponding meaning;

[Definition of “cultivate” inserted by s. 1 (b) of Act No. 17 of 1991 and substituted by s. 1 (d) of Act No. 25 of 1996.]

“denomination”, in relation to a variety entered in the varietal list, means the generic name for that variety;

“department” means the Department of Agriculture;

[Definition of “department” substituted by s. 1 (d) of Act No. 39 of 1983.]

“establishment”

[Definition of “establishment” substituted by s. 1 (b) of Act No. 10 of 1979 and deleted by s. 1 (e) of Act No. 25 of 1996.]

“import” means import into the Republic by any means; and “importation” has a corresponding meaning;

[Definition of “import” inserted by s. 1 (c) of Act No. 17 of 1991.]

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

“Minister” means the Minister of Agriculture;

“nursery”

[Definition of “nursery” substituted by s. 1 (c) of Act No. 10 of 1979 and deleted by s. 1 (f) of Act No. 25 of 1996.]

“officer” means an officer or employee as defined in section 1 of the Public Service Act, 1984 (Act No. 111 of 1984);

[Definition of “officer” substituted by s. 1 (e) of Act No. 39 of 1983 and by s. 1 (d) of Act No. 17 of 1991.]

“owner or occupier”, in relation to premises, means the person who is the owner or lessee of the premises or who otherwise has the right of management, care, control or use thereof;

[Definition of “owner or occupier” substituted by s. 1 (d) of Act No. 10 of 1979 and by s. 1 (g) of Act No. 25 of 1996.]

“pack” means pack or cause to be packed for sale;

“plant” includes any part of a plant;

[Definition of “plant” substituted by s. 1 (f) of Act No. 39 of 1983 and by s. 1 (h) of Act No. 25 of 1996.]

“prepack” means to pack propagating material which complies with the prescribed requirements, in the mass or quantity prescribed in respect thereof, in containers which comply with the prescribed requirements and which are sealed and branded, marked or labelled in the prescribed manner with the prescribed information; and

“prepacking” has a corresponding meaning;

“prescribed” means prescribed by regulation;

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

[Definition of “propagating material” substituted by s. 1 (g) of Act No. 39 of 1983 and by s. 1 (i) of Act No. 25 of 1996.]

“register”

[Definition of “register” deleted by s. 1 (h) of Act No. 39 of 1983.]

“registrar” means the officer designated under section 3 as Registrar of Plant Improvement;

[Definition of “registrar” substituted by s. 1 (i) of Act No. 39 of 1983.]

“regulation” means a regulation made under this Act;

“scheme” means a scheme established in terms of section 23;

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

[Definition of “sell” substituted by s. 1 (j) of Act No. 25 of 1996.]

“test laboratory” means a laboratory where plants and propagating material are tested, examined or analysed in respect of any physical or biological property thereof or the occurrence thereon or therein of pathogens or insects, for reward;

[Definition of “test laboratory for seed” inserted by s. 1 (j) of Act No. 39 of 1983 and substituted by s. 1 (e) of Act No. 17 of 1991.]

“this Act” includes the regulations;

“unit” means an area of land which is registered in terms of a scheme for the cultivation of plants and propagating material of the kinds and varieties to which the scheme applies;

[Definition of “unit for certification” substituted by s. 1 (f) of Act No. 17 of 1991.]

“varietal list” means the list kept in terms of section 15;

“variety” means any plant grouping within a single botanical taxon of the lowest known classification, which grouping can be—

- (a) defined by the expression of the characteristics resulting from a given genotype or combination of genotypes;
- (b) distinguished from any other plant grouping by the expression of at least one of the said characteristics; and
- (c) considered as a unit with regard to its suitability for being propagated unchanged.

[Definition of “variety” substituted by s. 1 (k) of Act No. 25 of 1996.]

2. Application of Act.—

- (1) The provisions of this Act shall apply with reference to any kind of plant which the Minister by notice in the Gazette declares to be a kind for the purposes of this Act.
- (2) Different kinds of plants may be thus declared with respect to different provisions of this Act.

3. Designation of registrar.—

- (1) The Minister shall designate an officer in the department as the Registrar of Plant Improvement, 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 or, if he is designated under paragraph (a) (i) of section 24 (1),

exercise the powers, perform the functions and carry out the duties conferred upon, assigned to or imposed upon the authority referred to in that section.

[Sub-s. (1) substituted by s. 2 (a) of Act No. 39 of 1983.]

- (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) The registrar may authorize any officer or, with the approval of the Minister, a person who is not an officer, to exercise, perform or carry out any power, function or duty of the registrar.
- (b) Any decision made or order given by any such officer or person may be withdrawn or amended by the registrar, and shall, until it has been so withdrawn or amended, be deemed, except for the purposes of this paragraph, to have been made or given by the registrar.
[Sub-s. (3) substituted by s. 2 (b) of Act No. 39 of 1983.]
- (4) The officer designated as registering officer in terms of section 2 of the Seeds Act, 1961 (Act 28 of 1961), shall be deemed to have been designated as Registrar of Plant Improvement in terms of this section.

4.

[S. 4 amended by s. 2 of Act No. 10 of 1979 and repealed by s. 3 of Act No. 39 of 1983.]

5.

[S. 5 repealed by s. 4 of Act No. 39 of 1983.]

6. *Prohibition of conducting of business on unregistered premises.—*

Business shall only be conducted on premises which have been registered in terms of this Act or which are exempt from the provisions of this section in terms of section 10.

[S. 6 substituted by s. 3 of Act No. 10 of 1979 and by s. 2 of Act No. 25 of 1996.]

7. *Registration of premises in respect of businesses.—*

- (1)(a) An application for the registration of any premises in respect of a business under this Act shall be made to the registrar in the prescribed manner by the person intending to conduct the business on such premises, and shall be accompanied by the prescribed application fee.
- (b) The prescribed application fee may differ in respect of different classes of applications.
[Sub-s. (1) substituted by s. 2 of Act No. 17 of 1991 and by s. 3 (a) of Act No. 25 of 1996.]
- (2) The registrar shall consider an application referred to in subsection (1) and may undertake any investigation in connection therewith which he may deem necessary.

- (3) The registrar shall register premises and issue a certificate of registration in respect thereof if—
- (a) the premises comply with the prescribed requirements;
 - (b) the practices to be employed in the business in question comply with the prescribed requirements;
 - (c) the prescribed facilities for the business in question are available at the premises; and
 - (d) the person in direct control of the premises has sufficient knowledge of the practices to be employed in the business.
- [Sub-s. (3) substituted by s. 5 of Act No. 39 of 1983 and by s. 3 (b) of Act No. 25 of 1996.]*
- (4) The registrar may refuse to register premises if—
- (a) the owner or occupier has been found guilty of an offence under this Act or has been sequestered or liquidated whilst conducting any business; or
 - (b) the applicant has been found guilty of an offence under this Act or has been sequestered or liquidated whilst conducting any business; or
 - (c) the applicant is or was a director, functionary or member of a juristic person which was found guilty of an offence under this Act or was liquidated whilst conducting any business.
- [Sub-s. (4) substituted by s. 3 (b) of Act No. 25 of 1996.]*
- (4A) The registrar may make the registration of premises subject to such conditions as may be necessary.
- [Sub-s. (4A) inserted by s. 3 (c) of Act No. 25 of 1996.]*
- (5) If the registrar refuses an application for registration referred to in subsection (1), he shall in writing advise the person who applied for the registration of his decision and of the grounds on which it is based.
- [S. 7 substituted by s. 4 of Act No. 10 of 1979.]*

8. Term of registration.—

- (1) The registration of premises shall, subject to earlier termination under this Act, be valid for a period of two years from the date of issue of the certificate of registration under section 7 (3) and shall be renewable.
- Sub-s. (1) substituted by s. 4 (a) of Act No. 25 of 1996.]*
- (2)
- [Sub-s. (2) deleted by s. 4 (b) of Act No. 25 of 1996.]*
[S. 8 substituted by s. 6 of Act No. 39 of 1983.]

9. *Renewal of registration.—*

- (1)(a) The person to whom a certificate of registration has been issued under section 7(3) may, till 30 days after the expiry of the registration but not later, apply to the registrar in the prescribed manner for the renewal of the registration, and the application shall be accompanied by the prescribed renewal fee and such information or documents as may be prescribed or required by the registrar.
- (b) The prescribed renewal fee may differ in respect of different classes of renewal applications.
[Sub-s. (1) substituted by s. 5 (a) of Act No. 10 of 1979, by s. 3 (a) of Act No. 17 of 1991 and by s. 5 (a) of Act No. 25 of 1996.]
- (2) The registrar may renew the registration if the provisions of paragraphs (a) to (d) of section 7 (3) are still being complied with, and if—
- (a)
[Para. (a) deleted by s. 5 (c) of Act No. 25 of 1996.]
- (b)
[Para. (b) deleted by s. 5 (c) of Act No. 25 of 1996.]
- (c)
[Para. (c) substituted by s. 5 (b) of Act No. 10 of 1979 and deleted by s. 5 (c) of Act No. 25 of 1996.]
- (d)
[Para. (d) deleted by s. 5 (c) of Act No. 25 of 1996.]
- (e) the prescribed records regarding the plants or propagating material handled at the premises are being kept for the period and in the manner prescribed, and such information in connection therewith as the registrar may require has been furnished to him or her; and
[Para. (e) substituted by s. 5 (c) of Act No. 10 of 1979 and by s. 5 (d) of Act No. 25 of 1996.]
- (f) any condition contemplated in section 7 (4A) has been complied with.
[Para. (f) substituted by s. 3 (b) of Act No. 17 of 1991 and by s. 5 (d) of Act No. 25 of 1996.]
[Sub-s. (2) amended by s. 5 (b) of Act No. 25 of 1996.]
- (3) The registrar may renew the registration of premises subject to such conditions as he or she may in each case determine.
[Sub-s. (3) substituted by s. 5 (e) of Act No. 25 of 1996.]
- (4) If the registrar renews the registration of premises he or she shall notify the person who applied for such renewal in writing thereof, and may, if he or she deems it necessary, issue a fresh certificate of registration in respect thereof.
[Sub-s. (4) substituted by s. 7 (a) of Act No. 39 of 1983 and by s. 5 (e) of Act No. 25 of 1996.]

- (5) The renewal of the registration of premises shall, subject to earlier termination under this Act, be valid for a period of two years and an application for the further renewal thereof shall be made biennially in accordance with the provisions of subsection (1).

[Sub-s. (5) substituted by s. 7 (b) of Act No. 39 of 1983 and by s. 5 (e) of Act No. 25 of 1996.]

- (6) The registrar may refuse to renew the registration if any of the provisions of section 7 (4) apply.

[Sub-s. (6) substituted by s. 7 (c) of Act No. 39 of 1983, deleted by s. 3 (c) of Act No. 17 of 1991 and inserted by s. 5 (f) of Act No. 25 of 1996.]

- (7) If the registrar refuses an application for the renewal of the registration of premises he or she shall advise the person who applied for the renewal in writing of his or her decision and of the grounds on which it is based.

[Sub-s. (7) substituted by s. 5 (g) of Act No. 25 of 1996.]

10. Exemption from registration.—

- (1) The Minister may by notice in the Gazette and on such conditions as he or she may specify in the notice, exempt any premises from the provisions of section 6 in respect of any kind of business.

- (2) The registrar may on application and subject to the conditions determined by him or her, exempt any premises from the provisions of section 6.

[S. 10 substituted by s. 6 of Act No. 10 of 1979 and by s. 6 of Act No. 25 of 1996.]

11. Termination of registration.—

- (1) The registrar may at any time terminate the registration of premises or refuse to renew the registration of premises if—

(a) a condition of or a requirement for the registration of premises in terms of section 7 or the renewal of registration in terms of section 9 has not been complied with; or

(b) the person who applied for the registration or renewal, or the owner or occupier of the premises, has been found guilty of an offence under this Act.

- (2) If the registrar terminates the registration of premises or refuses to renew the registration of premises in terms of this section, he or she shall in writing advise the person to whom the certificate of registration in respect thereof was issued of his or her decision and of the grounds on which it is based.

[S. 11 substituted by s. 7 of Act No. 25 of 1996.]

12. Display, lapsing and return of certificate of registration.—

- (1) The owner or occupier of premises shall cause the certificate of registration issued in respect thereof to be displayed at all times in a prominent position at or near the main entrance to the premises.

- (2) The registration of premises shall lapse—
- (a) if the person to whom the certificate of registration in respect thereof was issued ceases to be the owner or occupier of the premises;
 - (b) if the premises in question cease to be used for the conduct of the business for which it was registered; or
 - (c) if an application for the renewal thereof is not received by the registrar within 30 days of the date of expiry thereof.
- (3)(a) If a person to whom a certificate of registration in respect of premises has been issued dies or is declared by any court to be incapable of managing his or her own affairs or a prodigal or becomes a patient as defined in section 1 of the Mental Health Act, 1973 (Act No. 18 of 1973), or if the estate of such a person is sequestrated or if such a person is liquidated, the executor, curator, trustee or liquidator of such person, as the case may be, may, subject to any law relating to deceased estates, mental health, insolvency, during the currency of the certificate of registration and without formal transfer of the certificate, conduct the business in question on such premises either personally or by an agent approved by the registrar in writing.
- (b) For the period pending the appointment of such executor, curator, trustee or liquidator, the person managing the affairs of the person concerned shall, for the purposes of this subsection, be deemed to be his or her executor, curator, trustee or liquidator, as the case may be.
- (4) When the registration of premises has been terminated under section 11 or has lapsed in terms of subsection (2) of this section, the relevant certificate of registration shall be returned within the prescribed period to the registrar by the person to whom it was issued.
- [S. 12 amended by s. 7 of Act No. 10 of 1979 and by s. 8 of Act No. 39 of 1983 and substituted by s. 8 of Act No. 25 of 1996.]*

13. Requirements relating to sale of plants and propagating material.—

- (1) Plants and propagating material shall only be sold for purposes of cultivation—
- (a) if the plants and propagating material are of a variety which is entered in the varietal list;
 - (b) under the denomination entered in respect thereof in the varietal list;
 - (c) if no qualifying term or reference is added to or used in connection with the denomination referred to in paragraph (b);
 - (d) if the plant or propagating material, as the case may be, complies with the requirements prescribed in respect thereof; and
 - (e) if, in the case of—

- (i) propagating material, the material is prepackaged or is packed in containers which comply with the prescribed requirements and are sealed and branded, marked or labelled in the prescribed manner with the prescribed information; or
 - (ii) a plant, the prescribed information appears on a label affixed to the plant or on the container in which the plant grows or is packed.
- (2) The registrar may, on good cause shown in writing, give written exemption from compliance with one or more of the requirements referred to in subsection (1) subject to such conditions as he or she may in each case determine.
[S. 13 amended by s. 8 of Act 10 of 1979 and substituted by s. 9 of Act No. 25 of 1996.]

14. Savings regarding certain propagating material.—

The provisions of this Act shall not apply—

- (a) to the cleansing of propagating material intended for a purpose other than the cultivation thereof;
- (b) to the sale of propagating material intended for a purpose other than the cultivation thereof;
[Para. (b) amended by s. 10 (a) of Act No. 25 of 1996.]
- (bA) to the cleansing of propagating material by the producer thereof; or
[Para. (bA) inserted by s. 4 (b) of Act No. 17 of 1991.]
- (c) to the sale of propagating material by the producer thereof to the owner or occupier of a registered premises: Provided—
 - (i) that, in the case of propagating material certified under a scheme, the containers of the material shall be sealed and labelled or marked in accordance with the provisions of the scheme; and
 - (ii) that, in the case of propagating material not certified under a scheme, the name and address of the producer, the kind of plant and the denomination of the variety concerned shall be clearly and legibly marked on the container thereof or on a label attached thereto.

[Para. (c) amended by s. 4 (c) of Act No. 17 of 1991 and by s. 10 (b) of Act No. 25 of 1996.]

15. Varietal list.—

- (1) The registrar shall keep a list in which shall be entered—

- (a) the denomination by which a variety is generally known on the date on which the kind of plant to which the variety belongs, has been declared to be a kind of plant for the purposes of this Act in terms of section 2; or
 - (b) the denomination of a variety recognised in terms of section 20; or
 - (c) the denomination of a variety in respect of which a plant breeder's right has been registered in terms of the Plant Breeders' Rights Act, 1976 (Act No. 15 of 1976); or
 - (d) the denomination by which a variety is known internationally.
- (2) The registrar may enter in the varietal list such other particulars regarding a variety referred to in subsection (1) as he or she may deem necessary.
 - (3) Notwithstanding the provisions of subsection (1), the registrar may, independent of any specific variety or in addition to any variety entered in the list, include all the varieties or any further variety of any kind of plant in the varietal list.
 - (4) If a variety is known by more than one denomination or by an unacceptable denomination, the registrar shall enter in the varietal list such denomination for the variety as may be determined by him or her.
 - (5) The varietal list kept in terms of section 8 of the Seeds Act, 1961 (Act No. 28 of 1961), shall be incorporated in and form part of the list kept under this section, and any document, information or other proof supplied or furnished to the registrar under that Act in terms of any provision thereof, shall be deemed to have been supplied or furnished to the registrar under the corresponding provision of this Act.
 - (6) The registrar shall furnish to any person a copy of the varietal list on request.
[S. 15 amended by s. 9 of Act No. 39 of 1983 and by s. 5 of Act No. 17 of 1991 and substituted by s. 11 of Act No. 25 of 1996.]

15A. Registrar may enter into certain agreements for obtaining or rendering available of results of certain tests and trials.—

The registrar may with the approval of the Minister, which shall be granted with the concurrence of the Minister of Finance and of the Minister of Foreign Affairs, enter into an agreement with the appropriate authority of another country in which it is provided that the registrar—

- (a) shall, for the purposes of the consideration by him of an application for the recognition of a variety in terms of this Act, be entitled to obtain the results of tests and trials conducted by that authority in respect of that variety;
- (b) shall render available to such authority the results of tests and trials conducted by the registrar in respect of a variety, against payment by

the registrar or that authority, as the case may be, of the amount stipulated in the agreement.

[S. 15A inserted by s. 10 of Act No. 39 of 1983 and amended by s. 6 of Act No. 17 of 1991.]

16. Application for recognition of variety.—

(1) An application for the recognition of a variety for entry in the varietal list may be made by any person: Provided that where an applicant is not resident in the Republic or, in the case of a juristic person, where an applicant does not have a registered office in the Republic, an application shall be submitted only through a person who is resident in the Republic.

(2) Such application—

(a) shall be made to the registrar in the prescribed manner;

[Para. (a) substituted by s. 7 of Act No. 17 of 1991 and by s. 12 (a) of Act No. 25 of 1996.]

(b) shall be accompanied by the prescribed application fee; and

(c) shall, in the case of a variety bred or discovered by a person other than the applicant, be accompanied by the written authorisation of the breeder or discoverer.

[Para. (c) substituted by s. 12 (b) of Act No. 25 of 1996.]

(3)(a) The registrar may, on good cause shown by the applicant in writing, give written exemption from compliance with the requirement referred to in subsection (2) (c).

(b) Neither the registrar nor the State shall be liable for any claim as a result of an exemption granted in terms of paragraph (a).

[Sub-s. (3) added by s. 12 (c) of Act No. 25 of 1996.]

17. Requirements for recognition of variety.—

(1) A variety may be recognised if—

(a) it is clearly distinguishable from any other variety of the same kind of plant of which the existence is a matter of common knowledge at the time of the filing of the application;

[Para. (a) substituted by s. 13 (a) of Act No. 25 of 1996.]

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

[Para. (b) substituted by s. 13 (a) of Act No. 25 of 1996.]

(c) it is stable in that the characteristics of the variety remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle; and

[Para. (c) substituted by s. 13 (a) of Act No. 25 of 1996.]

- (d) it is identified by a denomination which complies with the provisions of subsections (3) and (4).
 - (2) A characteristic referred to in subsection (1) (a) shall be of such a nature that it is clearly recognizable and describable.
[Sub-s. (2) substituted by s. 13 (b) of Act No. 25 of 1996.]
 - (3) The denomination of a variety for which an application for recognition is being considered shall be proposed by the person who applies for such recognition and—
 - (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 not be inimical to public order or contrary to morality; and
 - (e) shall comply with such further requirements as the registrar may determine.
 - (4)(a) A denomination shall, subject to the provisions of paragraph (b), 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 of the Trade Marks Act, 1963 (Act 62 of 1963), and which applies to plants or propagating material or the use in connection therewith or in connection with a product thereof.
 - (b) If the denomination of a variety proposed by a person under subsection (3) is a designation in respect of which he enjoys the protection referred to in paragraph (a), the registrar shall not approve such denomination unless such person in writing renounces his right to such mark as from the date on which the variety in question is recognized.
- 18. *Consideration and examination of applications.*—**
- (1) The registrar shall consider every application for the recognition of a variety 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.
 - (2) The registrar shall, in order to enable him or her to determine whether a variety may be recognized—

- (a) undertake or cause to be undertaken such tests and trials as he or she may deem necessary with a variety in respect of which an application is being considered under subsection (1); or
- (b) use the results of tests and trials undertaken with that variety and obtained by him or her in terms of an agreement referred to in section 15A (a).

[Sub-s. (2) substituted by s. 14 (a) of Act No. 25 of 1996.]

- (3) A person whose application is being considered shall, for the purposes of such tests and trials and at the time and place determined by the registrar—
 - (a) subject to the provisions of subsection (4), pay the appropriate prescribed examination fee; and
 - (b) furnish the registrar—
 - (i) with such quantity or mass of plants and propagating material of the variety as he may require;
 - (ii) with such specimens of plants of the variety or of such parts thereof as he may require; and
 - (iii) with such information in connection with the variety as he may require.
- (4) If the registrar for the purposes of the consideration of an application in terms of subsection (1), decides to use the results referred to in paragraph (b) of subsection (2)—
 - (a) the costs incurred in obtaining the results shall be reimbursed to the registrar by the person whose application is being considered; and
 - (b) the registrar may, before taking any steps, require that person to furnish a written undertaking or suitable guarantee for the reimbursement of such costs.
- (5)(a) The person whose application for the recognition of a variety is being considered shall furnish the registrar within 12 months from the filing of the application with everything required by the registrar in terms of this section for the examination of the application for the recognition of a variety, including, where applicable—
 - (i) plants and propagating material for the undertaking of tests and trials;
 - (ii) any information, documents or other proof; and
 - (iii) written undertakings or suitable guarantees for the reimbursement of costs.

- (b) The date of the application shall be deemed to be the day on which the final requirements for the consideration of the application are received by the registrar.

[Sub-s. (5) added by s. 14 (b) of Act No. 25 of 1996.]

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

- (b) An application for extension shall be submitted to the registrar in writing and shall set out reasons why extension should be granted.

[Sub-s. (6) added by s. 14 (b) of Act No. 25 of 1996.]

[S. 18 amended by s. 9 of Act No. 10 of 1979 and substituted by s. 11 of Act No. 39 of 1983.]

19. *Rejection of application.—*

- (1) The registrar may reject an application for the recognition of a variety if it appears to him—

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

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

- (i) has previously been recognised in terms of this Act or the Seeds Act, 1961 (Act 28 of 1961);

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

- (iii) does not belong to a kind of plant to which this Act applies;

- (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 granted in terms of the Plant Breeders' Rights Act, 1976, or of the person to whom provisional protection has been granted in terms of that Act;

- (f) that the applicant refuses or has failed or is not able—

- (i) to propose an acceptable denomination; or

- (ii) to furnish a written undertaking or suitable guarantee referred to in section 18 (4) after having been requested to do so;

[Para. (f) substituted by s. 12 of Act No. 39 of 1983.]

- (g) that the propagation of the variety in question would require repeated use of plants or propagating material of another variety for which plant breeders' rights have been granted to or applied for by another person under the Plant Breeders' Rights Act, 1976, unless such plants are or

such propagating material is used under a licence issued in terms of that Act; or

- (h) that the description submitted does not clearly describe the variety; or
- (i) that the provisions of section 18 have not been complied with at the filing of the application.

[Para. (i) added by s. 15 of Act No. 25 of 1996.]

- (2) If the registrar rejects an application under subsection (1) or refuses an application under section 20 (2), he shall advise the person who applied for recognition in writing of his decision and of the grounds on which it is based.

20. *Recognition of variety.*—

- (1) Subject to the provisions of subsection (2), the registrar shall, after considering an application in terms of section 18 and examining the results of any tests or trials conducted with a variety, recognize the variety and enter it in the varietal list if—

- (a) the application conforms to the requirements of this Act;
- (b) the variety complies with the requirements referred to in section 17; and
- (c) all moneys payable in terms of this Act in respect of the application have been paid.

[Sub-s. (1) amended by s. 13 of Act No. 39 of 1983]

- (2) The registrar may refuse to recognize a variety if—

- (a) it is in the public interest to do so;
- (b) he or she, after an evaluation in terms of section 22, decides that the variety is undesirable for use.

- (3) The registrar shall not recognise a variety before—

- (a) he or she has decided under section 22 (1) not to investigate the variety; or
- (b) the prescribed period, reckoned from the date on which the plants and propagating material were supplied to the registrar under section 22 (3) (a) for the first time, has expired.

- (4) The registrar shall in respect of each variety which is recognised—

- (a) enter the applicable particulars referred to in section 15 in the varietal list; and
- (b) inform the applicant in writing of such recognition.

- (5) If the registrar refuses to recognize a variety in terms of this section, he or she shall in writing advise the person who applied for recognition of a variety of his or her decision and of the grounds on which it is based.
[S. 20 amended by s. 13 of Act No. 39 of 1983 and substituted by s. 16 of Act No. 25 of 1996.]

21. *Alterations in and deletions from varietal list.—*

- (1) A denomination of a variety entered in the varietal list may be altered or supplemented by the registrar—
- (a) on application made to him or her and on payment of the prescribed fees;
[Para. (a) substituted by s. 17 (a) of Act No. 25 of 1996.]
 - (b) in the case of a denomination referred to in paragraph (a) or (b) of section 15 (1)—
 - (i) if the information submitted to the registrar in the application for 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
 - (ii) if information comes to light which, if discovered earlier, would in the opinion of the registrar have resulted in a refusal to enter the denomination in the varietal list; or
 - (c) in the case of a denomination referred to in paragraph (c) of section 15 (1), if the denomination is altered or supplemented under the Plant Breeders' Rights Act, 1976.
- (2) The registrar may delete the denomination of a variety entered in the varietal list if—
- (a) any information submitted to him or her in the application for the recognition of such variety or in connection with such an application was incorrect and the variety would not have been recognised if he or she had known that the information was incorrect; or
 - (b) information has come to light which, if discovered earlier, would have resulted in the refusal of such application; or
 - (c) it is in the public interest to delete it; or
 - (d) plants and propagating material of such variety capable of reproducing the variety in such a manner that the characteristics thereof correspond with the characteristics described at the time of the recognition thereof, cannot readily be obtained; or

- (e) the variety no longer conforms to the requirements referred to in section 17; or
- (f) after an evaluation referred to in section 22, he or she decides that the use of the variety is undesirable.

[Sub-s. (2) substituted by s. 17 (b) of Act No. 25 of 1996.]

- (3) If the registrar deletes the denomination of a variety from the varietal list, he or she shall in writing advise the person who applied for recognition of the variety of his or her decision and of the grounds on which it is based, unless that person's identity and address is unknown to the registrar.

[Sub-s. (3) substituted by s. 17 (c) of Act No. 25 of 1996.]

22. Evaluation of variety.—

- (1) The Minister may, if he or she deems it necessary, evaluate the usefulness of a variety for agricultural or industrial purposes.
- (2) For the purposes of subsection (1), the registrar may investigate—
 - (a) any variety in respect of which an application for recognition has been submitted in terms of section 16; or
 - (b) any variety of which the denomination has been entered in the varietal list.
- (3) The prescribed quantity or mass of plants or propagating material of the variety in question required for the purpose of the evaluation—
 - (a) shall, in the case of a variety referred to in subsection (2) (a), be supplied free of charge to the registrar by the applicant at the prescribed time and place; and
 - (b) may, in the case of a variety referred to in subsection (2) (b), be procured by the registrar against payment from any person.
- (4) The registrar may, in order to enable him or her to evaluate a variety—
 - (a) investigate the variety in the manner which he or she deems expedient;
 - (b) cause the variety to be investigated;
 - (c) use the results of tests and trials conducted with that variety and obtained by him or her in terms of an agreement referred to in section 15A.
- (5) The registrar may, as a result of the evaluation of a variety—
 - (a) if an application for recognition has been filed with him or her, either recognize the variety or refuse the application; or

- (b) if the variety has been entered in the varietal list, either retain it in the list or delete it.
- (6) If plants or propagating material cannot be supplied or procured as contemplated in subsection (3), the registrar may—
 - (a) in the case of a variety referred to in subsection (2) (a), refuse the application for the recognition of the variety; or
 - (b) in the case of a variety referred to in subsection (2) (b), delete the variety from the varietal list.
- (7) The registrar may at any time after an investigation in terms of this section has been undertaken, repeat the investigation.
[S. 22 substituted by s. 18 of Act No. 25 of 1996.]

23. Establishment of certification schemes.—

- (1) The Minister may, after consultation with the Minister of Finance, by notice in the Gazette establish a scheme for the certification of plants and propagating material of the kinds of plants referred to in the scheme, with the object of maintaining the quality of plants and propagating material of such kinds and of ensuring the usefulness for agricultural or industrial purposes of the products derived there from.
- (2) Different schemes may be established for plants and propagating material of different kinds of plants, and the requirements for different kinds and varieties of plants and propagating material in a scheme may differ.
- (3)
[Sub-s. (3) deleted by s. 14 of Act No. 39 of 1983.]
- (4)
[Sub-s. (4) deleted by s. 14 of Act No. 39 of 1983.]
- (5) The Minister may at any time by notice in the Gazette amend or revoke a scheme.

24. Provisions of scheme.—

- (1) The Minister may in a notice relating to the establishment of a scheme—
 - (a)(i) designate the authority which shall exercise the powers, perform the functions and carry out the duties conferred upon, assigned to or imposed upon such authority under a scheme;
 - (ii) if the authority referred to in subparagraph (i) is not an officer in the Department, or a body consisting of such officers, provide that such authority shall exercise, perform or carry out its powers, functions or duties at its own cost and subject to the directions of the registrar and have any right of recourse against the State for costs so incurred;
[Sub-para. (ii) substituted by s. 8 (a) of Act No. 17 of 1991.]

[Para. (a) substituted by s. 10 (a) of Act No. 10 of 1979 and by s. 15 (a) of Act No. 39 of 1983.]

- (b) provide that any area of land utilized for the cultivation of plants or propagating material in terms of a scheme, shall be registered as a unit with the authority referred to in paragraph (a);

[Para. (b) substituted by s. 15 (a) of Act No. 39 of 1983, by s. 8 (b) of Act No. 17 of 1991 and by s. 19 of Act No. 25 of 1996.]

- (c) provide for the manner in which an application for registration as a unit shall be lodged, the information which shall accompany such an application and the circumstances under which such registration shall lapse, be refused or be cancelled;

[Para. (c) substituted by s. 8 (c) of Act No. 17 of 1991 and by s. 19 of Act No. 25 of 1996.]

- (d) determine the requirements for registration to be complied with by a unit, the conditions on which such a unit shall be registered and the period of validity of such registration;

[Para. (d) substituted by s. 8 (d) of Act No. 17 of 1991.]

- (e) determine that, as from the date on which a unit is registered in terms of a scheme, the provisions of such scheme shall be binding on the person in whose favour that unit is registered;

[Para. (e) substituted by s. 8 (e) of Act No. 17 of 1991.]

- (f) indicate the kind of plants and varieties thereof to which the provisions of a scheme shall apply;

[Para. (f) substituted by s. 10 (b) of Act No. 10 of 1979.]

- (g) provide for the manner in which and the control subject to which plants and propagating material intended for certification under a scheme shall be produced and treated;

- (h) determine the manner in which and the times at which any inspection of units or of plants or propagating material with reference to which the provisions of a scheme are applicable, shall be carried out, and authorize the authority designated under paragraph (a) to determine the forms to be used in connection with such an inspection;

[Para. (h) substituted by s. 8 (f) of Act No. 17 of 1991.]

- (i) determine the requirements and standards of quality which plants and propagating material shall comply with for certification in terms of a scheme;

- (j) determine the manner in which plants and propagating material shall be certified, the form of a certificate in connection therewith and the circumstances under which such a certificate shall lapse;

- (k) determine the manner in which certified plants and propagating material shall be packed, marked, labelled, sealed, stored or distributed, and the specifications of the labels and seals to be used therefore;
- (l) determine the information which shall appear on the containers in which certified plants and propagating material are packed, or on labels affixed thereto;
- (m) determine the records to be kept and the information to be furnished by any person in whose favour a unit is registered under a scheme;
[Para. (m) substituted by s. 8 (g) of Act No. 17 of 1991.]

- (n) determine the fees or charges payable in terms of a scheme, or authorize any authority designated in terms of paragraph (a), to determine such fees or charges, and stipulate that the rendering of any service may be refused to a person who is indebted to any such authority in any amount in respect of such fees or charges:
[Para. (n) substituted by s. 15(a) of Act No. 39 of 1983 and by s. 8(h) of Act No. 17 of 1991.]

- (o) confer on any authority designated in terms of paragraph (a) of this subsection, or on any person authorized in writing by any such authority to enforce any provision of a scheme, the powers of inspection referred to in section 25 (1);
[Para. (o) substituted by s. 15 (a) of Act No. 39 of 1983.]

- (p) declare that the provisions of section 32 shall mutatis mutandis apply with reference to any person who feels aggrieved by any decision or action taken in connection with a scheme by any authority designated in terms of paragraph (a) of this subsection; and
[Para. (p) substituted by s. 15 (a) of Act No. 39 of 1983.]

- (q) provide generally for any other matter which, in the opinion of the Minister, is necessary or expedient in order to further or better achieve the objects of a scheme, the generality of the powers conferred by this paragraph not being limited by the preceding paragraphs.

(2)(a) The authority designated under subsection (1) (a) may authorize any person to exercise, perform or carry out any power, function or duty of that authority.

(aA) When any authority designated in terms of paragraph (a) so authorizes any person at his request, it may determine that—

- (i) the power, function or duty concerned be exercised, performed or carried out at the cost of the person concerned;
- (ii) the person concerned shall have no right of recourse against that authority or the State for costs so incurred; and

- (iii) the person concerned shall exercise, perform or carry out the power, function or duty concerned subject to the directions of that authority.

[Para. (aA) inserted by s. 8 (i) of Act No. 17 of 1991.]

- (aB) A juristic person established under any law and so authorized, shall be deemed, notwithstanding the absence of any express provision to such effect in the law under which it was established, to be competent to exercise, perform or carry out the power, function or duty concerned.

[Para. (aB) inserted by s. 8 (i) of Act No. 17 of 1991.]

- (aC) The said juristic person may authorize any person in its service in writing to exercise, perform or carry out the power, function or duty concerned.

[Para. (aC) inserted by s. 8 (i) of Act No. 17 of 1991.]

- (b) A decision made or order given by any person authorized under paragraph (a), may be withdrawn by such authority, and any such decision or order shall, until it is so withdrawn or amended, be deemed, except for the purpose of this paragraph, to have been given by such authority.

[Sub-s. (2) added by s. 15 (b) of Act No. 39 of 1983.]

24A. Inspection for quality control.—

An officer or authorised person may during business hours enter any premises registered under this Act and—

- (a) open any container found at or on the premises which the officer or authorised person believes on reasonable grounds contains any propagating material;
- (b) examine the propagating material and take samples thereof; and
- (c) require the owner or occupier to produce for inspection, or for the purpose of obtaining copies or extracts, any books, labels, shipping bills, bills of lading or other documents or papers with respect to the administration of this Act.

[S. 24A inserted by s. 20 of Act No. 25 of 1996.]

25. Power to enter premises, carry out inspections, take samples and seize certain articles.—

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

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

- (b) direct a person in control of or employed at such place, premises or vehicle to—
 - (i) deliver any book, record or other document that pertains to that plant, propagating material, substance or other article and which is in the possession or under the control of that person;
 - (ii) furnish the information he or she has with regard to that plant, propagating material, substance or other article;
 - (iii) render the assistance the office or authorized person requires to enable him or her to perform his or her functions under this Act;
 - (c) inspect any book, record or other document and make copies thereof or excerpts therefrom;
 - (d) seize any plant, propagating material, substance, book, record or other document or article which is or might be relevant to a prosecution under this Act and keep it in his or her custody: Provided that the person from whose possession or control any book, record or document has been taken, may, at his or her own expense and under the supervision of the officer or authorized person concerned, make copies thereof or excerpts therefrom;
 - (e) take samples of any plant, propagating material, substance or other article used or intended for use in the production, reproduction, breeding, cultivation, processing, treatment, preparation, testing, examining, analysing, classification, prepackaging, marking, labelling, holding, keeping, packing, removal, transport, exhibition or sale thereof, and of any plant, propagating material, substance or other article seized in terms of paragraph (d), and examine, analyse or classify such samples.
- (2) Any sample taken in terms of subsection (1) (e) or (6)—
- (a) shall consist of the quantity or mass determined by the registrar, taken in accordance with the methods determined by him or her;
 - (b) shall be taken in the presence of the person in charge of, or the owner or custodian of, such plant, propagating material, substance or other article, or, if such person, owner or custodian is not available, in the presence of any other witness, and the form determined by the registrar shall be completed in respect thereof;
 - (c) shall, if necessary, be packed and identified in such manner as the nature thereof permits; and
 - (d) shall with all convenient speed be tested, examined or analysed in accordance with the methods which the registrar may determine or

which may be prescribed, and the result of such test, examination or analysis shall be entered on the form determined by the registrar.

- (3) A warrant referred to in subsection (1) shall be issued by a judge of the Supreme Court or by a magistrate who has jurisdiction in the area where the place or premises in question is situated, or where the vehicle is or will be, and shall only be issued if it appears to the judge or magistrate from information on oath that there are reasonable grounds for believing that an article mentioned in subsection (1) (a) and (b) is upon or in such place, premises or vehicle, and shall specify which of the acts mentioned in subsection (1) may be performed there under by the person to whom it is issued.
- (4) A warrant issued in terms of this section shall be executed by day unless the person who issues the warrant authorizes the execution thereof by night at times which shall be reasonable, and entry upon and search of any place, premises or vehicle specified in such warrant shall be conducted with strict regard to decency and order, including—
 - (a) a person's right to, respect for and protection of his or her dignity;
 - (b) the right of a person to freedom and security; and
 - (c) the right of a person to his or her personal privacy.
- (5) The officer or authorized person executing a warrant in terms of this section shall immediately before commencing with the execution—
 - (a) identify himself or herself to the person in control of the place, premises or vehicle, if such person is present, and hand to such person a copy of the warrant or, if such person is not present, affix such copy to a prominent place on the place, premises or vehicle;
 - (b) supply such person at his or her request with particulars regarding his or her authority to execute such a warrant.
- (6) An officer in the department or authorized person may without a warrant enter any place, premises or vehicle, and search for, seize, take samples of and remove any article referred to in subsection (1) if the person who is competent to do so consents to such entry, search, seizure, taking of samples and removal.
- (7)(a) The officer or authorized person who may on the authority of a warrant issued in terms of subsection (3), or under the provisions subsection (6), enter and search any place, premises or vehicle, may such force as may be reasonably necessary to overcome resistance to such entry or search.
- (b) No person may enter upon and search any place, premises or vehicle unless he or she has audibly demanded admission to the place, premises or vehicle and has notified the purpose of his or her entry, unless such person is upon

reasonable grounds of the opinion that any article may be destroyed if such admission is first demanded and such purpose is first notified.

- (8) If, during the execution of a warrant or the conducting of a search in terms of this section, a person claims that an article found on or in the place, premises or vehicle in question contains privileged information and refuses the inspection or removal of such article, the person executing the warrant or conducting the search shall, if he or she is of the opinion that the article contains information which is relevant to the investigation and that such information is necessary for the investigation or hearing, request the registrar of the Supreme Court which has jurisdiction, or his or her delegate, to seize and remove that article for safe custody until a court of law has made a ruling on the question whether or not the information in question privileged.
- (9) A warrant issued in terms of this section may be issued on any day and shall be of force until—
 - (a) it is executed; or
 - (b) it is cancelled by the person who issued it or, if such person is not available, by any person with similar authority; or
 - (c) the expiry of one month from the day of its issue; or
 - (d) the purpose for which the warrant was issued, no longer exists, whichever may occur first.
- (10) If no criminal proceedings are instituted in connection with any plant, propagating material, substance, book, record or other article or document seized in terms of subsection (1) or (6), or if it appears that such plant, propagating material, substance, book, record or other article or document is not required at the trial for the purposes of evidence or an order of court, that plant, propagating material, substance, book, record or other article or document shall be returned to the person from whom it was seized.
[S. 25 amended by s. 11 of Act No. 10 of 1979, by s. 16 of Act No. 39 of 1983 and by s. 9 of Act No. 17 of 1991 and substituted by s. 21 of Act No. 25 of 1996.]

26. *Importation of plants and propagating material.—*

- (1) No person shall import into the Republic any plant or propagating material—
 - (a) unless the plant or propagating material—
 - (i) is of a variety of which the denomination is entered in the varietal list;
 - (ii) complies with the requirements prescribed in respect thereof;

- (iii) is packed in a container which is sealed and branded, marked or labelled in the prescribed manner with the prescribed information;
- (iv) is imported through a prescribed port of entry or such other place as the registrar may determine; and

(b) under a denomination other than the denomination entered in the varietal list in respect thereof.

[Para. (b) amended by s. 22 (a) of Act No. 25 of 1996.]

[Sub-s. (1) substituted by s. 10 (a) of Act No. 17 of 1991.]

(2)(a) Notwithstanding the provisions of subsection (1)—

- (i) the registrar may in his discretion and on such conditions as he may determine, in writing allow the importation of a consignment of plants or propagating material which does not conform to all or any of the requirements referred to in subsection (1); and
- (ii) the Minister may by notice in the Gazette determine that any particular kind of plant, or propagating material of a particular kind of plant, shall only be imported with the permission in writing of the registrar and on such conditions as he may specify in such permission.

[Para. (a) substituted by s. 10 (b) of Act No. 17 of 1991.]

(b) A person requiring the permission of the registrar under paragraph (a) shall apply therefor to the registrar in the prescribed manner.

[Para. (b) substituted by s. 22 (b) of Act No. 15 of 1996.]

(3) A person importing a consignment of plants or propagating material shall furnish the registrar with the particulars which the registrar may determine regarding such consignment, and such consignment shall not be removed from a port or place contemplated in subsection (1) (a) (iv) unless the registrar has authorized the removal thereof in writing.

[Sub-s. (3) substituted by s. 17 (a) of Act No. 39 of 1983 and by s. 22 (c) of Act No. 15 of 1996.]

(4) Plants and propagating material imported in terms of subsection (1) or (2) shall, if the registrar so requires, be presented for examination and sampling in terms of this section at a port or place contemplated in subsection (1) (a) (iv).

[Sub-s. (4) substituted by s. 17 (b) of Act No. 39 of 1983 and by s. 22 (c) of Act No. 15 of 1996.]

(5)(a) The registrar shall determine the manner in which plants and propagating material imported in terms of subsection (1) or (2) shall be presented for examination and sampling in terms of subsection (4), and the manner in which and the time and place at which the examination and sampling shall be carried out.

[Para. (a) substituted by s. 12 of Act No. 10 of 1979.]

- (b) The provisions of sections 25 (1) and (3) shall *mutatis mutandis* apply with reference to such examination and sampling and the analysis of such sample.
- (6)(a) The provisions of this section shall not apply with reference to the importation of plants and propagating material intended for purposes other than cultivation or for immediate export.
- (b) The person importing plants or propagating material in terms of paragraph (a) shall, prior to or on arrival thereof in the Republic, furnish to the registrar a declaration to that effect in the prescribed manner.
[Sub-s. (6) substituted by s. 17 (c) of Act No. 39 of 1983 and by s. 22 (d) of Act No. 15 of 1996.]
- (7) If plants and propagating material have been imported contrary to the provisions of this section, the registrar may—
 - (a) in accordance with the election of the importer, order that the plants or propagating material in question shall within the period determined by the registrar—
 - (i) be destroyed without compensation; or
 - (ii) be removed from the Republic at the expense of the importer; or
 - (b) permit the disposal thereof in the Republic in such manner and on such conditions as he may determine.

27. *Export of plants and propagating material.*—

- (1) No person shall export from the Republic any plant or propagating material unless he is in possession of a certificate from the registrar authorising such export.
- (2) Any person desiring to obtain any such certificate shall apply therefore to the registrar in the prescribed manner and such application shall be accompanied by the prescribed application fee.
[Sub-s. (2) substituted by s. 11 (a) of Act No. 17 of 1991 and by s. 23 of Act No. 25 of 1996.]
- (3) After receipt of an application referred to in subsection (2) the registrar may undertake such inspection of the plants and propagating material intended for export as he or she may deem necessary, take such samples thereof as he or she may deem necessary and test, examine or analyse the samples or cause the samples to be tested, examined or analysed in the manner contemplated in section 25 (2), and the person who has thus applied shall pay to the registrar on demand the prescribed fees in connection with such inspection and for the testing, examination or analysis of such samples.
[Sub-s. (3) substituted by s. 23 of Act No. 25 of 1996.]
- (4)
[Sub-s. (4) deleted by s. 11 (b) of Act No. 17 of 1991.]

- (5) If the registrar is of opinion that a consignment of plants or propagating material may not be exported, he shall prohibit the export thereof in writing.
- (6) The provisions of subsection (1) shall not apply with reference to the export of—
 - (a) plants and propagating material intended for purposes other than cultivation; or
 - (b) propagating material which does not exceed the prescribed quantity.
[Sub-s. (6) substituted by s. 11 (c) of Act No. 17 of 1991.]

27A. Distribution of plants or propagating material.—

The Minister may by notice in the Gazette prohibit, or, subject to such conditions as may be mentioned in the notice, regulate, the distribution of plants or propagating material.

[S. 27A inserted by s. 12 of Act No. 17 of 1991.]

28. Certain provisions to apply in respect of State.—

This Act, except sections 32, 35 and 37, shall apply also in respect of the State: Provided that no fees shall be payable by the State in terms of this Act.

[S. 28 substituted by s. 18 of Act No. 39 of 1983.]

29. Discretionary power of registrar.—

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

30. Preservation, inspection and proof of documents.—

- (1) All documents lodged with the registrar in terms of this Act shall, subject to the provisions of subsection (3), be preserved for the prescribed period.
- (2) Any document referred to in subsection (1) which, in the opinion of the registrar, may lie for inspection by the public, shall upon payment of the prescribed fees be open for 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 recognition of a variety 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)
[Sub-s. (4) deleted by s. 19 of Act No. 39 of 1983.]

31. Secrecy.—

- (1) No person shall, except—
- (a) for the purpose of carrying out his duties or the performance of his functions under this Act;
 - (b) for the purposes of legal proceedings under this Act or any other law;
 - (c) when required to do so by any court or under any law; or
 - (d) with the written consent of the Minister, disclose any information acquired by him in the carrying out of his duties or the performance of his functions under this Act or a scheme and which relates to the business or affairs of another person.

[Sub-s. (1) substituted by s. 20 of Act No. 39 of 1983.]

- (2) Notwithstanding the provisions of subsection (1) the person or body designated in terms of section 24 (a) may, in respect of the relevant scheme, furnish to the holder of a plant breeder's right granted under the Plant Breeders' Rights Act, 1976, in respect of a variety, information regarding—
- (a) the persons who applied for the certification of plants or propagating material of the variety in question;
 - (b) the area of land of each unit for certification for which application for registration in respect of such plants or propagating material has been made; and
 - (c) the quantity of such plants or propagating material which has been certified.

32. Appeal against decision or action of registrar.—

- 1) A person who feels aggrieved by any decision or action taken by the registrar in terms of this Act may, within the period and in the manner prescribed and upon payment of the prescribed fees, appeal to the Minister against the decision or action in question.
- (2)(a) The Minister shall refer the appeal for investigation and decision to a board the members of which shall be appointed by the Minister and which shall consist of—

- (i) one person designated as chairman on account of his knowledge of law;
 - (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) An appeal shall be heard on the date and at the place and time fixed by the chairman of the board, who shall advise the appellant and the registrar in writing thereof.
- (4) The chairman of the board may, for the purposes of the hearing of the appeal—
 - (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 chairman 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.
- (5) The procedure at the hearing of an appeal shall be as prescribed.
[Sub-s. (5) substituted by s. 24 of Act No. 25 of 1996.]
- (6) An appellant, if he appears before the board at the hearing of an appeal, and the registrar, may be represented by an advocate or an attorney.
- (7) 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.

- (8)(a) If the parties do not agree under subsection (7), 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 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*.
- (9) 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.
- (10)(a) The decision of the board shall be in writing, and a copy thereof shall be furnished to the registrar, the appellant and any other party.
- (b)
[Para. (b) deleted by s. 60 of Act No. 88 of 1996.]
- (11) 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.

33. Publication or distribution of false or misleading advertisements.—

- (1) No person shall publish or distribute or cause or permit to be published or distributed any false or misleading advertisement concerning plants, propagating material or premises.
[Sub-s. (1) substituted by s. 25 of Act No. 25 of 1996.]
- (2) It shall be a sufficient defence for any person, other than the person selling the plants or propagating material to which the false or misleading advertisement relates, who is charged with a contravention of subsection (1), if he proves to the satisfaction of the court that he did not know and could not reasonably be expected to have known that the advertisement was false or misleading in any respect, unless it is proved that the accused failed on demand by the registrar or a police official to furnish the name and address of the person at whose instance the advertisement was published or distributed.

34. Regulations.—

- (1) The Minister may make regulations—

- (a) prescribing any certificate or other document or form to be issued or used for the purposes of this Act;
 - (b) prescribing the fees payable in respect of any application, matter or document;
 - (c) prescribing the scale of remuneration which shall be paid to any member of the board, other than an officer, appointed in terms of section 32 (2);
 - (d) prescribing the information and facilities to be provided to the registrar by a person applying for the recognition of a variety, and the plants and propagating material to be submitted at the time of an application and thereafter;
 - (e) prescribing the tests, trials, examinations and other steps to be taken by an applicant or the registrar before a variety may be recognised, and the time within which they are to be taken;
 - (f) prescribing the records relating to plants and propagating material to be kept by any person who has such plants or 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;
 - (g) concerning any matter which in terms of this Act is required or permitted to be prescribed; and
 - (h) 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 kinds of establishments or in respect of different kinds of plants or propagating material or in such other respects as the Minister may determine.
- (3)
[Sub-s. (3) deleted by s. 21 of Act No. 39 of 1983.]
- (4)
[Sub-s. (4) deleted by s. 21 of Act No. 39 of 1983.]
- (5) The regulations may in respect of any contravention thereof or failure to comply therewith prescribe a penalty—
- (a) in the case of a first conviction, of an appropriate fine or imprisonment for a period not exceeding six months; and

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

[Sub-s. (5) substituted by s. 26 of Act No. 25 of 1996.]

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

35. Offences and penalties.—

- (1) Any person—

- (a) who—

- (i) makes a false entry in the varietal list or causes it to be made therein, or who makes a document or causes a document to be made which falsely purports to be a copy of or excerpt from the varietal list; or
- (ii) produces or tenders or causes to be produced or tendered as evidence any such entry, copy or excerpt; or
- (iii) knowing it to be false offers, utters or puts out an entry, a copy or an excerpt referred to in subparagraph (i) to the detriment or potential detriment of another person;

[Para. (a) substituted by s. 22 (a) of Act No. 39 of 1983 and by s. 27 (a) of Act No. 25 of 1996.]

- (b) who—

- (i) fails or refuses to make any statement or to give any explanation demanded by an officer or an authorized person or by any authority designated in terms of section 24 (1) (a) in the execution of the provisions of this Act or a scheme;
- (ii) makes a false statement or representation or furnishes false information knowing it to be false; or

[Sub-para. (ii) substituted by s. 27 (b) of Act No. 25 of 1996.]

- (iii) fails or refuses to comply with any instruction issued under section 25 (1A);

[Sub-para. (iii) substituted by s. 13 (a) of Act No. 17 of 1991.]

[Para. (b) substituted by s. 22 (b) of Act No. 39 of 1983.]

- (c) who obstructs or hinders the registrar or an officer or an authorized person or an authority designated under section 24 (1) (a) in the exercise of his powers, the performance of his functions or the carrying out of his duties under this Act or a scheme;

[Para. (c) substituted by s. 22 (c) of Act No. 39 of 1983.]

- (d) who, having been duly summoned to appear at proceedings under section 32, fails without lawful excuse so to appear;

- (e) who, having appeared as a witness at proceedings under section 32, 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 conducts a business in conflict with the provisions of section 6;
[Para. (f) substituted by s. 13 of Act No. 10 of 1979 and by s. 27 (c) of Act No. 25 of 1996.]
- (g) who—
 - (i) sells any plant or propagating material in contravention of section 13;
 - (ii) imports any plant or propagating material in contravention of section 26, or uses for the purposes of cultivation any plant or propagating material imported in accordance with section 26 (6) for purposes other than cultivation or for immediate export;
[Sub-para. (ii) substituted by s. 22 (d) of Act No. 39 of 1983.]
 - (iii) exports any plant or propagating material in contravention of section 27;
 - (iv) furnishes any particulars in connection with a plant or propagating material on any container in which it is sold or on a label which is attached to such plant or container, which do not correspond with the true properties thereof;
 - (v) distributes any plant or propagating material in contravention of a notice mentioned in section 27A or of any condition referred to in that section;
[Sub-para. (v) added by s. 13 (b) of Act No. 17 of 1991.]
[Para. (g) substituted by s. 13 of Act No. 10 of 1979.]
- (h) who tampers with any sample taken or any plant, propagating material, substance or other article seized in terms of this Act;
- (i) who fails to display or return a certificate of registration of premises;
[Para. (i) substituted by s. 27 (d) of Act No. 25 of 1996.]
- (j) who fails to comply with a provision of a scheme while he is under an obligation to do so;
- (k) who, except in the circumstances referred to in section 31, discloses information acquired by him in the course of his duties or in the performance of his functions under this Act;
- (l) who contravenes any provision of section 33 (1);

- (m) who sells, removes or tampers with any plant, propagating material, substance or other article, or any book or document seized in terms of section 25, or who tampers with an identification mark or seal attached thereto in terms of that section;

[Para. (m) added by s. 27 (e) of Act No. 25 of 1996.]

- (n) who falsely holds himself or herself out to be the registrar, an officer referred to in section 3 (3) (a) or an authorized person;

[Para. (n) added by s. 27 (e) of Act No. 25 of 1996.]

- (o) who makes a document or causes a document to be made which purports to be a certificate, authorization or other document issued in terms of this Act,

[Para. (o) added by s. 27 (e) of Act No. 25 of 1996.]

shall be guilty of an offence and liable on conviction—

- (i) in the case of a first conviction of a contravention referred to in this subsection, to a fine or to imprisonment for a period not exceeding one year;

[Sub-para. (i) substituted by s. 27 (f) of Act No. 25 of 1996.]

- (ii) in the case of a second or subsequent conviction of a contravention referred to in paragraph (c), (d), (e), (i) or (j), to a fine or to imprisonment for a period not exceeding two years; or

[Sub-para. (ii) substituted by s. 27 (f) of Act No. 25 of 1996.]

- (iii) in the case of a second or subsequent conviction of a contravention referred to in paragraph (a), (b), (f), (g), (h), (k), (l), (m), (n) or (o), to a fine or to imprisonment for a period not exceeding four years.

[Sub-para. (iii) added by s. 27 (g) of Act No. 25 of 1996.]

[Sub-s. (1) amended by s. 13 (c) of Act No. 17 of 1991.]

- (2) The court convicting any person of an offence under this Act may upon the application of the prosecutor declare any plant or propagating material in respect of which the offence was committed and all other plants and propagating material of a similar nature of which such person is the owner or which is in his possession, to be forfeited to the State.
- (3) Notwithstanding anything to the contrary in any other law a magistrate's court shall have jurisdiction to impose any penalty prescribed by this Act.

36. Presumptions and evidence.—

In criminal proceedings under this Act or a scheme—

- (a) any plant, propagating material, substance or other article in or upon any premises, place or vehicle at the time a sample thereof is taken pursuant to the provisions of this Act shall, unless the contrary is proved, be deemed to possess the same properties as such sample;

- (aA) any sample taken in terms of section 25 (1) (e) shall be deemed to be representative of that plant, propagating material, substance or other article from which it was taken unless the contrary is proved;

[Para. (aA) inserted by s. 28 (a) of Act No. 25 of 1996.]

- (b)

[Para. (b) deleted by s. 28 (b) of Act No. 25 of 1996.]

- (c) a form on which particulars have been entered as contemplated in section 25 (2) or (3), shall be accepted as prima facie proof of the facts stated therein;

- (d) any statement or entry contained in any book or document kept by or purporting to be issued by any person, or by the manager, agent or employee of such a person, shall be admissible in evidence against such person as an admission of the facts set forth in that statement or entry, unless it is proved that such statement or entry was not made by such person, or by the manager, agent or employee of such person in the course of his work as manager or in the course of his agency or employment;

[Para. (d) substituted by s. 23 of Act No. 39 of 1983.]

- (e) an excerpt from or a copy of the varietal list certified as such by the registrar, shall be accepted as prima facie proof of the information contained therein.

[Para. (e) added by s. 28 of Act No. 25 of 1996.]

37. *Liability of employer or principal.—*

- (1) Any act or omission of an employee, manager or agent which constitutes an offence under this Act or a scheme, shall be deemed to be the act or omission of his employer or principal, and such employer or principal may be convicted and sentenced in respect thereof unless he proves—

- (a) that he did not permit or connive at such act or omission;
- (b) that he took all reasonable measures to prevent an act or omission of the nature in question; and
- (c) that an act or omission, whether legal or illegal, of the nature in question did not under any condition or in any circumstances fall within the course of the employment or the scope of the authority of the employee, manager or agent concerned.

- (2) For the purposes of subsection (1) (b) the fact that an employer or principal forbade an act or omission of the nature in question shall not by itself be regarded as sufficient proof that he took all reasonable measures to prevent such an act or omission.

- (3) The provisions of subsection (1) shall not relieve the employee, manager or agent concerned from liability to be convicted and sentenced in respect of the act or omission in question.

38. *Limitation of liability.—*

No compensation shall be payable by the State, the Minister, the registrar, an authority designated in terms of section 24 (1), any person authorized thereto in writing by the registrar or such authority, or any officer, in respect of any act done in good faith under this Act or a scheme.

[S. 38 substituted by s. 14 of Act No. 10 of 1979 and by s. 24 of Act No. 39 of 1983.]

39. *Assignment of powers and duties by Minister.—*

The Minister may either generally or in relation to any particular matter 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 24 or 34.

40.

[S. 40 repealed by s. 20 (1) of Act No. 36 of 1983.]

41.

[S 41 repealed by s. 20 (1) of Act No. 36 of 1983.]

42. *Repeal of laws.—*

The laws mentioned in the Schedule are hereby repealed to the extent set out in the third column of the Schedule.

43. *Short title and date of commencement.—*

- (1) This Act shall be called the Plant Improvement Act, 1976, and shall come into operation on a date to be fixed by the State President by proclamation in the Gazette.

- (2) Different dates may be so fixed in respect of different provisions of this Act.

Schedule

LAWS REPEALED

<i>Number and year of law</i>	<i>Short Title</i>	<i>Extent of repeal</i>
Act 28 of 1961	Seeds Act, 1961	The whole
Act 29 of 1961	Foundation Seed Act, 1961	The whole
Act 33 of 1967	Seeds Amendment Act, 1967	The whole
Act 8 of 1971	Seeds Amendment Act, 1971	The whole
Act 3 of 1973	Agricultural Pests Act, 1973	Sections 2 and 3