

CHAPTER 18:16
PLANT BREEDERS RIGHTS ACT

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

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

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

PART I

PRELIMINARY

1 Short title

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

2 Interpretation

In this Act—

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

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

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

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

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

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

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

“date of application” means the effective date of an application for plant breeders rights in terms of subsection (5) of section *seven*;

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

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

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

“legal representative” means—

- (a) the liquidator or receiver of a company;

- (b) the representative recognized by law of any person who has died, become insolvent or bankrupt or assigned his estate, is an infant or a minor, is of unsound mind or is otherwise under a disability;
- “Minister” means the Minister of Agriculture or any other Minister to whom the President may, from time to time, assign the administration of this Act;
- “multiline” means an assemblage of individual breeding lines in a stated proportion;
- “new variety” means any plant which is a new variety as described in subsection (1) of section *three*;
- “officer” means the Registrar or any examiner or other officer appointed in terms of section *four*;
- “plant breeders rights” means plant breeders rights granted in terms of section *fourteen*;
- “plant concerned” means the plant to which the application in terms of section *seven* or foreign application, as the case may be, relates and which is claimed by the applicant to be a new variety;
- “Register” means the Register of Plant Breeders Rights kept in terms of section *five*;
- “Registrar” means the Registrar of Plant Breeders Rights appointed in terms of section *four*;
- “reproductive material” means a plant or part of a plant which is used to multiply the plant;
- “sell” includes to offer, advertise, keep, expose, transmit, convey, deliver or prepare for sale or to exchange or to dispose of for any consideration whatsoever or to transmit, convey or deliver in pursuance of such a sale, exchange or disposal;
- “stable” means stable in the sense that it retains its distinctive characteristics with a reasonable degree of reliability or to a degree comparable to other subdivisions of the same kind when reproduced or, in the case of a hybrid or a multiline, when reconstituted;
- “uniform” means uniform in the sense that any variations are describable, predictable and commercially acceptable;
- “variety” means—
- (a) a botanical variety, cultivar, breeding line or clone which—
 - (i) is sufficiently homogeneous; and
 - (ii) can be differentiated from another of the same kind by one or more characteristics which are capable of definition and recognition; and
 - (iii) is reasonably uniform and stable after repeated propagation;
 or
 - (b) a hybrid; or
 - (c) a multiline.

3 Application of Act

- (1) Subject to this section and sections *thirty-two* and *forty-six*, this Act shall apply only in respect of a plant which has its origin in Zimbabwe and which is a new variety in that—
- (a) before the date of application it was not available to the public in trade or otherwise; and
 - (b) before the date of application it was not generally known; and
 - (c) it is distinct by at least one characteristic from any other variety the existence of which is a matter of common knowledge at the date of application; and
 - (d) it is uniform; and
 - (e) it is stable.
- (2) Subject to sections *thirty-two* and *forty-six*, plant breeders rights shall only be granted in respect of new varieties of a prescribed kind.
- (3) For the purposes of paragraphs (b) and (c) of subsection (1), general or common knowledge may be established by reference to plant varieties which are—
- (a) already in cultivation or accepted for commercial purposes; or
 - (b) included in any commercial or botanical reference collection; or
 - (c) described precisely in any magazine, journal or other publication.

PART II

ADMINISTRATION

4 Registrar of Plant Breeders Rights and other officers

Subject to the law relating to the Public Service, the Minister shall appoint—

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

5 Register of Plant Breeders Rights

(1) The Registrar shall cause to be kept a Register of Plant Breeders Rights, in which shall be entered—

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

PART III

APPLICATIONS FOR AND GRANT OF PLANT

BREEDERS RIGHTS

6 Persons entitled to make application

(1) Subject to section *thirty-two*, an application for the grant of plant breeders rights in respect of a new variety may be made by any of the following persons—

- (a) a person who is the breeder of the new variety; or
- (b) an assignee of the person referred to in paragraph (a);

and may be made by that person either alone or jointly with any other person who is the breeder of the new variety or his assignee.

(2) An application for the grant of plant breeders rights may be made by the legal representative of—

- (a) a deceased person who, immediately before his death, was entitled to make such an application; or
- (b) a person under disability who, had it not been for such disability, would himself have been entitled to make such an application.

(3) An application in terms of subsection (1) may be made by the Minister on behalf of the State.

7 Application for plant breeders rights and effective date thereof

(1) An application for the grant of plant breeders rights shall be—

- (a) made in the prescribed form; and
- (b) lodged with the Registrar in the prescribed manner.

(2) An assignee making or joining in an application shall furnish such proof of title or authority as the Registrar may require or as may be prescribed.

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

- (a) indicate the origins of the plant concerned and give the full name of the breeder; and
- (b) where the applicant or one of the applicants is not the breeder of the plant concerned, contain a declaration that the applicant believes the person named as the breeder to be the breeder of the plant concerned.

(4) In addition to the requirements set out in subsection (3), a foreign application shall specify—

- (a) the country in which the variety concerned has its origin and where the application for the grant of rights similar to plant breeders rights was made, if any; and
- (b) the number or title of such application, if any; and
- (c) the effective date of such application, if any.

(5) The effective date of an application in terms of this section shall be—

- (a) in the case of an application which is not a foreign application, the date on which the application is received by the Registrar;
- (b) in the case of a foreign application, the effective date of the application in the foreign country:

Provided that if no such application has been made in the foreign country or the application made in the foreign country is subsequently withdrawn, abandoned or refused, the effective date of the application shall be the date on which it was received by the Registrar.

8 Description and samples of new variety

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

- (a) a complete description of the plant concerned; and
- (b) samples of reproductive material necessary for the reproduction of the plant concerned in such quantities as the Registrar may require.

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

- (a) commence with a title naming the plant concerned or giving it a temporary designation until the grant of plant breeders rights; and
- (b) contain or be accompanied by such other particulars as may be prescribed or required by the Registrar; and
- (c) specify the procedure to be used for the maintenance and reproduction of the plant concerned.

(3) The Registrar may require—

- (a) that the plant concerned or the plant or plants from which it originated be shown to him or to a person designated by him; and

- (b) that any additional information or specimens which he considers necessary to determine whether or not the plant concerned constitutes a new variety be furnished to him.

9 Naming of plant concerned

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

(2) The Registrar may at any time before the grant of plant breeders rights, after consideration of any representations made by the applicant or an objector, reject any name proposed in terms of subsection (1) if, in his opinion, the name proposed—

- (a) is identical with or may be confused with—
- (i) the name of any other plant, whether or not plant breeders rights in respect of that plant have been granted; or
 - (ii) a trade mark which has been registered in terms of the Trade Marks Act [*Chapter 26:04*] for any food, fruit, plant or seed;

or

- (b) does not correspond with the international code for the nomenclature of plants; or
(c) is misleading or creates a wrong impression of the characteristics of the plant concerned; or
(d) conflicts with any law or is likely to give offence to any person or class of persons.

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

10 Refusal of application

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

- (a) the application does not comply with the requirements of this Part; or
(b) the plant in respect of which the application has been made is not a new variety of a prescribed kind; or
(c) the applicant is not entitled in terms of this Act to make the application; or
(d) the growing of the plant concerned would be contrary to the general interests of agriculture, forestry or horticulture in Zimbabwe; or
(e) the production of the plant concerned would require the repeated use of the reproductive material of another plant variety for which plant breeders rights have been granted to or applied for by another person unless such reproductive material is used under a licence granted in terms of section *eighteen* or *nineteen*.

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

11 Amendment of application

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

12 Rights of applicant for plant breeders rights

(1) If, in the opinion of the Registrar, a plant in respect of which application has been made in terms of section *seven* appears to be a new variety of a prescribed kind and the applicant appears to be entitled to apply for plant breeders rights in respect thereof, the Registrar shall publish in the *Gazette* a notice specifying the following particulars in relation to the application—

- (a) the name of the applicant; and
(b) the date of application; and
(c) the proposed name of the plant concerned; and
(d) such particulars relating to the plant concerned as he thinks fit.

(2) Subject to subsection (3), an applicant for plant breeders rights shall, during the period from the publication of the notice in terms of subsection (1) until plant breeders rights are granted, refused or rejected in terms of this Act, have the sole right to sell, reproduce and multiply reproductive material of the plant concerned.

(3) It shall not be an infringement of the rights conferred by subsection (2) for a person—

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

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

- (b) if he has purchased or otherwise acquired the plant concerned or reproductive material thereof, to grow or to sell the plant or reproductive material or, if he has planted it, to sell the plant or seed thereby obtained for a purpose other than reproduction or multiplication.

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

13 Objection to grant of plant breeders rights

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

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

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

- (a) specify the grounds on which the objector objects to the grant of plant breeders rights; and
- (b) be accompanied by a statement setting out particulars of the facts alleged in support of the said grounds.

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

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

(5) The Registrar shall furnish—

- (a) an applicant for plant breeders rights with a copy of any notice of objection lodged in terms of subsection (1);
- (b) an objector with a copy of any counter-statement lodged in terms of subsection (4).

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

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

- (a) upholds the objection and, in the case of an objection on the grounds referred to in paragraph (g) of subsection (1) the applicant does not alter the name of the plant concerned, the Registrar shall reject the application and shall—
 - (i) forthwith notify the applicant and the objector in writing of such rejection; and
 - (ii) within one month of such rejection, publish in the *Gazette* notice of such rejection:
Provided that if an appeal in terms of subsection (8) is lodged, the notice shall not be published until such time as the appeal has been determined;
- (b) does not uphold the objection, he shall notify the applicant and the objector of his decision.

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

14 Refusal or grant of plant breeders rights

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

- (a) the plant concerned should be regarded as a new variety of a prescribed kind; and
- (b) the applicant is entitled in terms of this Act to make the application.

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

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

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

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

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

- (a) refused in terms of section *ten*; or
- (b) rejected in terms of section *thirteen*.

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

- (a) the application for plant breeders rights does not comply with the requirements of this Act; or
- (b) the plant in respect of which the application has been made is not a new variety of a prescribed kind; or
- (c) the applicant is not entitled to make the application;

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

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

15 Cancellation of plant breeders rights

(1) The Registrar may, at any time, cancel any plant breeders rights if he is satisfied that—

- (a) any information submitted in the application for those rights or any information submitted by or on behalf of the applicant in connection with the application was incorrect and that if the Registrar had known before the grant that it was incorrect he would have refused the grant; or
- (b) facts have been discovered which, if known before the grant, would have resulted in the grant being refused in terms of subsection (5) of section *fourteen*.

(2) Any person may apply in the prescribed manner to the Registrar for the cancellation of plant breeders rights in terms of subsection (1) and such application shall be accompanied by such deposit, not exceeding five hundred dollars, as may be prescribed, and if the plant breeders rights—

- (a) are cancelled as a result of the application, the deposit shall be returned to the applicant;
- (b) are not cancelled, the deposit shall be forfeited to the State.

(3) On receipt of an application in terms of subsection (2), the Registrar shall inform the holder of the plant breeders rights of such application and give him an opportunity of lodging a counter-statement.

(4) Within one month of the cancellation of plant breeders rights in terms of subsection (1) the Registrar shall publish in the *Gazette* notice of such cancellation.

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

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

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

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

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

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

he may cancel those rights.

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

17 Rights of holder of plant breeders rights

(1) Subject to subsection (2), the holder of plant breeders rights shall, during the period specified in subsection (3), have the sole right to sell, reproduce and multiply reproductive material of the plant concerned.

(2) It shall not be an infringement of the rights conferred by subsection (1) for a person—

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

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

- (b) if he has purchased or otherwise acquired the plant concerned or reproductive material thereof, to grow or to sell the plant or reproductive material or, if he has planted it, to sell the plant or seed thereby obtained for a purpose other than reproduction or multiplication.

(3) The term of plant breeders rights shall, subject to the provisions of this Act, be twenty years from the date of the grant thereof:

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

- (4) An appeal shall lie from any decision of the Registrar under the proviso to subsection (3).

18 Issue of licences

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

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

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

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

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

- (a) make an application in terms of subsection (1); and
(b) grant licences referred to in subsection (2) to such persons and subject to such conditions, limitations or restrictions as he thinks fit.

19 Compulsory licences

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

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

- (a) set out fully the nature of the applicant's interests, the facts on which he bases his case and the relief he seeks; and
(b) be accompanied by—
(i) an affidavit verifying the facts set out in the application; and
(ii) a certificate from the Minister stating that it is in the public interest that the variety concerned be made freely available to the public.

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

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

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

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

20 Surrender of plant breeders rights

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

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

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

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

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

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

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

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

PART IV

APPEALS

21 Appeals from decision of Registrar

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

22 Assessors

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

23 Time for appeals

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

24 Right of Registrar to appear at appeal

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

25 References by Registrar to Administrative Court

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

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

PART V

OFFENCES AND PENALTIES

26 Falsification of documents

Any person who—

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

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

[Section as amended by Act No. 22 of 2001]

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

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

[Section as amended by Act No. 22 of 2001]

28 Deceiving or improper influencing of officer

Any person who—

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

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

[Section as amended by Act No. 22 of 2001]

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

- (1) Any person who falsely and without lawful excuse represents that—
 - (a) any reproductive material of a plant sold or reproduced or exported by him is a plant in respect of which plant breeders rights have been granted; or
 - (b) an application has been made in terms of this Act for the grant of plant breeders rights in respect of a plant sold by him;

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

[Subsection as amended by section 4 of Act No. 22 of 2001]

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

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

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

[Subsection as amended by section 4 of Act No. 22 of 2001]

30 Offences by officers

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

[Section as amended by Act No. 22 of 2001]

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

31...

[Section repealed by Act No. 22 of 2001]

PART VI

GENERAL

32 Foreign applications

- (1) If the Minister is satisfied that any country is prepared to grant, in respect of any new variety of a prescribed kind, rights which, in the opinion of the Minister, are similar to the plant breeders rights contemplated in this Act, he may, by notice in the *Gazette*, declare that the provisions of this Act shall apply in respect of any new variety of a prescribed kind or any class thereof specified in that notice which has its origin in that country and which, if it had its origin in Zimbabwe, would be a new variety as described in subsection (1) of section *three*.

- (2) The Minister may grant to any person who is resident in Zimbabwe authority to apply in terms of this Act for the grant of plant breeders rights in respect of a new variety of a prescribed kind which has its origin outside Zimbabwe and which, if it had its origin in Zimbabwe, would be a new variety as described in subsection (1) of section *three*.

- (3) An application for the grant of plant breeders rights in respect of a new variety for which a similar application has been made—

- (a) in a foreign country specified in terms of subsection (1); or
- (b) in a foreign country by a person authorized in terms of subsection (2);

may be made by the person by whom that similar application was made or by the assignee of that person, as the case may be, at any time within twelve months from the date that that similar application was made in the foreign country.

33 Hearing before exercise of discretion of Registrar

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

34 Rights of patent agents and attorneys

(1) A patent agent as defined in subsection (1) of section 2 of the Patents Act [*Chapter 26:03*] or a legal practitioner may act as agent on behalf of any person in connection with any matter or proceeding before the Registrar under this Act and may for that purpose draw and sign all documents and may represent an applicant at all attendances before the Registrar.

(2) Subsection (2) of section 63 of the Patents Act [*Chapter 26:03*] shall apply, *mutatis mutandis*, in respect of any act performed by a patent agent in terms of subsection (1).

35 Powers of Registrar to authorize corrections

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

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

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

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

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

36 Rectification of Register

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

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

(a) give notice thereof to all interested parties; and

(b) forward the application to the Administrative Court.

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

(a) the Registrar, the applicant and any other interested party shall be entitled to appear and be heard; and

(b) the Administrative Court shall determine the question in such manner as it considers desirable in the interests of justice.

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

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

(a) that the plant concerned was made available or the knowledge was acquired from him without his knowledge or consent; and

(b) if he learned of the use or disclosure before the date of application, that he applied for the grant of plant breeders rights with all reasonable diligence after learning of the use or disclosure, as the case may be.

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

38 Evidence of certain entries and documents

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

(2) A copy of—

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

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

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

39 Inspection and provision of certified copies of entries in Register

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

40 Preservation of secrecy

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

- (a) to the Minister, the Administrative Court, the Registrar or any other person for the purposes of the performance of his functions under this Act; or
 - (b) to a police officer for the purposes of an investigation or inquiry relating to the enforcement of the provisions of this Act; or
 - (c) when required to do so by any court or under any law;
- any information acquired by him in the carrying out of any duty or the performance of any function under this Act in relation to any plant in respect of which an application for the grant of plant breeders rights has been made under this Act or to the business affairs of any other person shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Section as amended by Act No. 22 of 2001]

41 State to be bound and limitation of actions against State

- (1) Plant breeders rights shall have the same effect against the State as they have against a subject.
- (2) No fees such as are referred to in paragraph (f) or (i) of subsection (2) of section *forty-five* or deposit referred to in subsection (2) of section *fifteen* shall be payable by the State.
- (3) No claim shall lie against the State, the Minister, the Registrar or any other officer for any thing done in good faith and without negligence under the powers conferred by this Act.

42 Damages for infringement of registered plant breeders rights

Any person who infringes any plant breeders rights may be sued in any court of competent jurisdiction by the holder of such rights for—

- (a) an amount not exceeding the equivalent of a fine of level seven or an interdict or both and the court may, without proof of any damages and in addition to the costs of the action, award such amount, not exceeding the afore-said amount, as may in the circumstances of the case appear to it to be reasonable or grant an interdict or both award such amount and grant an interdict; or
- (b) damages or an interdict or both, and the court may, in addition to the costs of the action, award such damages as may in the circumstances of the case appear to it to be reasonable or grant an interdict or both award such damages and grant an interdict.

[Paragraph as amended by section 4 of Act No. 22 of 2001]

43 Particulars to be furnished

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

44 Assignments

- (1) The rights granted to the holder of plant breeders rights shall be capable of assignment and of devolution by operation of law and of being mortgaged and pledged.
- (2) Where any person becomes entitled by assignment, transmission or operation of law to any plant breeders rights or to a share in plant breeders rights or becomes entitled as mortgagee, licensee or otherwise to any other interest in plant breeders rights, he may apply to the Registrar in the prescribed manner for the registration in the Register of his title as proprietor or co-proprietor or, as the case may be, of notice of his interest and the Registrar shall, upon proof of such entitlement to his satisfaction, register such title or notice against the plant breeders rights accordingly.
- (3) Except for the purposes of an application to rectify the Register under the provisions of this Act, a document in respect of which no entry has been made in the Register under subsection (2) shall not be admitted in any proceedings as evidence of the title of any person referred to in subsection (2) to plant breeders rights or a share of or interest in plant breeders rights unless the Administrative Court or a court of competent jurisdiction otherwise directs.

45 Regulatory powers

- (1) The Minister may make regulations prescribing anything which under this Act is to be prescribed and generally for the better carrying out of the objects and purposes of this Act or to give effect to its provisions or for its better administration.
- (2) Regulations in terms of subsection (1) may provide for—
 - (a) the form of any application, description, drawing, objection, counter-statement or other document which may be lodged with the Registrar and the furnishing of copies of any such document;
 - (b) the procedure to be followed in connection with any application or request to the Registrar or any proceedings before him, and the authorizing of the rectification of irregularities of procedure;
 - (c) the information and facilities to be afforded by an applicant and the reproductive material and other plant material to be submitted at the time of application and subsequently;
 - (d) the tests, trials, examinations and other steps to be taken by the applicant or the Registrar before plant breeders rights are granted and the time within which any such steps are to be taken;

- (e) requiring any person who has in his possession or under his control any reproductive material for sale, reproduction or export to keep records relating thereto in the form and manner specified and to render returns in the form and manner and at the times specified;
- (f) the fees to be paid in respect of—
 - (i) applications for or the grant of plant breeders rights;
 - (ii) the examination of samples of reproductive material or any plant grown therefrom;
 - (iii) the inspection of the Register or the provision of a certified copy of any entry therein;
- (g) the rights and duties of the holder of a licence granted under section *eighteen* or *nineteen* and of the holder of the plant breeders rights concerned in connection with the institution of actions for infringement of the plant breeders rights where the holder thereof fails or refuses to institute such an action;
- (h) preventing the use of false or misleading statements in any advertisement of plant breeders rights.

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