

REPUBLIC OF SOUTH AFRICA

PLANT BREEDERS' RIGHTS BILL

*(As introduced in the National Assembly (proposed section 76); explanatory summary of Bill
published in Government Gazette No. of) (The English text is the official text of the
Bill)*

(MINISTER FOR AGRICULTURE, FORESTRY AND FISHERIES)

[B —2013]

BILL

To provide for a system whereunder plant breeders' rights relating to varieties of certain kinds of plants may be granted; for the requirements that have to be complied with for the grant of such rights; for the scope and protection of such rights; and for the grant of licenses in respect of the exercise of such rights; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa as follows:—

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SCHEDULE

Definitions

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

"agent" means a person who is domiciled and resident in the Republic and who has been duly authorised by a breeder or the holder of a plant breeder's right to act on his or her behalf;

"applicant" means a breeder who makes an application for the granting of a plant breeder's right in terms of section 14;

"breeder", in relation to a variety contemplated in section 14, means—

- (a) the person who bred, or discovered and developed, the variety;
- (b) the employer of the person contemplated in paragraph (a), if that person is an employee whose duties are such that the variety was bred, or discovered and developed, in the performance of those duties; or
- (c) the successor in title of the person contemplated in paragraph (a) or the successor in title of the employer contemplated in paragraph (b);

"conditioning", in relation to propagating material of a plant variety, means—

- (a) cleaning, drying, coating, sorting, grading or packaging of the material;
- (b) testing for germination and vigour; or
- (c) any other similar treatment,

undertaken for the purposes of preparing the material for propagation or sale;

"convention country" means a country or intergovernmental organisation that is a member of the International Union for the Protection of New Varieties of Plants;

"denomination", in respect of a protected variety, means the denomination contemplated in section 22;

"Department" means the Department responsible for agriculture;

"employee" has the meaning ascribed to it in section 1 of the Public Service Act, 1994 (Proclamation No. 103 of 1994), but does not include an employee contemplated in the definition of breeder;

"essential characteristics", in relation to a plant variety, means heritable traits that are determined by the expression of one or more genes, or other heritable determinants, that contribute to the principal features of the variety;

"kind of plant" means a group of plants of the same taxon;

"mark" has the meaning ascribed to it in section 2 of the Trade Marks Act, 1993 (Act No. 194 of 1993);

"material" in relation to a variety, means—

- (a) any propagating material;
- (b) harvested material, including an entire plant or any part of a plant; or
- (c) any product made directly from the harvested material;

"Minister" means the Minister responsible for agriculture;

"persons" includes a trust;

"Plant Breeders' Rights Act, 1976" means the Plant Breeders' Rights Act, 1976 (Act No. 15 of 1976);

"plant breeder's right" means a plant breeder's right granted in terms of section 27;

"prescribed" means prescribed by regulation;

"propagating material" means any reproductive or vegetative material of a plant from which, whether alone or in combination with other parts or products of that plant, another plant with the same characteristics can be produced;

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

"register" means the register kept in terms of section 3;

"Registrar" means the employee contemplated in section 2(1);

"regulation" means a regulation made in terms of section 49;

"sell" includes—

- (a) agree to sell;
- (b) to offer, keep, expose, send, convey or deliver for sale; and
- (c) to exchange or to otherwise dispose of to any person in any manner;

"successor"—

- (a) in relation to a breeder of a plant variety, means a person to whom the right of the breeder to make application for a plant breeder's right in that variety has been assigned by operation of law, testamentary disposition or otherwise; and
- (b) in relation to a holder of a plant breeder's right, means a person to whom that right has been assigned by operation of law, testamentary disposition or otherwise;

"this Act" includes the regulations;

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

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

REGISTRAR AND REGISTER OF PLANT BREEDERS' RIGHTS

Designation and functions of Registrar

2. (1) Subject to the Public Service Act, 1994 (Proclamation No. 103 of 1994), and after following the recruitment processes prescribed by and in terms of that Act, the Minister must designate a person as the Registrar of Plant Breeders' Rights.

(2) The Registrar is the authority to whom the protection of varieties is entrusted and must perform the functions entrusted to the Registrar under this Act.

Discretionary powers of registrar

3. (1) Subject to the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000)–

(a) any discretionary power conferred on the registrar in terms of this Act must not be exercised by him or her to the prejudice of any applicant or any other person who appears to the registrar to be an interested party, without giving such applicant or such other person an opportunity to be heard within such period as may be prescribed or, if no period has been prescribed, within such reasonable period as the registrar may determine; and (b) an applicant or other interested party referred to in paragraph (a) may waive the right to be heard.

(2) Whenever in terms of this Act, any period is specified within which any act or anything is to be done, the registrar may, except where otherwise expressly provided, extend the time.

Register of plant breeders' rights

3. (1) The Registrar must keep a register in which the prescribed particulars in respect of all applications for plant breeders' rights in terms of this Act must be entered.

(2) The register must be open for inspection at the office of the Registrar.

(3) The Registrar must furnish, at the request of any person and upon payment of the prescribed fee, a copy of any particulars in the register.

Register to be evidence

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

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

Inspection of documents submitted in connection with an application for plant breeder's right

5. (1) Any person may inspect any document submitted in connection with an application for a plant breeder's right at any reasonable time and upon payment of a prescribed fee.

(2) The Registrar must furnish a person contemplated in subsection (1), on payment of a prescribed fee, with a copy of the document contemplated in that subsection.

(3) Notwithstanding subsections (1) and (2) but subject to subsection (4), a person may not—

(a) inspect that part of the document in question that contains information in respect of the name of each variety used in the breeding program and in respect of the manner in which the variety was bred;

- (b) be furnished with a copy of the part of the document referred to in paragraph (a); or
- (c) inspect or be furnished with a copy of any other confidential information that may be prescribed.

(4) Subsection (3) does not apply to—

- (a) the applicant;
- (b) the applicant's authorised agent; or
- (c) any person who has to inspect the application contemplated in subsection (3) in the course of the performance of any function entrusted to him or her in terms of this Act.

Defect in form not to invalidate documents

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

PLANT BREEDER'S RIGHT

Protection given to holder of plant breeder's right

6. (1) The protection given under this Act to the holder of a plant breeder's right is that prior authorisation has to be obtained for the duration of the plant breeder's right from that holder, by way of a licence granted or issued in terms of section 33 or section 35, by any person intending to undertake—

- (a) the production or reproduction (multiplication) of the protected variety;
- (b) the conditioning for the purposes of propagation of the protected variety;
- (c) the sale or any other form of marketing of the protected variety;
- (d) the exporting of the protected variety;
- (e) the importing of the protected variety; or
- (f) the stocking of the protected variety for any of the purposes referred to in paragraphs (a) to (e).

(2) (a) The undertaking of any activity referred to in subsection (1)(a) to (f) in respect of harvested material obtained through the unauthorised use of propagating material of the protected variety also requires the authorisation of the holder of the plant breeder's right concerned, unless that holder has had reasonable opportunity to exercise his or her right in respect of that propagating material.

(b) For the purposes of paragraph (a), "harvested material" includes an entire plant, any part of such plant or any product made directly from harvested material of such plant.

(3) (a) Subsections (1) and (2) also apply to a variety—

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

- (ii) that is not clearly distinguishable from the protected variety in accordance with section 14(2)(b); or
- (iii) whose production requires the repeated use of the protected variety.

(b) For the purposes of paragraph (a)(i), a variety must be regarded as being essentially derived from another variety if—

- (i) it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety;
- (ii) it is clearly distinguishable from the initial variety; and
- (iii) it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety except for the differences which result from the act of derivation.

Duration of plant breeder's right

7. (1) A plant breeder's right is valid for a period of 20, 25 or 30 years depending on the particular kind of plant, calculated from the date on which the certificate of registration is issued in terms of section 27(b).

(2) The period of validity of the plant breeder's right in respect of a particular kind of plant must be prescribed.

Period of sole right

8. (1) The holder of a plant breeder's right has the sole right to undertake any activity referred to in section 6(1), or to have any such activity undertaken by any other person, during such period as may be prescribed as a period for the exercise of sole rights in respect of the kind of plant to which such a variety belongs.

(2) During the period prescribed in terms of subsection (1) the Registrar may not order the issue of a compulsory licence in terms of section 35 in respect of the variety in question.

Exceptions to plant breeder's right

9. (1) Notwithstanding section 31(a), a plant breeder's right in respect of a variety obtained in a legitimate manner does not extend to—

- (a) any act done in respect of that variety for private and non-commercial purposes;
- (b) any act done in respect of that variety for experimental purposes;
- (c) any act done in respect of that variety for the purposes of breeding other varieties and, except where section 6(3) applies, any act contemplated in section 6(1) and (2) in respect of such other varieties; or
- (d) a farmer who—
 - (i) within reasonable limits; and

(ii) subject to the safeguarding of the legitimate interests of the breeder, uses the protected variety concerned as prescribed in accordance with subsection (2).

(2) The Minister must, in respect of subsection 1(*d*), prescribe the—

- (*a*) category or categories of farmers;
- (*b*) category or categories of plants;
- (*c*) uses to which such a protected variety may be put; and
- (*d*) where applicable, the—
 - (i) conditions for payment of royalties; and
 - (ii) labelling requirements.

(3) Any act or omission, either intended or unintended, that attempts to circumvent or results in circumventing the scope of this section, whether—

- (*a*) by means of an agreement between the plant breeder concerned or his or her agent and a third party, or
- (*b*) otherwise,

as the case may be, is invalid and without any effect.

Exhaustion of plant breeder's right

10. A plant breeder's right does not extend to any act concerning any material of the protected variety or of a variety covered by section 6(3) that has, in the Republic, been sold or otherwise marketed by the holder of the plant breeder's right

concerned, or sold or otherwise marketed with his or her written authorisation, or any material derived from the said material, unless the act—

- (a) involves further propagation of the variety in question, or
- (b) involves exportation of material of the variety in question, which enables the propagation of the variety, into any country that does not protect varieties of the particular kind of plant, except where the exported material is for consumption purposes.

Joint holders of plant breeder's right

11. (1) Where a plant breeder's right is granted to two or more persons jointly, each such person is, subject to any written agreement to the contrary between them, entitled—

- (a) to an equal share in such right;
- (b) to undertake in connection therewith for his or her own benefit any activity referred to in section 6, if he or she discloses any such activity in writing to the other joint holders; and
- (c) to institute any action in respect of any infringement of that right.

(2) A joint holder of a plant breeder's right may not without the written authorisation of the other joint holders—

- (a) grant a licence under section 33; or
- (b) transfer the whole or any part of his or her interest in such right.

Transfer of plant breeder's right

12. (1) The holder of a plant breeder's right must, after such right or any part thereof has been transferred to any other person, in the prescribed manner inform the Registrar of the name and address of the person to whom the right or part thereof has been transferred.

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

State bound by plant breeder's right

13. A plant breeder's right binds the State in all respects in the same way as it binds any other person.

APPLICATION FOR PLANT BREEDER'S RIGHT**Varieties in respect of which plant breeders' rights may be granted**

14. (1) A plant breeder's right may be granted in respect of any variety of all plant genera and species, excluding fungi and algae, if it is new, distinct, uniform and stable and has an acceptable variety denomination.

(2) A variety contemplated in subsection (1) must be regarded as—

- (a) new, if propagating material or harvested material thereof has not been sold or otherwise disposed of by, or with the consent of, the breeder for the purposes of exploitation of the variety before the date of filing of the application for a plant breeder's right—
 - (i) in the Republic, for a period of not more than one year; and
 - (ii) in any other country, in the case of—
 - (aa) varieties of vines and trees, for a period of not more than six years; or
 - (bb) other varieties, for a period of not more than four years;
- (b) distinct, if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application;
- (c) uniform, if it is sufficiently uniform with regard to the characteristics of the variety in question taking into account the variation that may be expected from the particular features of the propagation of that variety; and
- (d) stable, if the characteristics thereof remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

(3) Subsection (2)(a) does not apply to the sale of plant material of a plant variety to a person by, or with the consent of, the breeder if—

- (a) the sole purpose of the sale is for the person to multiply plant material of that plant variety on behalf of the breeder;
- (b) by virtue of the agreement of sale, ownership in the new plant material vests in the breeder immediately after the plant material has been multiplied; or
- (c) the sale is part of an agreement under which the person agrees to use plant material of that variety for the sole purpose of evaluating the variety in one or more of the following tests or trials:
 - (i) field trials;
 - (ii) laboratory tests;
 - (iii) small-scale processing trials; or
 - (iv) tests or trials prescribed for the purposes of this paragraph.

(4) (a) A variety contemplated in subsection (1) is deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application.

(b) The filing of an application for the—

- (i) granting of a plant breeder's right; or
- (ii) entering of another variety in an official register of varieties, in any country, is deemed to render that such variety a matter of common knowledge from the date of such application:

Provided that the application results in the granting of a plant breeder's right or the entering of the said other variety in the official register of varieties, as the case may be.

Application for grant of plant breeder's right

15. (1) An application for the grant of a plant breeder's right must be made by an applicant in the prescribed manner and must be accompanied by the following documents and fees:

- (a) An application form obtainable from the office of the Registrar, duly completed;
- (b) a technical questionnaire in respect of a kind of plant of the variety in question obtainable from the office of the Registrar, duly completed;
- (c) such application fee and such examination fee as may be prescribed;
- (d) written proof of the appointment of an agent by the breeder, if applicable; and
- (e) written proof of the transfer of the variety to the applicant, if applicable.

(2) If the applicant is not domiciled and resident in the Republic, the application must be submitted through an agent.

(3) The Registrar must notify the applicant of any outstanding documentation or information within 21 days of receiving the application.

(4) The applicant must furnish the Registrar with any documentation or information required by the Registrar within three months of the notification contemplated in subsection (3), failure of which may result in the application being returned to the applicant.

(5) (a) The effective filing date is the date on which the requirements of subsection (1) have been met.

(b) Copies of documents referred to in subsection (1)(e) to (f) may be submitted in order to secure a filing date, but the original documents must be submitted to the Registrar within three months of the filing date.

(6) In the event that a variety may not be used without prior approval in terms of other legislation, the application must be accompanied by the relevant permit or proof of general release for the variety issued in terms of such legislation..

Priority and redating of applications

16. (1) If an application in terms of section 15 is preceded by another application by or on behalf of the same applicant for protection of the same variety in a convention country, and such other application has been deposited in accordance with the laws in force in the convention country in question, the Registrar must give priority to the application submitted in terms of section 15, if it is—

- (a) submitted to the Registrar in the prescribed manner within a period of 12 months of the date on which such other application was duly filed in the convention country in question; and
- (b) accompanied by the prescribed fee.

(2) An application contemplated in subsection (1)(a) must be confirmed within three months by submitting a copy, certified as correct by the

appropriate authority in the relevant country, of each document that constituted the relevant preceding application.

(3) The applicant must, within two years after the—

- (a) expiration of the period of priority or,
- (b) first application is rejected or withdrawn,

furnish the Registrar with the relevant information, documents or material required for the purposes of undertaking the tests and trials in terms of section 25.

(4) If two or more applications for the protection of the same variety have been deposited on different dates in different convention countries, the period referred to in subparagraph (1)(a) must be calculated as from the date on which the earliest of such applications was deposited with the appropriate authority.

(5) During the period referred to in subsection (1)(a), the filing of another application, the publication or use of the variety that is the subject of the first application or such other event as may be prescribed does not constitute grounds for the rejection of the subsequent application.

Provisional protection

17. (1) An applicant has provisional protection in respect of the variety in question from the filing date of the application for a plant breeder's right until the granting or refusal thereof.

(2) The effect of provisional protection is that the applicant is entitled to equitable remuneration from any person who, during the period of provisional protection, carries out any act contemplated in section 6 that would, once the plant breeder's right is granted, require the authorisation of the holder of the plant breeder's right.

(3) An applicant who has provisional protection in a plant variety as contemplated in this section is not entitled to institute proceedings for any alleged infringement of such right during the period of provisional protection: Provided that sections 31 and 32 apply in the event that a plant breeder's right in the variety concerned has been granted as contemplated in section 27.

(4) An applicant has the provisional protection contemplated in subsection (2) only in respect of a person who has been notified as prescribed.

Rejection of application

18. (1) The Registrar must reject an application made in terms of section 15, if—

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

- (b) the variety in respect of which the application is made does not fulfill the requirement contemplated in section 14(2)(a);
- (c) the applicant is not entitled to make an application under this Act;
- (d) the application contains a misrepresentation; or
- (e) the applicant refuses or has failed to or is not able to propose an acceptable denomination.

(2) In the event that the Registrar rejects an application in terms of subsection (1) all fees relating to such application are forfeited.

(3) If the Registrar rejects an application in terms of subsection (1), the Registrar must advise the applicant in writing of the rejection and must state the reasons for the rejection within 21 days of the rejection.

Acceptance and registration of application

19. If the Registrar accepts the application, the Registrar must register the application and must notify the applicant in writing of the acceptance within 21 days of the registration of the application.

Amendment of application

20. An applicant whose application has been registered in terms of section 19 may, at any time before or after the granting of a plant breeder's right, apply in the prescribed manner to the Registrar for the amendment of that application, subject to the approval of the Registrar and upon payment of the prescribed fee: Provided that such amendment does not affect the description of the variety which is the subject of the application.

Objection to application for grant of plant breeder's right

21. (1) Any person may lodge an objection in the prescribed manner with the Registrar in respect of an application for the grant of a plant breeder's right following the publication of the information regarding the application in terms of section 39.

(2) The Registrar must within seven days of the receipt of an objection—

- (a) inform the applicant concerned in writing of the objection; and
- (b) provide the applicant with a copy of the objection.

(3) The applicant may in the prescribed manner lodge with the Registrar a counter-statement against the objection.

VARIETY DENOMINATIONS

Denomination of variety

22. (1) An applicant for the grant of a plant breeder's right must, subject to the approval of the Registrar, propose a denomination that complies with the prescribed requirements.

(2) No denomination other than the denomination approved by the Registrar in terms of subsection (1) may be used in connection with the variety in question, whether before or after the expiry of the term of the plant breeder's right granted in respect of the variety.

(3) Subsection (2) does not prohibit the proprietor or other registered user of a mark to use such mark in conjunction with the denomination in respect of which a plant breeder's right has been granted, if such mark is clearly distinguishable from the variety denomination.

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

Amendment of denomination

23. (1) The Registrar must amend the denomination approved in respect of a variety in terms of section 22(1), if—

- (a) ordered by a court on application by a person who in law has a preferential claim to the use of the denomination in question;
- (b) the information submitted to the Registrar in the application for the approval of, or in connection with, the denomination in question was incorrect and such denomination would not have been approved had the Registrar known at the time of the application that such information was incorrect; or
- (c) information comes to light which, if discovered earlier, would have resulted in the refusal of such denomination.

(2) (a) If an amendment becomes necessary on any ground referred to in subsection (1) the Registrar must notify the relevant applicant or holder of the plant breeder's right accordingly in writing and must give reasons in the notice why the amendment is necessary.

(b) The applicant or holder must submit proposals in writing to the Registrar for an alternative denomination within 30 days from the date of the notice.

(3) An applicant may request the Registrar in the prescribed manner and upon payment of the prescribed fee at any time before the grant of the plant breeder's right to amend the approved denomination.

(4) The Registrar must consider the request in terms of subsection (3) and must notify the applicant of his or her decision and the reasons for the decision in writing within 14 days of the date on which the request was received.

(5) Any person may lodge an objection in the prescribed manner and within the prescribed period against an intended amendment of a variety denomination.

Marking of labels and containers

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

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

EXAMINATION OF VARIETY AND GRANT OF PLANT BREEDER'S RIGHT

Tests and trials

25. (1) The Registrar must, in order to enable him or her to determine whether a variety in respect of which an application has been accepted is new, distinct, uniform and stable in accordance with the provisions of section 14—

- (a) undertake, or cause to be undertaken, such tests and trials as may be necessary; or
- (b) use the results of tests and trials obtained from the appropriate authority in another country.

(2) (a) The applicant must furnish the Registrar within the prescribed period with such material as may be prescribed.

(b) The Registrar may grant an extension to the applicant from compliance with paragraph (a) for a period not exceeding the initial prescribed period.

(c) An application for extension contemplated in paragraph (b) must be submitted to the Registrar in writing and must—

- (i) set out reasons for the request of an extension; and
- (ii) in the event of imported plant material, include prescribed proof that the plant material has been imported into the Republic.

(d) An application in terms of section 15 lapses if the material contemplated in paragraph (a) is not furnished to the Registrar within the prescribed period or extended period, as the case may be.

(3) If an objection has been lodged against an application for the grant of a plant breeder's right in terms of section 21, the Registrar may terminate all actions performed in accordance with subsection (1)(a) or (b) in the event that such objection is upheld.

Refusal to grant plant breeder's right

26. (1) The Registrar must refuse to grant a plant breeder's right to an applicant if, after examining the results of any tests or trials conducted in terms of section 25(1) in respect of the variety in question, the requirements specified in section 14 have not been met.

(2) If the results from the tests or trials conducted in terms of section 25(1) indicate that two or more varieties in respect of which different applications have been registered in terms of section 19 cannot be distinguished, the Registrar must grant a plant breeder's right to the applicant whose application was submitted—

(a) first in time in accordance to section 15(1); or

(b) in accordance to section 16(1),

whichever is the earlier.

(3) The Registrar must advise any applicant contemplated in subsection (1) or (2) in writing of the Registrar's decision and of the grounds of the refusal.

Grant of plant breeder's right

27. The Registrar must—

- (a) grant a plant breeder's right to an applicant in respect of the variety applied for if, after the examination contemplated in section 25(1), that variety conforms to the requirements specified in section 14; and
- (b) issue a certificate of registration to the applicant in respect of each plant breeder's right granted.

HEARING OF OBJECTIONS

Hearing of objection

28. (1) In considering an objection lodged in terms of section 21, the Registrar must conduct a hearing in accordance with this section.

(2) The Registrar must determine the date on and the time and place at which the objection will be heard and must inform the person objecting and the applicant in writing of such date, time and place.

(3) (a) The Registrar may appoint one or more persons who have experience in the administration of justice or skill in any matter which may be considered at the hearing, to assist and advise him or her with regard to the hearing of the objection.

(b) A person appointed in terms of paragraph (a) receives such remuneration as may be prescribed.

(4) The Registrar may, for the purposes of the hearing of an objection—

- (a) summon any person who may give material information concerning the subject of the hearing or who has in his or her possession or custody or under his or her control any document that has any bearing upon the subject of the hearing, to appear before the Registrar at a time and place specified in the summons, to be interrogated or to produce that document, and the Registrar may retain for examination any document so produced;
- (b) administer an oath to or accept an affirmation from any person called as a witness at the hearing; and
- (c) call any person present at the hearing as a witness and interrogate him or her and require him or her to produce any document in his or her possession or custody or under his or her control.

(5) The procedure at the hearing of an objection must be prescribed.

(6) The person objecting and the applicant may, if he or she appears before the Registrar at the hearing of an objection, be represented.

(7) The Registrar must advise the person objecting and the applicant in writing of his or her decision and of the grounds on which it is based within seven days after the hearing of the objection.

OBLIGATIONS OF HOLDER OF PLANT BREEDER'S RIGHT

Payment of annual fee

29. (1) A person to whom a plant breeder's right has been granted in terms of section 27 must pay the prescribed annual fee for the duration of the plant breeder's right in question.

(2) The holder of the plant breeder's right must pay the first annual fee on or before 31 March of the year following the date on which a plant breeder's right was granted, and must pay any subsequent annual fee on or before 31 March of each year thereafter.

(3) In the event that an annual fee has not been paid on or before the date contemplated in subsection (2), the plant breeder concerned may pay an amount double the amount of such fee in order to ensure that the registration of the plant breeder's right does not lapse, but such late payment may only be effected during a period not exceeding three months from the date on which the payment was due in terms of that subsection.

(4) If no fee is paid in terms of subsection (2) or within the period contemplated in subsection (3), the registration of the plant breeder's right in question lapses.

Maintenance of propagating material

30. (1) The holder of a plant breeder's right must ensure that he or she is in a position for the duration of the right when requested by the Registrar—

- (a) to furnish the Registrar with propagating material of the variety in respect of which the right was granted that is capable of reproducing the variety in question in such a manner that the characteristics of the variety correspond with those described at the time of the grant of the relevant right; and
- (b) to provide the Registrar with the information and access to the relevant facilities to satisfy the Registrar that the holder is maintaining propagating material that conforms with the requirements contemplated in paragraph (a).

(2) The Registrar must, during normal business hours, undertake such inspection in connection with any matter contemplated in subsection (1) as may be necessary in order to ensure compliance with the provisions of that subsection.

ENFORCEMENT OF PLANT BREEDERS' RIGHTS

Infringement of plant breeder's right

31. Subject to section 9, a plant breeder's right is infringed by any person who—

- (a) not being the holder of the plant breeder's right, performs, or causes to be performed, an act contemplated in section 6(1), read with section 6(2) and

section 6(3), without having been granted a licence contemplated in section 33 or section 35;

- (b) in the case of an essentially derived variety performs, or causes to be performed, an act contemplated in section 6(1), read with section 6(2) and 6(3), without an authorisation from the holder of the plant breeder's right of the
 - (i) initial variety; or
 - (ii) essentially derived variety, in the event that separate protection for the essentially derived variety exists;
- (c) uses the approved denomination of a protected variety in relation to plants or propagating material of any other variety for any purpose whatsoever; or
- (d) sells plants or propagating material of a protected variety—
 - (i) under a denomination other than the approved denomination of that variety; or
 - (ii) without using the approved denomination.

Remedies in respect of infringement of plant breeder's right

32. (1) The holder of a plant breeder's right or any person to whom a licence contemplated in section 33 or section 35 has been granted may, upon proof of an infringement of that right and with proof of damages suffered by that holder or licensee, recover by action in any competent court from the person who infringed the plant breeder's right compensation in respect of such infringement.

(2) The holder of a plant breeder's right may not institute an action contemplated in subsection (1) while the relevant plant breeder's right or variety is the subject of an appeal in terms of section 40.

(3) If the person to whom a licence contemplated in section 33 or section 35 has been granted institutes a claim contemplated in subsection (1), the holder of the relevant plant breeder's right must be joined as a party to those proceedings.

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

LICENCES

Licences

33. (1) The holder of a plant breeder's right may enter into a written licence agreement authorising any person to undertake any activity referred to in section 6.

Application for compulsory license

34. (1) (a) Any person who is of the opinion that the holder of a plant breeder's right unreasonably refuses to grant him or her a license under section 33, or that such a holder is imposing unreasonable conditions for the issue of such a license, may in the prescribed manner apply to the Registrar to issue a compulsory license in respect of the relevant plant breeder's right.

(b) A compulsory license in respect of a plant breeder's right may only be issued by the Registrar as contemplated in section 35 in the event that the Registrar is of the opinion that such granting is in the public interest.

(c) In issuing a compulsory licence, the Registrar shall follow the guidelines as prescribed.

(2) The Registrar must inform the holder of the plant breeder's right in writing of the application contemplated in subsection (1)(a) within seven days of receiving that application.

(3) The holder of the plant breeder's right may lodge a counter-statement with the Registrar within 30 days of receiving the information contemplated in subsection (2) in which the holder concerned sets out the reasons why he or she contests the application in question.

(4) If the person who made the application and the holder of the relevant plant breeder's right at any stage after the application has been lodged with the Registrar reach an agreement with regard to the issue of a license, the person who

made the application must inform the Registrar of the agreement within 30 days of reaching the agreement.

Hearing of application for and issue of compulsory license

35. (1) The Registrar must determine the date on and the time and place at which an application contemplated in section 34(1) will be heard and must inform the person who made the application and the holder of the plant breeder's right in question in writing of such date, time and place.

(2) (a) The Registrar may appoint one or more persons who have experience in the administration of justice or skill in any matter which may be considered at the hearing, to assist and advise him or her with regard to the hearing of the application for a compulsory license.

(b) A person appointed in terms of paragraph (a) must receive such remuneration as may be prescribed.

(3) The Registrar may, for the purposes of the hearing of an application for a compulsory license —

(a) summon any person who may give material information concerning the subject of the hearing or who has in his or her possession or custody or under his or her control any document that has any bearing upon the subject of the hearing, to appear before the Registrar at a time and place specified in the summons, to be

interrogated or to produce that document, and the Registrar may retain for examination any document so produced;

- (b) administer an oath to or accept an affirmation from any person called as a witness at the hearing; and
- (c) call any person present at the hearing as a witness and interrogate him or her and require him or her to produce any document in his or her possession or custody or under his or her control.

(4) The procedure at the hearing of an application for compulsory license must be prescribed.

(5) The person who applied for a compulsory license and the holder of the plant breeder's right in question may, if he or she appears before the Registrar at the hearing, be represented.

(6) The Registrar must advise the applicant for a compulsory license and the holder of the plant breeder's right in question in writing of his or her decision and of the grounds on which it is based within seven days after the hearing of the application for a compulsory license.

(7) (a) The Registrar must issue a compulsory license if it has been established that—

- (i) the holder of the plant breeder's right is unreasonably refusing a license referred to in section 33 or is imposing unreasonable conditions for the issue of such a license; and

- (ii) the reasonable requirements of the public with regard to the variety in question are not being satisfied or will not be satisfied as a result of such refusal or the imposition of such conditions.

(b) A compulsory license contemplated in paragraph (a)—

- (i) must include one or more of the conditions referred to in section 33(2)(a) to (f), and may include any such other condition as the Registrar may determine; and
- (ii) may at any time be reviewed by the Registrar by reason of representations made to him or her for the amendment or withdrawal of that compulsory licence.

(8) In setting the terms of a compulsory license the Registrar must endeavour to ensure that propagating material of the variety in question is available to the public at reasonable prices consistent with the holder of a plant breeder's right deriving a reasonable advantage therefrom.

(9) (a) A compulsory license may be granted to any person whether or not the holder of the relevant plant breeder's right has granted a license in terms of section 33 to any other person.

(b) The issue of a compulsory license does not prevent the holder of the plant breeder's right from granting additional licenses in terms of section 33.

(10) In the event that a compulsory licence is issued in accordance with subsection (7), the Registrar must ensure the payment of equitable compensation to the holder of the plant breeder's right concerned.

TERMINATION OF PLANT BREEDER'S RIGHT

Expiry of plant breeder's right

36. A plant breeder's right expires at the end of the relevant period contemplated in section 7.

Cancellation of plant breeder's right

- 37.** (1) The Registrar may cancel a plant breeder's right if—
- (a) it is established that a requirement specified in section 14(2)(a) or (b) has not been complied with at the time of the grant of the right;
 - (b) a requirement specified in section 14(2)(c) or (d) is no longer complied with;
 - (c) the right has been granted to a person who is not entitled to it, unless it is transferred to a person who is so entitled; or
 - (d) the holder of the plant breeder's right concerned has failed to—
 - (i) provide the Registrar with information or material considered necessary for verifying the maintenance of the variety within three months of the

date on which the Registrar requested the information or material in terms of section 30(1);

- (ii) pay the annual fee to maintain the plant breeder's right; or
- (iii) propose, within 30 days from the date of notification in terms of section 23(2), another suitable denomination if the denomination of the variety is cancelled after the grant of the plant breeder's right.

(2) The Registrar must—

- (a) notify the holder of the plant breeder's right concerned in writing that an application for the cancellation of the right has been received and is being considered;
- (b) request the plant breeder to submit reasons in writing within the prescribed period as to why the plant breeder's right should not be cancelled;
- (c) consider any reasons received pursuant to the notice contemplated in paragraph (a);
- (d) make a decision whether or not to cancel the plant breeder's right; and
- (e) in the event that the he or she decides to cancel the plant breeder's right in accordance with subsection (1)—
 - (i) inform the holder of the plant breeder's right concerned in writing of the intended cancellation and the reasons for the cancellation; and
 - (ii) cancel the plant breeders' right within 60 days in the event that the holder of the plant breeders' rights does not object to the cancellation; or

- (iii) execute the decision of the board in the event that the holder of the plant breeders' rights lodges an appeal against the intended cancellation in terms of section 40

(3) The Registrar must cancel a plant breeder's right before the expiry of the plant breeder's right if ordered by a court or the board contemplated in section 40.

(4) A plant breeders' right may not be cancelled for any reasons other than those contained in subsections (1) or (3).

(5) A variety in respect of which a plant breeder's right has been cancelled under this section vests, by operation of law, in the public domain and is not capable of registration in accordance with this Act.

Voluntary surrender of plant breeder's right

38. (1) The holder of a plant breeder's right may, at any time, surrender his or her plant breeder's right by notifying the Registrar in writing of such surrender.

(2) A variety in respect of which a plant breeder's right has been surrendered as contemplated under this section vests, by operation of law, in the public domain and is not capable of registration in accordance with this Act.

PLANT VARIETY JOURNAL

Matters to be published in Plant Variety Journal

- 39.** (1) The Registrar must ensure that a journal, the Plant Variety Journal, is published on an annual basis or at regular intervals within each year.
- (2) The subject matter of the journal contemplated in subsection (1) must be prescribed.

APPEALS

Appeal against decision or action by Registrar

- 40.** (1) A person who feels aggrieved by any decision or action taken by the Registrar in terms of this Act may appeal in the prescribed manner to the Minister against the decision or action in question.
- (2) (a) The Minister must—
- (i) refer the appeal for investigation and decision to a board to be established by the Minister;
 - (ii) appoint as members of the board—

- (aa) one person on account of his or her knowledge of relevant fields of law, including but not limited to Intellectual Property Law and Administrative Law, who must be designated as chairperson; and
- (bb) two other persons who have expert knowledge of the subject of the appeal.

(b) The remuneration of a member of the board must be prescribed.

(3) Any person appointed in terms of subsection (2)(a)(ii) must recuse himself or herself as a member of the board if he or she has any direct or indirect personal interest in the outcome of the appeal.

(4) (a) An appeal in terms of subsection (1) must be heard on the date and at the time and place determined by the chairperson and the chairperson must inform the person appealing and any other party that has an interest in the appeal in writing of the date, time and place of the hearing.

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

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

- (ii) administer an oath to or accept an affirmation from any person called as a witness at the hearing; and
- (iii) call any person present at the hearing as a witness and interrogate him or her and require him or her to produce any document in his or her possession or custody or under his or her control.

(c) The person appealing and the Registrar may be represented.

(5) If a person appointed in terms of subsection (2)(a)(ii)—

- (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 chairperson of the board, the Minister must designate one of the remaining members to act as chairperson.

(6) (a) If the parties do not agree in the manner contemplated in subsection (5), the investigation must be adjourned in order that the Minister may appoint a member, in accordance with the requirements of subsection (2)(a)(ii), in the place of the member who has died or has become incapacitated.

(b) Where an appointment has been made in terms of paragraph (a) the investigation must, 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 must, if the parties do not so agree, be commenced afresh.

(7) The board may, after investigation of the appeal—

- (a) confirm, set aside or vary the relevant decision or action of the Registrar; and
- (b) order the Registrar to execute the decision of the board in connection therewith.

(8) The decision of the board must be in writing and a copy thereof must be furnished to the Registrar, the appellant and any other party.

(9) 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 must be refunded to him or her or, if the board varies any such decision or action, the board may direct that the whole or any part of such fees be refunded to the appellant.

ADVISORY COMMITTEE

Establishment of Advisory Committee

41. (1) A committee to be known as the Plant Breeder's Rights Advisory Committee is hereby established.

(2) The Advisory Committee may advise the Registrar on—

- (a) any technical matter arising from any provision of this Act; and

- (b) any other matter relating to the administration of this Act referred to the Advisory Committee by the Registrar.

Appointment of members of Advisory Committee and termination of membership

42. (1) The Minister must appoint as members of the Advisory Committee—

- (a) two persons who are appropriate persons to represent breeders of new plant varieties;
- (b) two persons who are appropriate persons to represent farmers;
- (c) one person who is an appropriate person to represent the interests of consumers of new plant varieties or of the products of new plant varieties;
- (d) one person to represent conservation interests in respect of new plant varieties and the potential impacts of new plant varieties on the environment;
- (e) one person to represent indigenous interests in respect of new plant varieties and the source, use and impacts of new plant varieties; and
- (f) one person with qualifications in respect, or experience of relevant fields, of law including but not limited to Intellectual Property Law and Administrative Law.

(2) Whenever it is necessary to appoint a member of the Advisory Committee—

- (a) the Minister must, by notice in any appropriate media, call for the nomination of persons who comply with the criteria contemplated in subsection (1);
- (b) the Minister must establish a selection committee, consisting of not more than five members appointed by the Minister;
- (c) the Minister must refer all nominations received to such selection committee;
- (d) the selection committee must compile a short-list of candidates in accordance with the provisions of subsection (1);
- (e) the selection committee must, within 30 days after the signing of the letters of appointment of its members, recommend to the Minister a list of not less than three candidates for each of the categories referred to in subsection (1); and
- (f) the Minister must appoint such number of members as is required from the list of candidates recommended by the selection committee.

(3) A member of the of the Advisory Committee serves in a part-time capacity.

(4) A member of the Advisory Committee serves for a period not exceeding three years as specified in the letter of appointment and may be reappointed for one more term not exceeding three years.

(5) If, upon the expiration of the term of office of the members of the Advisory Committee, the Minister has not yet appointed new members to take their place, the existing members continue in office until new members have been appointed to replace them.

(6) The Minister may at any time terminate the appointment of a member of the Advisory Committee if that member is incapable of performing his or her functions or is found guilty of misconduct.

(7) If the appointment of a member of the Advisory Committee is terminated in terms of subsection (6), the Minister must give the person written notice informing him or her of the termination and must set out the reasons for the termination in the notice.

(8) A member of the Advisory Committee may resign by written notice to the Minister.

(9) The Registrar is a member of the Advisory Committee by virtue of his or her office.

(10) The remuneration of members of the Advisory Committee must be prescribed.

Recusal and disclosure of interests

43. (1) Any person appointed in terms of subsection 42(1) must recuse himself or herself as a member of the board if he or she has any direct or indirect personal interest in the outcome of the appeal.

(2) Any member of the Advisory Committee who has a direct or indirect pecuniary interest in a matter being considered at a meeting of the Advisory

Committee must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at the meeting.

- (3) A disclosure as contemplated in subsection (2) must be—
 - (a) recorded in the minutes of the meeting of the Advisory Committee; and
 - (b) made known in any advice given by the Committee in relation to that matter.

Meetings

44. (1) The Registrar must convene a meeting of the Advisory Committee when it is necessary for the purposes of the performance of the functions of the Advisory Committee.

(2) At a meeting of the Advisory Committee, five members constitute a quorum.

(3) The members must elect one of the members present at the meeting to preside at the meeting.

(4) The Advisory Committee may determine the procedure to be followed in the performance of its functions.

GENERAL PROVISIONS

Entering premises for inspection, sampling and seizure of certain articles

45. (1) The Registrar may, on the grounds of a warrant issued in terms of subsection (3)—

- (a) enter and inspect any place, premises or vehicle in or upon which any plant, propagating material, harvested material, substance or other article in respect of which this Act applies, is or is upon reasonable grounds suspected to be—
 - (i) conditioned for the purposes of—
 - (aa) propagation contemplated in section 6(1)(b);
 - (bb) exportation contemplated in section 6(1)(d); or
 - (cc) the sale or any other form of marketing of the protected variety contemplated in section 6(1)(c);
 - (ii) produced, reproduced, bred, cultivated, processed, treated, prepared, tested, examined, analysed, classified, pre-packaged, marked, labeled, 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, whether in physical, electronic, digital or any other form, which pertains to that plant, propagating material, substance or other article and which is in the possession or under the control of that person;
 - (ii) furnish such information as he or she has with regard to that plant, propagating material, substance or other article; and

- (iii) render such assistance as the Registrar, employee or person requires to enable him or her to perform his or her functions in terms of this Act;
- (c) inspect any book, record or other document and make copies thereof or excerpts from it;
- (d) seize any plant, propagating material, substance, book, record or other document or article which is or may be relevant to a prosecution under this Act and keep it in his or her custody, after allowing the person from whose possession or control any book, record or document has been taken, to make, at his or her own expense and under the supervision of the Registrar, employee or person concerned, copies thereof or excerpts from it; and
- (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, pre-packaging, marking, labeling, 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 and classify those samples.

(2) Any sample taken in terms of subsection (1)(e) or (6) must—

- (a) consist of the quantity or mass determined by the Registrar, taken in accordance with the methods determined by him or her;
- (b) 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 as prescribed must be completed in respect thereof;

- (c) if necessary, be packed and identified in such manner as the nature thereof permits; and
- (d) with all convenient speed be tested, examined or analysed in accordance with such methods as the Registrar may determine or as may be prescribed, and the result of such test, examination or analysis must be entered on the form as prescribed.

(3) A warrant referred to in subsection (1) must be issued by a magistrate who has jurisdiction in the area where the place or premises in question are situated, or where the vehicle is or will be, and must only be issued if it appears to the magistrate from information on oath or affirmation 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 must 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 must be executed by day unless the person who issues the warrant authorizes the execution thereof by night at times which must be reasonable, and entry upon and search of any place, premises or vehicle specified in such warrant must be conducted with strict regard to decency and order, including—

- (a) a person's right to, respect for and the protection of his or her dignity;
- (b) the right of a person to freedom and security; and
- (c) the right of a person to his or her personal privacy.

(5) The Registrar, employee or person executing a warrant in terms of this section must 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; and
- (b) supply such person at his or her request with particulars regarding his or her authority to execute such a warrant.

(6) The Registrar 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 holder of the plant breeder's right or a person who has been authorised in writing by such holder, consents to such entry, search, seizure, taking of samples and removal.

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

(b) No person may enter upon and search any place, premises or vehicle unless he or she has audibly—

- (i) demanded admission to the place, premises or vehicle;
- (ii) identified himself or herself; and
- (iii) 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, such identification communicated 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 must, 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 a magistrate who has jurisdiction to seize and remove that article for safe custody until a court of law has made a ruling on the question whether or not the information in question is privileged.

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

- (a) it is executed;
 - (b) it is cancelled by the person who issued it or, if such person is not available, by any person with similar authority;
 - (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 must be returned to the person from whom it was seized.

Request for test results by authority of another country

46. The Registrar may provide to an appropriate authority the distinctness, uniformity and stability test reports and variety descriptions derived from tests and trials undertaken by him or her in terms of section 25(1)(a) against payment of a prescribed fee.

Correction of errors

- 47.** (1) The Registrar may authorise—
- (a) the correction of any clerical error or error in translation appearing in any plant breeder's right, the application for such a right or any document filed in pursuance of such application, or the register; and
 - (b) the amendment of any document for the amendment of which no express provision is made in this Act.

(2) The Registrar may exercise the authority under subsection (1) of his or her own accord or upon request in writing.

(3) Where the Registrar intends exercising the authority under subsection (1) of his or her own accord, the Registrar must—

- (a) give notice of his or her intention to the holder of the plant breeder's right or the applicant for such right, as the case may be, and to any other person who appears to him or her to have an interest in the matter; and
- (b) give such holder, applicant or person an opportunity of being heard before exercising his or her authority.

Disclosure of information

48. Subject to sections 5, and the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), no person may disclose any information obtained by him or her in the performance of his or her functions in terms of this Act, except—

- (a) to the extent that it may be necessary for the proper administration of this Act;
- (b) for the purposes of any legal proceedings under this Act;
- (c) upon an order of a competent court; or
- (d) at the request of the Minister, the Director-General or any other person entitled to the information.

Regulations

49. (1) The Minister may make regulations regarding—

- (a) any matter which may or must be prescribed in terms of this Act;
- (b) any certificate or other document or form to be issued or used for the purposes of this Act;
- (c) the fees payable in respect of any application, matter or document;
- (d) the information and facilities to be provided to the Registrar by an applicant for a plant breeder's right, and the reproductive material to be submitted at the time of an application and thereafter;
- (e) the tests, trials, examinations and other steps to be taken by an applicant or the Registrar before a plant breeder's right may be granted, and the time within which they are to be taken;
- (f) the records relating to reproductive material for sale, multiplication or export to be kept by any person who has such material in his or her possession or under his or her control, the form and manner in which they are to be kept, and how and to whom they must be available for inspection; and
- (g) any ancillary or incidental, administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.

(2) Different regulations may be made in respect of different classes or groups of plants or in respect of different kinds of plants.

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

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

(4) A regulation prescribing a fee may be made only after consultation with the Minister of Finance.

Offences and penalties

50. (1) (a) A person is guilty of an offence if that person, in relation to propagating material of a plant variety in respect of which a plant breeder's right has been granted in accordance with section 27, perform any of the activities contemplated in section 6(1)(a) to (f) and such activity would, by virtue of section 31, infringe the plant breeder's right in the variety.

(b) Any person convicted of an offence contemplated in paragraph (a) is liable to a fine or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

(c) The institution of an action for compensation and royalties on account of an infringement in accordance with section 32 in respect of a particular

activity does not prevent a prosecution in terms of this subsection in respect of such activity.

(d) A prosecution in terms of this subsection in respect of an activity that allegedly infringe the plant breeder's right in a variety does not prevent the institution of an action for compensation on account of an infringement in accordance with section 32.

(2) A person is guilty of an offence if that person—

- (a) knowingly makes a false entry in the register or causes it to be made therein, or who makes a writing or causes a writing to be made which falsely purports to be a copy of an entry in the register or of a document lodged with the Registrar, or who produces or tenders or causes to be produced or tendered as evidence any such entry or any such copy;
- (b) makes a false statement or representation, or furnishes false information, knowing it to be false;
- (c) obstructs or hinders the Registrar in the exercise of his or her powers or the carrying out of his or her duties under this Act;
- (d) having been duly summoned to appear at any proceedings under this Act, fails without lawful excuse so to appear;
- (e) having appeared as a witness at any proceedings under this Act, refuses without lawful excuse to be sworn in or to affirm or to produce any document or answer any question which he or she may be lawfully required to produce or answer;

- (f) falsely represents that propagating material sold by his or her for the purposes of propagation or multiplication is propagating material of a variety in respect of which a plant breeder's right has been granted under this Act, or that the propagating material originates from such a variety;
- (g) at the sale of propagating material for the purposes of propagation or multiplication, uses a denomination—
 - (i) for such material which is different from the denomination registered in terms of this Act for the variety in question or uses the registered denomination of another variety of the same kind of plant; or
 - (ii) which corresponds so closely to a registered denomination that it is misleading; or
- (h) except in the circumstances contemplated in section 48, discloses information acquired by him or her in the course of his or her duties or in the performance of his or her functions under this Act.

(3) Any person convicted of an offence referred to in subsection (2) is liable—

- (a) in the case of a first conviction of an offence referred to in subsection (2)(a), (b), (c), (d) or (e), to a fine or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment;
- (b) in the case of a second or subsequent conviction of an offence referred to in subsection (2)(a), (b), (c), (d) or (e), to a fine or to imprisonment for a period not exceeding four years or to both such fine and such imprisonment;

(c) in the case of a first conviction of an offence referred to in subsection (2)(f), (g) or (h), to a fine or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment; and

(d) in the case of a second or subsequent conviction of an offence referred to in subsection (2)(f), (g) or (h), to a fine or to imprisonment for a period not exceeding four years or to both a fine and such imprisonment.

(4) A fine in terms of subsections (1) and (4) may not exceed an amount prescribed in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991).

Jurisdiction of magistrate's court

51. Notwithstanding anything to the contrary in any other law, a magistrate's court has jurisdiction to impose any penalty prescribed by this Act.

Innocent Infringement

52. (1) The Court may refuse to award damages, or to make an order for an account of profits, against a person in an action for infringement of PBR in a plant variety, if the person satisfies the Court that, at the time of the infringement, the person was not aware of, and had no reasonable grounds for suspecting the existence of that right.

(2) If the propagating materials of plants of the variety, labeled so as to indicate that PBR is held in the variety in the Republic, has been sold to a substantial extent before the date of infringement, the person against whom the action for infringement is brought is taken to have been aware of the existence of PBR in the variety, unless the contrary is established.

Prohibition of trafficking by officers.

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

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

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

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

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

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

Delegation

52. (1) The Minister may in writing delegate any function entrusted to the Minister under this Act, except a function referred to in section 49, to any employee of the Department.

(2) The Registrar may delegate in writing the performance of any function entrusted to the Registrar under this Act to any employee of the Department.

(3) (a) Any decision made or order given by any employee contemplated in subsection (1) or (2) must be regarded as having been made by the Minister or Registrar, as the case may be.

(b) The Minister or Registrar, as the case may be, may withdraw or amend any decision or order contemplated in paragraph (a), subject to any rights that may have vested as a consequence of such decision or order.

Transitional provisions and savings

53. (1) (a) A plant breeder's right granted in terms of the Plant Breeders' Rights Act, 1976, immediately before the commencement of this Act, is deemed a plant breeder's right in accordance with this Act.

(b) The provisions of this Act apply with the changes required by the context in respect to a plant breeder's right contemplated in subsection (1)(a): Provided that the period of protection is regulated by section 21 of the Plant Breeders' Rights Act, 1976.

(2) (a) Any application for a plant breeder's right which was received by the Registrar on a date before the date of commencement of this Act, but in respect of which a plant breeder's right has not been granted in terms of section 20 of the Plant Breeder's Rights Act, 1976, before such date of commencement, must be dealt with in all respects in accordance with the Plant Breeder's Rights' Act, 1976, as if that Act was still in force, notwithstanding the repeal thereof as contemplated in section 54 of this Act:

(b) In the event that the plant breeder's right has been granted in accordance with subsection (2)(a), the provisions of this Act apply.

(3) (a) In the event that a breeder has developed a variety in respect of which an application for registration of a plant breeder's right in the variety in question has not been submitted in accordance with the Plant Breeder's Rights Act, 1976, before to the commencement of this Act, such breeder may, within the period prescribed by the Minister, submit an application for registration of such right in accordance with this Act.

(b) No such application may be submitted after expiration of the prescribed period contemplated in paragraph (a).

(4) The employee designated as registrar in terms of section 3(1) of the Plant Breeder's Rights Act, 1976, must be regarded as having been designated as Registrar in terms of section 2(1) of this Act.

(5) The register kept in terms of section 4(1) of the Plant Breeder's Rights Act, 1976, must be incorporated in and must form part of the register to be kept in terms of section 3(1) of this Act, and any document supplied to the register under the Plant Breeder's Rights Act, 1976, in terms of any provision thereof, must be regarded as having been furnished to the Registrar under the corresponding provision of this Act.

Repeal of laws

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

Short title and commencement

55. This Act is called the Plant Breeders' Rights Act, 2013, and comes into operation on a date to be fixed by the President by proclamation in the *Gazette*.

SCHEDULE

Laws repealed

(Section 54)

No. and year	Short title	Extent of repeal
Act No. 15 of 1976	Plant Breeders' Rights Act, 1976	The whole
Act No. 5 of 1980	Plant Breeders' Rights Amendment Act, 1980	The whole
Act No. 14 of 1981	Plant Breeders' Rights Amendment Act, 1981	The whole
Act No. 38 of 1983	Plant Breeders' Rights Amendment Act, 1983	The whole
Act No. 15 of 1996	Plant Breeders' Rights Amendment Act, 1996	The whole
Act No. 88 of 1996	Abolition of Restrictions on The Jurisdiction of Courts Act, 1996	Section 59