



This publication has been scanned from a paper copy and may have some discrepancies from the original publication.

Cette publication a été numérisée à partir d'une copie papier et peut contenir des différences avec la publication originale.

Diese Veröffentlichung wurde von einer Papierkopie gescannt und könnte Abweichungen von der originalen Veröffentlichung aufweisen.

Esta publicación ha sido escaneada a partir de una copia en papel y puede que existan divergencias en relación con la publicación original.

PLANT VARIETY PROTECTION



Gazette and Newsletter
of the International Union
for the Protection of
New Varieties of Plants
(UPOV)

UPOV

**No. 88
June 2000**

The International Union for the Protection of New Varieties of Plants (UPOV) – an international organization established by the International Convention for the Protection of New Varieties of Plants – is the international forum for States interested in plant variety protection. Its main objective is to promote the protection of the interests of plant breeders – for their benefit and for the benefit of agriculture and thus also of the community at large – in accordance with uniform and clearly defined principles.

Plant Variety Protection is a UPOV publication that reports on national and international events in its field of competence and in related areas. It is published in English only – although some items are quadrilingual (English, French, German and Spanish) – at irregular intervals, usually at a rate of three issues a year. Requests for addition to the mailing list may be placed with:

UPOV

International Union for the Protection of New Varieties of Plants (UPOV)
34, chemin des Colombettes, P.O.Box 18, CH-1211 Geneva 20, Switzerland

Telephone: +41-22-338 91 11 Telefax: +41-22-733 0336 E-mail: upov.mail@wipo.int

The picture on the front cover shows the species
Mioga Ginger (*Zingiber mioga* Roscoe)
painted by Ms. Tomomi Naruse (Japan),
courtesy of Tsukuba Botanical Garden, National Science Museum, Japan

UPOV PUBLICATION
No. 438(E)

ISSN 0257-9030

TABLE OF CONTENTS

GAZETTE

ACCESSION TO THE 1991 ACT OF THE UPOV CONVENTION

Kyrgyz Republic	2
-----------------------	---

NEWSLETTER

LEGISLATION

Australia	3
Finland	31
Ireland	39
Netherlands	49
UPOV News	67

GAZETTE

ACCESSION TO THE 1991 ACT OF THE UPOV CONVENTION

KYRGYZ REPUBLIC

On May 26, 2000, the Government of the Kyrgyz Republic deposited its instrument of accession to the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972, on October 23, 1978, and on March 19, 1991, with the Secretary-General of UPOV.

The 1991 Act entered into force for the Kyrgyz Republic one month after the deposit of its instrument of accession, i.e., on June 26, 2000.

According to the notification filed with the Secretary-General together with the instrument of accession, protection is available to the following genera and species (the Latin and English names have been communicated by the Kyrgyz Authorities; the French, German and Spanish common names have been added, without guarantee of concordance, by the Office of the Union.

Latin	English	Français	Deutsch	Español
<i>Agropyrum desertorum</i> L.	Wheatgrass stenostachyous	-	-	-
<i>Avena sativa</i> L.	Oats	Avoine	Hafer	Avena
<i>Beta B. vulgaris</i> L. var. <i>sacharifera</i>	Sugar Beet	Betterave sucrière	Zuckerrübe	Remolacha azucarera
<i>Brassica oleracea</i> convar. <i>capitata</i> (L.) Alef. var. <i>capitata</i> L.f. alba DC	Cabbage	Chou pommé	Kopfkohl	Col rizada
<i>Bromus riparia</i> L.	Bromus	-	-	-
<i>Dactylis glomerata</i> L.	Cocksfoot, Orchard lily	Dactyle	Knäulgras	Dactilo
<i>Fagopyrum esculentum</i> Moench.	Buckwheat	Sarrasin, Blé noir	Buchweizen	Alforfón
<i>Gossypium G. Barbadense</i> L.	Cotton	Cotonnier	Baumwolle	Algodón
<i>Glycine max</i> (L.) Merrill	Soya Bean	Soja	Sojabohne	Soja, Soya
<i>Gossypium G. Hirsutum</i> L.	Cotton	Cotonnier	Baumwolle	Algodón
<i>Hordeum vulgare</i> L.	Barley	Orge	Gerste	Cebada
<i>Medicago sativa</i> L.	Lucerne, Alfalfa	Luzerne (cultivée)	Blaue Luzerne	Alfalfa, Mielga
<i>Solanum tuberosum</i> L.	Potato	Pomme de terre	Kartoffel	Pap, Patata
<i>Triticum aestivum</i> L.	Wheat, Soft Wheat, Bread Wheat	Blé tendre, Froment	Weichweizen	Trigo blando
<i>Triticum durum</i> Desf.	Durum Wheat, Macaroni Wheat, Hard Wheat	Blé dur	Hartweizen	Trigo duro
<i>Zea mays</i> L.	Maize	Maïs	Mais	Maíz

NEWSLETTER

LEGISLATION

AUSTRALIA

PLANT BREEDER'S RIGHTS ACT 1994

Act No. 110 of 1994 as amended*

This compilation was prepared on 31 January 2000 taking into account amendments up to Act No. 170 of 1999.

The text of any of those amendments not in force on that date is appended in the Notes section.

Prepared by the Office of Legislative Drafting, Attorney-General's Department, Canberra

Contents

Part 1-Preliminary

- 1 Short title [see Note 1]
- 2 Commencement [see Note 1]
- 3 Definitions
- 4 Definition of essentially derived varieties
- 5 Definition of breeding
- 6 Genetic modification
- 7 Approved forms
- 8 Approved persons
- 9 Act to bind Crown
- 10 Extent of Act

Part 2-Plant breeder's right

- 11 General nature of PBR
- 12 Extension of PBR to cover essentially derived varieties
- 13 Extension of PBR to cover certain dependent plant varieties
- 14 Extension of PBR to harvested material in certain circumstances
- 15 Extension of PBR to products obtained from harvested material in certain circumstances
- 16 Certain acts done for private, experimental or breeding purposes do not infringe PBR
- 17 Conditioning and use of farm saved seed does not infringe PBR
- 18 Other acts that do not infringe PBR
- 19 Reasonable public access to plant varieties covered by PBR
- 20 PBR is personal property
- 21 Registrar must be notified of an assignment of PBR
- 22 Duration of PBR
- 23 Exhaustion of PBR

Part 3-Application for plant breeder's right

Division 1-The making of the application

- 24 Right to apply for PBR
- 25 Right to apply for PBR is personal property
- 26 Form of application for PBR
- 27 Names of new plant varieties
- 28 Applications to be given priority dates
- 29 Priority dates arising from foreign application
- 30 Acceptance or rejection of applications
- 31 Requests for variation of application
- 32 Notification of decisions on requests to vary application
- 33 Withdrawal of application

Division 2-Dealing with the application after its acceptance

- 34 Detailed description in support of application to be given to Secretary
- 35 Objection to application for PBR
- 36 Inspection of applications and objections
- 37 Test growing of plant varieties
- 38 Characteristics of plant varieties bred or test grown outside Australia

Division 3-Provisional protection

- 39 Provisional protection

Division 4-Essential derivation

- 40 Applications for declarations of essential derivation
- 41 Test growing associated with applications for declarations of essential derivation

Part 4-The grant and revocation of Plant Breeder's Right

Division 1-Grant of Plant Breeder's Right

- 42 PBR not to be granted in excluded varieties
- 43 Registrable plant varieties
- 44 Grant of PBR
- 45 Grant of PBR to be exclusive
- 46 Grant of PBR to be entered on Register

* Amendments listed in Note 1, page 30

- 47 Notice of grant of PBR
 48 Effect of grant of PBR
 49 PBR may be subject to conditionS

Division 2-Revocation of Plant Breeder's Right or declaration of essential derivation

- 50 Revocation of PBR
 51 Entry of particulars of revocation
 52 Surrender of PBR

Part 5-Enforcement of Plant Breeder's Right

- 53 Infringement of PBR
 54 Actions for infringement
 55 Declarations as to non-infringement
 56 Jurisdiction of Court
 57 Innocent infringement

Part 6-Administration

58 Registrar of Plant Breeder's Rights

- 59 Delegation
 60 Certain persons not to acquire PBR
 61 Register of Plant Varieties
 62 Inspection of Register

Part 7-Plant Breeder's Rights Advisory Committee

- 63 Establishment of Advisory Committee
 64 Membership of Advisory Committee
 65 Remuneration and allowances
 66 Disclosure of interests
 67 Meetings

Part 8-Miscellaneous

- 68 Public notices
 69 Notices inviting submissions in respect of certain regulations
 70 Genetic resource centres
 71 The herbarium
 72 Agents may act in matters relating to PBR
 73 Service of documents
 74 Infringement offences
 75 Offences other than infringement offences
 76 Conduct by directors, servants and agents
 77 Applications for review
 78 Repeal
 79 Compensation for acquisition of property
 80 Regulations

Part 9 Transitional

- 81 Definitions
 82 Plant variety rights under old Act to be treated as PBR under this Act
 83 Applications for plant variety rights lodged and criminal proceedings begun before commencing day
 84 Other applications and proceedings under old Act
 85 Transitional arrangements for membership and functions of Advisory Committee
 86 Register of Plant Varieties

Schedule 1*

Notes

An Act to provide for the granting of proprietary rights to breeders of certain new varieties of plants and fungi, to repeal the *Plant Variety Rights Act 1987*, and for related purposes



Part 1—Preliminary

1 Short title [see Note 1]

This Act may be cited as the *Plant Breeder's Rights Act 1994*.

2 Commencement [see Note 1]

- (1) Subject to subsection (2), the provisions of this Act commence on a day to be fixed by Proclamation.
 (2) If a provision of this Act does not commence under subsection (1) within the period of 6 months commencing on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

3 Definitions

- (1) In this Act, unless the contrary intention appears:

AAT means the Administrative Appeals Tribunal.

AAT Act means the *Administrative Appeals Tribunal Act 1975*.

Advisory Committee means the Plant Breeder's Rights Advisory Committee established by section 63.

applicant, in relation to an application, means the person currently shown in the application as the person making the application.

application means an application under section 24 for PBR in a plant variety to which this Act extends.

breeder, in relation to a new plant variety, means:

- (a) subject to paragraph (c), if the variety was bred by one person only—the person; or
 (b) subject to paragraph (c), if the variety was bred by 2 or more persons (whether jointly or independently and whether at the same time or different times)—each of those persons; or

*Schedule 1 is the text of the 1991 Act of the UPOV Convention and is not reproduced herein.

- (c) if the variety was bred:
- (i) by a person in the course of performing duties or functions as a member or employee of a body (whether incorporate or unincorporate); or
 - (ii) by 2 or more persons in the course of performing duties as a member or employee of such a body;

the body of which that person or each of those persons is a member or employee;

and includes any person or body that is the successor in title to the person referred to in paragraph (a), to any of the persons referred to in paragraph (b) or the body referred to in paragraph (c).

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

- (a) cleaning, coating, sorting, packaging or grading of the material; or
- (b) any other similar treatment;

undertaken for the purpose of preparing the material for propagation or sale.

contracting party means a State, or an intergovernmental organisation, that is a party to the Convention.

Convention means the International Convention for the Protection of New Varieties of Plants, a copy of the English text of which is set out in the Schedule.

Court means the Federal Court of Australia.

dependent plant variety, in relation to another plant variety in which a person holds PBR in Australia, means a plant variety over which PBR in the other plant variety extends under section 13.

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, performance or value of the variety.

genetic resource centre means a place that the Secretary declares to be a genetic resource centre under subsection 70(1).

grantee:

- (a) in relation to PBR in a plant variety—means the person currently entered on the Register as the holder of that right in that variety; and
- (b) in relation to PBR in a plant variety declared to be an essentially derived variety of another plant variety—includes the person currently entered on the Register as the holder of that right in relation to that other plant variety.

herbarium means the organisation that the Secretary declares to be the herbarium under section 71.

hybrid means a plant that is a combination of 2 or more genotypes of the same or different taxa but excluding a combination comprising a scion grafted on to a root stock.

member means a member of the Advisory Committee and includes the Registrar.

PBR, in a plant variety, means the plant breeder's right specified in section 11.

PBR, in respect of a plant variety registered in another contracting party, means a plant breeder's right corresponding to the right specified in section 11 conferred under the law of that contracting party.

plant includes all fungi and algae but does not include bacteria, bacteroids, mycoplasmas, viruses, viroids and bacteriophages.

plant class, for the purpose of variety denomination, means a class consisting of all plants:

- (a) that belong to a single botanical genus; or
- (b) that belong to a group of closely related genera;

that is specified from time to time as a plant class in the Registrar's List of Plant Classes maintained under subsection 61(1A).

plant variety means a plant grouping (including a hybrid):

- (a) that is contained within a single botanical taxon of the lowest known rank; and
- (b) that can be defined by the expression of the characteristics resulting from the genotype of each individual within that plant grouping; and
- (c) that can be distinguished from any other plant grouping by the expression of at least one of those characteristics; and
- (d) that can be considered as a functional unit because of its suitability for being propagated unchanged.

Note: Plant groupings for the purposes of this definition include genetically modified plant groupings. See section 6.

process, in relation to the reproduction of propagating material, of a plant variety does not include:

- (a) the development of a cell or tissue or a plant part into a plant of that variety; or
- (b) the growth of a plant into a larger plant of that variety.

propagating material, in relation to a plant of a particular plant variety, means any part or product from which, whether alone or in combination with other parts or products of that plant, another plant with the same essential characteristics can be produced.

propagation, in relation to a living organism or its components, means the growth, culture or multiplication of that organism or component, whether by sexual or asexual means.

Register means the Register of Plant Varieties kept under section 61.

Registrar means the Registrar of Plant Breeder's Rights.
reproduction, in relation to propagating material of a plant of a particular variety, means any process, whereby the number of units of that propagating material that have the capacity to grow into independent plants is multiplied.

Secretary means the Secretary of the Department.

sell includes letting on hire and exchanging by way of barter.

successor means:

- (a) in relation to a breeder of a plant variety—a person to whom the right of the breeder to make application for PBR in that variety has been assigned, or transmitted by will or by operation of law; and
- (b) in relation to a grantee of PBR—a person to whom that right has been assigned, or transmitted by will or by operation of law.

synonym, in relation to the name of a plant variety in which PBR has been granted in another contracting party, means a name, additional to the name of the variety, by which the variety will be known and sold in Australia.

Union means the Union for the Protection of New Varieties of Plants as defined in Article 1 of the Convention.

will includes a codicil.

- (2) If a provision of this Act requires or authorises the Secretary or the Registrar to give written notice of any matter to a particular person and does not specify the means of giving that notice, that provision is to be taken, for the purposes of section 29 of the *Acts Interpretation Act 1901* to authorise or require the Secretary or Registrar to serve the notice on the person personally or by post.

4 Definition of essentially derived varieties

A plant variety is taken to be an essentially derived variety of another plant variety if:

- (a) it is predominantly derived from that other plant variety; and
- (b) it retains the essential characteristics that result from the genotype or combination of genotypes of that other variety; and
- (c) it does not exhibit any important (as distinct from cosmetic) features that differentiate it from that other variety.

5 Definition of breeding

- (1) A reference in this Act to breeding, in relation to a new plant variety, includes a reference to the discovery of a plant together with its use in selective propagation so as to enable the development of the new plant variety.
- (2) If a plant is discovered by one person but used in selective propagation by another so as to enable the development of a new plant variety, those persons are together taken to be the joint breeders of the new plant variety.

6 Genetic modification

For the purposes of this Act, an organism may be treated as constituting a plant grouping within a single botanical taxon despite the fact that the genome of the plants in that plant grouping has been altered by the introduction of genetic material that is not from plants.

7 Approved forms

- (1) In this Act, a reference to an approved form is a reference to a form that is approved, by instrument in writing, by the Secretary.
- (2) The instrument by which a form is approved under subsection (1) is a disallowable instrument for the purpose of section 46A of the *Acts Interpretation Act 1901*.

8 Approved persons

- (1) In this Act, a reference to an approved person is a reference to a person who, on the basis of the person's qualifications and experience, the Secretary has designated, by instrument in writing, to be such a person in relation to one or more species of plant.
- (2) The Registrar must, from time to time, cause lists of all persons who are approved persons in relation to particular species of plant to be published in the *Plant Varieties Journal*.

9 Act to bind Crown

- (1) This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of the Northern Territory.
- (2) Nothing in this Act renders the Crown, in any of its capacities, liable to be prosecuted for an offence.

10 Extent of Act

Nothing in this Act requires or permits the granting of PBR in a plant variety unless:

- (a) if Australia is a party to the Convention—the grant is appropriate to give effect to the obligations of Australia under the Convention; or

- (b) the breeding of the plant variety constitutes an invention for the purpose of paragraph 51(xviii) of the Constitution.

Part 2—Plant breeder's right

11 General nature of PBR

Subject to sections 16, 17, 18, 19 and 23, PBR in a plant variety is the exclusive right, subject to this Act, to do, or to license another person to do, the following acts in relation to propagating material of the variety:

- (a) produce or reproduce the material;
- (b) condition the material for the purpose of propagation;
- (c) offer the material for sale;
- (d) sell the material;
- (e) import the material;
- (f) export the material;
- (g) stock the material for the purposes described in paragraph (a), (b), (c), (d), (e) or (f).

12 Extension of PBR to cover essentially derived varieties

Subject to section 23, if:

- (a) PBR is granted to a person in a plant variety (the **initial variety**); and
- (b) PBR is granted to another person in another plant variety; and
- (c) the Secretary makes a declaration, on application by the first-mentioned person, that the other plant variety is an essentially derived variety from the initial variety;

the right granted in the initial variety extends, with effect from the date of the declaration, to that other plant variety.

13 Extension of PBR to cover certain dependent plant varieties

Subject to section 23, if PBR is granted in a plant variety (the **initial variety**), the right extends to:

- (a) any other plant variety that:
 - (i) is not clearly distinguishable from the initial variety; and
 - (ii) is clearly distinguishable from any plant variety that was a matter of common knowledge at the time of the grant of PBR in the initial variety; and

- (b) any other plant variety that cannot be reproduced except by the repeated use of the initial variety or of a variety referred to in paragraph (a);

whether or not that other plant variety was in existence at the time PBR was granted in the initial variety.

14 Extension of PBR to harvested material in certain circumstances

- (1) If:
- (a) propagating material of a plant variety covered by PBR is produced or reproduced without the authorisation of the grantee; and
 - (b) the grantee does not have a reasonable opportunity to exercise the grantee's right in relation to the propagating material; and
 - (c) material is harvested from the propagating material;

section 11 operates as if the harvested material were propagating material.

- (2) Subsection (1) applies to so much of the material harvested by a farmer from propagating material conditioned and reproduced in the circumstances set out in subsection 17(1) as is not itself required by the farmer, for the farmer's own use, for reproductive purposes.

15 Extension of PBR to products obtained from harvested material in certain circumstances

If:

- (a) propagating material of a plant variety covered by PBR is produced or reproduced without authorisation of the grantee; and
- (b) the grantee does not have a reasonable opportunity to exercise the grantee's rights in relation to the propagating material; and
- (c) material is harvested from plants grown from the propagating material but the grantee does not have, in the circumstances set out in section 14, a reasonable opportunity of exercising the grantee's rights in the harvested material; and
- (d) products are made from the harvested material;

section 11 operates as if those products were propagating material.

16 Certain acts done for private, experimental or breeding purposes do not infringe PBR

Any act done in relation to a plant variety covered by PBR that is done:

- (a) privately and for non-commercial purposes; or

- (b) for experimental purposes; or
- (c) for the purpose of breeding other plant varieties; does not infringe the PBR.

17 Conditioning and use of farm saved seed does not infringe PBR

- (1) If:
 - (a) a person engaged in farming activities legitimately obtains propagating material of a plant variety covered by PBR either by purchase or by previous operation of this section, for use in such activities; and
 - (b) the plant variety is not included within a taxon declared under subsection (2) to be a taxon to which this subsection does not apply; and
 - (c) the person subsequently harvests further propagating material from plants grown from that first-mentioned propagating material;
 the PBR is not infringed by:
 - (d) the conditioning of so much of that further propagating material as is required for the person's use for reproductive purposes; or
 - (e) the reproduction of that further propagating material.
- (2) The regulations may declare a particular taxon to be a taxon to which subsection (1) does not apply.

18 Other acts that do not infringe PBR

- (1) Despite the fact that a plant variety is covered by PBR, any act referred to in section 11:
 - (a) that is done in relation to the propagating material of plants of that variety; and
 - (b) that enables the use of that propagating material:
 - (i) as a food, food ingredient or fuel; or
 - (ii) for any other purpose that does not involve the production or reproduction of the propagating material;

does not infringe the PBR.

- (2) Without limiting the generality of subsection (1), for the purpose of that subsection, the use of propagating material of a plant by way of allowing it to sprout and then eating it, or using it in the preparation of food, before it has developed further, is not taken to be a use that involves the production or reproduction of propagating material.

19 Reasonable public access to plant varieties covered by PBR

- (1) Subject to subsection (11), the grantee of PBR in a plant variety must take all reasonable steps to ensure reasonable public access to that plant variety.
- (2) Reasonable public access to a plant variety covered by PBR is taken to be satisfied if propagating material of reasonable quality is available to the public at reasonable prices, or as gifts to the public, in sufficient quantities to meet demand.
- (3) For the purpose of ensuring reasonable public access to a plant variety covered by PBR, the Secretary may, on behalf of the grantee, in accordance with subsections (4) to (10), license a person whom the Secretary considers appropriate:
 - (a) to sell propagating material of plants of that variety; or
 - (b) to produce propagating material of plants of that variety for sale;

during such period as the Secretary considers appropriate and on such terms and conditions (including the provision of reasonable remuneration to the grantee) as the Secretary considers would be granted by the grantee in the normal course of business.

- (4) If, at any time more than 2 years after the grant of PBR in a plant variety, a person considers:
 - (a) that the grantee is failing to comply with subsection (1) in relation to the variety; and
 - (b) that the failure affects the person's interests;

the person may make a written request to the Secretary to exercise a power under subsection (3) in relation to the variety.

- (5) A request must:
 - (a) set out the reasons why the person considers that the grantee is failing to comply with subsection (1); and
 - (b) give particulars of the way in which the person considers that the failure affects the person's interests; and
 - (c) give an address of the person for the purposes of notifications under this section.
- (6) The Secretary must give the grantee:
 - (a) a copy of the request; and
 - (b) a written invitation to give the Secretary, within 30 days after giving the request, a written statement of the reasons the Secretary should be satisfied that the grantee:

- (i) is complying with subsection (1) in relation to the variety; or
 - (ii) will so comply within a reasonable time.
- (7) The Secretary must, after considering the request and any statement given by the grantee in response to the invitation under paragraph (6)(b):
- (a) decide whether or not to exercise the power concerned; and
 - (b) within 30 days after so deciding, give written notice of the decision to the grantee and to the person making the request.

Note: A decision under this subsection is reviewable by the AAT under section 77.

- (8) If the Secretary proposes to exercise a power under subsection (3) in relation to a plant variety, the Secretary must give public notice:
- (a) identifying the variety; and
 - (b) setting out particulars of any licence the Secretary proposes to grant; and
 - (c) inviting persons to apply in writing to the Secretary, within 30 days of the publication of the notice, to be granted that licence.
- (9) The Secretary must not grant any such licence unless:
- (a) the Secretary has considered all applications made in response to the invitation; and
 - (b) at least one month before granting any such licence, the Secretary has:
 - (i) given written notice to each such applicant of the name of the proposed licensee; and
 - (ii) given public notice of the name of the proposed licensee.
- (10) If the Secretary:

- (a) has granted a person a licence to produce propagating material of plants of a particular variety; and
- (b) is satisfied that the person will be unable to obtain such propagating material at a reasonable price or without charge;

the Secretary may, on behalf of the grantee, make that propagating material available to the person from material stored at a genetic resource centre.

Note: A decision under this subsection to make propagating material available is reviewable by the AAT under section 77.

- (11) This section does not apply in relation to a plant variety in respect of which the Secretary certifies, in writing, at

the time of the grant of PBR, that he or she is satisfied that plants of that variety have no direct use as a consumer product.

Note: A decision under this subsection is reviewable by the AAT under section 77.

20 PBR is personal property

- (1) PBR is personal property and, subject to any conditions imposed under section 49, is capable of assignment, or of transmission by will or by operation of law.
- (2) An assignment of PBR (otherwise than because of the order of a court) does not have effect unless it is in writing signed by, or on behalf of, the assignor and assignee.
- (3) If a grantee of PBR in a plant variety gives another person a licence in that right, the licence binds every successor in title to the interest of that grantee to the same extent as it was binding on that grantee of the PBR.

21 Registrar must be notified of an assignment of PBR

- (1) If a person (the **claimant**) claims that PBR was assigned or transmitted to the claimant, the claimant must inform the Registrar in writing that the claimant has acquired that right, giving particulars of the manner in which that right was acquired, within 30 days after acquiring that right.
- (2) If the Registrar is satisfied that the right has been so assigned or transmitted, the Registrar must amend the Register by entering the name of the claimant as the holder of that right.
- (3) If the Registrar enters the name of the claimant on the Register as the holder of PBR, the Registrar must, within 30 days after entering the name, give written notice to the claimant and to the person who was the holder before the entry was made, stating that the entry has been made.
- (4) If the Registrar is not satisfied that PBR has been assigned or transmitted to the claimant, the Registrar must, as soon as possible:
 - (a) give written notice to the claimant:
 - (i) telling the claimant that the Registrar is not so satisfied; and
 - (ii) setting out the reasons why the Registrar is not so satisfied; and
 - (b) give written notice to the person entered on the Register as the holder of the right:
 - (i) setting out particulars of the information given by the claimant; and
 - (ii) telling the claimant that the Registrar is not so satisfied; and
 - (iii) setting out the reasons why the Registrar is not so satisfied.

- (5) A claimant must include, in the notice to the Registrar informing of the assignment or transmission, an address in Australia for the service of documents in accordance with this Act.

Note: A decision under this section to amend or to refuse to amend the Register is reviewable by the AAT under section 77.

22 Duration of PBR

- (1) Subject to subsections (4) and (5), PBR in a plant variety begins on the day that the grant of PBR in the variety is made.
- (2) Subject to subsections (3), (4) and (5), PBR in a plant variety lasts for:
- (a) in the case of trees and vines—25 years; and
- (b) for any other variety—20 years.
- (3) The regulations may provide that PBR in a plant variety included within a specified taxon lasts for a longer period than is specified in subsection (2).
- (4) PBR in a plant variety that is a dependent plant variety of another plant variety begins on:
- (a) the day that the grant of PBR in the other plant variety is made; or
- (b) the day that dependent variety comes into existence;
- whichever occurs last, and ends when PBR in the other variety ceases.
- (5) If:
- (a) PBR is held in a plant variety (the *initial variety*); and
- (b) another plant variety is declared under section 40 to be an essentially derived variety of the initial variety;

PBR in the initial variety extends to the essentially derived variety from the day on which that declaration is made until the day on which PBR in the initial variety ends.

23 Exhaustion of PBR

- (1) PBR granted in a plant variety does not extend to any act referred to in section 11:
- (a) in relation to propagating material of the variety; or
- (b) in relation to propagating material of any essentially derived variety or dependent plant variety;

that takes place after the propagating material has been sold by the grantee or with the grantee's consent unless that act:

- (c) involves further production or reproduction of the material; or
- (d) involves the export of the material:
- (i) to a country that does not provide PBR in relation to the variety; and
- (ii) for a purpose other than final consumption.

- (2) If:
- (a) a plant variety is declared to be an essentially derived variety of another plant variety (the *initial variety*); and
- (b) PBR in the essentially derived variety is held both by the grantee of PBR in the essentially derived variety and by the grantee of PBR in the initial variety;

the reference in subsection (1) to propagating material sold by the grantee or with the grantee's consent is a reference to propagating material sold by, or with the consent of, both of the grantees referred to in paragraph(b).

Part 3—Application for plant breeder's right

Division 1—The making of the application

24 Right to apply for PBR

- (1) A breeder of a plant variety may make application to the Secretary for the grant of a PBR in the variety.
- (2) The breeder can make the application whether or not:
- (a) the breeder is an Australian citizen; and
- (b) the breeder is resident in Australia; and
- (c) the variety was bred in Australia.
- (3) Subject to subsection (4), if 2 or more persons bred a plant variety jointly, those persons or some of them may make a joint application for that right.
- (4) If 2 or more persons bred a plant variety jointly, one of those persons is not entitled to apply for PBR in the variety otherwise than jointly with, or with the consent in writing of, each other of those persons.

25 Right to apply for PBR is personal property

- (1) The right of a breeder of a plant variety to apply for PBR is personal property and is capable of assignment and of transmission by will or by operation of law.
- (2) An assignment of a right to apply for PBR must be in writing signed by or on behalf of the assignor.

26 Form of application for PBR

- (1) An application for PBR in a plant variety must:

- (a) be in writing; and
- (b) be in an approved form; and
- (c) be lodged in a manner set out in the approved form.
- (2) The application must contain:
- (a) the name and address of the applicant; and
- (b) if the applicant is using an agent to make the application on the applicant's behalf—the name and address of the agent; and
- (c) if the applicant is the breeder of the variety—a statement of that effect; and
- (d) if the applicant is not the breeder of the variety—the name and address of the breeder and particulars of the assignment, or transmission by will or by operation of law, of the right to make the application; and
- (e) a brief description, or a brief description and photograph, of a plant of the variety sufficient to establish a *prima facie* case that the variety is distinct from other varieties of common knowledge; and
- (f) the name of the variety, having regard to the requirements of section 27, and any proposed synonym for that name; and
- (g) particulars of the location at which, and the manner by which, the variety was bred including, in respect of each variety used in the breeding program:
- (i) particulars of the names (including synonyms) by which that variety is known and sold in Australia); and
- (ii) particulars of any PBR granted in Australia or in a contracting party other than Australia; and
- (h) particulars of any application for, or grant of, rights of any kind in the variety in any other country; and
- (i) the name of an approved person who:
- (i) will verify the particulars in the application; and
- (ii) will supervise any test growing or further test growing of the variety required under section 37; and
- (iii) will verify a detailed description of the variety when such a description is supplied to the Secretary;
- (j) such other particulars (if any) as are required by the approved form.
- (3) If an applicant is resident overseas, the applicant must, unless the applicant has appointed an agent resident in Australia to act on the applicant's behalf in the application, specify, in addition to any address overseas, a postal address in Australia for the service of notices on the applicant.
- (4) An applicant must, before, or at the time of, lodging an application under this section, pay to the Commonwealth such application fee (if any) as is prescribed.

27 Names of new plant varieties

- (1) If PBR has not been granted in another contracting party in a plant variety before an application for that right in that variety is made in Australia, the name set out in the application must comply with subsections (4), (5), (6) and (7).
- (2) If, before making an application in Australia for PBR in a plant variety, PBR has been granted in that variety in another contracting party:
- (a) the name of the variety set out in the Australian application must be the name under which PBR was first granted in another contracting party; but
- (b) there may, and, if the name referred to in paragraph (a) does not comply with subsections (4), (5), (6) and (7) there must, also be included in the application a synonym, additional to the name of the variety, by which the variety will also be known and sold in Australia.
- (3) The synonym must be a name determined in accordance with subsections (4), (5), (6) and (7) as if the variety had not been the subject of a grant of PBR in another contracting party.
- (4) A name under subsection (1), or a synonym under subsection (3), in respect of a plant variety, must be a word or words (whether invented or not) with or without the addition of either or both of the following:
- (a) a letter or letters that do not constitute a word;
- (b) a figure or figures.
- (5) A name under subsection (1), or a synonym under subsection (3), in respect of a plant variety must not:
- (a) be likely to deceive or cause confusion, including confusion with the name of another plant variety of the same plant class; or
- (b) be contrary to law; or
- (c) contain scandalous or offensive matter; or
- (d) be prohibited by regulations in force at the time of the application; or
- (e) be or include a trade mark that is registered, or whose registration is being sought, under the *Trade Marks Act 1955*, in respect of live plants, plant cells and plant tissues.

- (6) A name under subsection (1), or a synonym under subsection (3), in respect of a plant variety must comply with the International Code of Botanical Nomenclature and subsidiary codes.
- (7) A name under subsection (1), or a synonym under subsection (3), in respect of a plant variety must not consist of, or include:
- (a) the name of a natural person living at the time of the application unless the person has given written consent to the name of the variety; or
 - (b) the name of a natural person who died within the period of 10 years before the application unless the legal personal representative of the person has given written consent to the name of the variety; or
 - (c) the name of a corporation or other organisation, unless the corporation or other organisation has given its written consent to the name of the variety.

28 Applications to be given priority dates

- (1) The Secretary must ensure that each application for PBR is given a priority date.
- (2) The priority date is, unless section 29 applies in relation to the application, the date on which the application was lodged with the Secretary.
- (3) If 2 or more applications are made for PBR in the same plant variety, the Secretary must first consider the application having the earlier priority date.

29 Priority dates arising from foreign application

- (1) A person who lodges an application (the *foreign application*) for PBR in a plant variety in a contracting party other than Australia may, in accordance with this section, claim the date of that foreign application as the priority date for the purposes of a subsequent application in Australia for those rights in that variety.
- (2) If:
 - (a) during that period of 12 months after the date of the foreign application, the person lodges an application in Australia (the *local application*) for PBR in the variety; and
 - (b) the person accompanies the local application with a claim to have the date of the foreign application treated as the priority date for the purposes of the local application;

the person is, if the local application is accepted and subject to subsections (3) and (4), entitled to have the date referred to in paragraph (b) treated as the priority date for the purposes of the local application.

- (3) The entitlement of the person to the priority date referred to in subsection (2) is conditional on the person lodging with the Secretary, within 3 months of making the local

application, a copy of the documents that constituted the foreign application, certified by the Authority that received the foreign application to be a true copy of the documents.

- (4) The entitlement of the person to the priority date referred to in subsection (2) is conditional on the person providing to the Secretary, within a period of 3 years after the making of the foreign application, such further particulars in relation to the plant variety as are required to complete the consideration of the local application.

30 Acceptance or rejection of applications

- (1) The Secretary must, as soon as practicable after an application for PBR is lodged in a plant variety, decide whether to accept or reject the application.
- (2) If the Secretary is satisfied that:
 - (a) no other application has, or, if the application were to meet the requirements of paragraphs (b) and (c), would have, an earlier priority date in the variety; and
 - (b) the application complies with the requirements of section 26; and
 - (c) the application establishes a *prima facie* case for treating the plant variety as distinct from other varieties;

the Secretary must accept the application.

- (3) If the Secretary is not satisfied of all of the matters referred to in subsection (2), the Secretary must reject the application.
- (4) If the Secretary decides to accept the application, the Secretary must:
 - (a) give written notice to the applicant telling the applicant that the application has been accepted; and
 - (b) as soon as possible after notifying the applicant—give public notice of the acceptance of the application.
- (5) If the Secretary decides to reject an application, the Secretary must:
 - (a) give written notice to the applicant telling the applicant of the rejection and setting out the reasons for the rejection; and
 - (b) as soon as possible after notifying the application—give public notice of the rejection of the application.

Note: A decision under this section to accept or reject an application is reviewable by the AAT under section 77.

31 Requests for variation of application

- (1) If:

- (a) after an application for PBR in a plant variety has been accepted; but
- (b) before concluding the examination of that application (including the subsequent detailed description of that variety) and of any objection to the application;

the right of the applicant to apply for PBR in a particular plant variety is assigned to, or has been transmitted by will or operation of law to, another person, that other person may request the Secretary, in writing, to vary the application so that that other person is shown as the applicant.

- (2) If the Secretary is satisfied that the right to apply for PBR in a particular plant variety has been assigned to, or has been transmitted by will or operation of law to, a particular person, the Secretary must vary the application so that that person is shown as the applicant.
- (3) A request by a person under subsection (1) must give an address in Australia for the service of notices on the person for the purposes of this Act.
- (4) If the Secretary complies with a request under subsection (1) and the address for the service of notices that is given in connection with that request is different from the address contained in the application as the address for service of documents on the applicant, the Secretary must vary the application so that the address so given is shown as the address for service of documents on the applicant.
- (5) If:
 - (a) after an application for PBR in a plant variety has been accepted; but
 - (b) before concluding the examination of that application (including the subsequent detailed description of that variety) and of any objection to the application;

the applicant requests the Secretary, in writing, to vary the application in any other respect other than that referred to in subsection (1), the Secretary may, in his or her discretion, vary the application in accordance with the request.

- (6) Despite the previous provisions of this section, the Secretary is not obliged or permitted to vary an application in response to a request under this section unless the person making the application for the variation has paid to the Commonwealth the application variation fee that is prescribed for the purposes of this section.

Note: A decision under this section to vary or to refuse to vary an application is reviewable by the AAT under section 77.

32 Notification of decisions on requests to vary application

- (1) If the Secretary varies an application in accordance with a request under subsection 31(1) or (5), the Secretary

must, as soon as practicable, give written notice to the person making the request telling the person that the application has been so varied.

- (2) If the Secretary rejects a request under subsection 31(1) or (5), the Secretary must, as soon as practicable, give written notice to the person making the request:
 - (a) telling the person that the request has been rejected; and
 - (b) setting out the reasons for the rejection.
- (3) If the Secretary rejects a request under subsection 31(1), the Secretary must, as soon as practicable, also give written notice to the applicant:
 - (a) setting out particulars of the request; and
 - (b) telling the applicant that the request has been rejected; and
 - (c) setting out the reasons for the rejection.
- (4) If the Secretary varies an application in accordance with a request under subsection 31(1), the Secretary must, as soon as practicable, also give written notice of particulars of the variation to the person who was the applicant before the variation was made.
- (5) If an application:
 - (a) is varied because of a request under subsection 31(1); or
 - (b) is varied because of a request under subsection 31(5) in a significant respect;

the Secretary must, as soon as practicable, give public notice of particulars of the variation.

33 Withdrawal of application

- (1) An application may be withdrawn by the applicant at any time.
- (2) If an application is withdrawn after public notice of acceptance of the application is given, the Secretary must, as soon as practicable, give public notice of the withdrawal.

Division 2—Dealing with the application after its acceptance

34 Detailed description in support of application to be given to Secretary

- (1) As soon as practicable after, but not later than 12 months after, an application has been accepted, or within such further period as the Secretary allows for the purpose, the applicant must, if the applicant has not already done so, give the Secretary a detailed description of the plant variety to which the application relates.

Note: A decision under this subsection to refuse to extend the 12 months period is reviewable by the AAT under section 77.

- (2) If the applicant fails to give the Secretary the detailed description required under this section within the required period, the application is taken to have been withdrawn.
- (3) The detailed description must:
 - (a) be in writing; and
 - (b) be in an approved form; and
 - (c) be lodged with the Secretary in a manner set out in the approved form.
- (4) The detailed description must contain:
 - (a) particulars of the characteristics that distinguish the variety from other plant varieties the existence of which is a matter of common knowledge; and
 - (b) particulars of:
 - (i) any test growing carried out, including a test growing carried out as required under section 37, to establish that the variety is distinct, uniform and stable; and
 - (ii) any test growing carried out as required under section 41; and
 - (c) if the variety was bred outside Australia—particulars of any test growing outside Australia that tend to establish that the variety will, if grown in Australia, be distinct, uniform and stable; and
 - (d) such other particulars (if any) as are required by the approved form;

and must be accompanied by a certificate, in the approved form, verifying the particulars of the detailed description, completed by the approved person nominated in the application as the approved person in relation to that application.

- (5) The Secretary must, as soon as practicable after receiving a detailed description of a plant variety to which an application for PBR relates, give public notice of that description.
- (6) The applicant must:
 - (a) unless paragraph (b) applies within 12 months after the application has been accepted; and
 - (b) if the detailed description has been given to the Secretary before the end of that period at the time when the description was given;

pay to the Commonwealth such examination fee as is prescribed.

35 Objection to application for PBR

- (1) Any person who considers, in relation to an application for PBR in a plant variety that has been accepted:
 - (a) that his or her commercial interests would be affected by the grant of that PBR to the applicant; and
 - (b) that the Secretary cannot be satisfied, in relation to that application, of a matter referred to in a paragraph of subsection 26(2) or in subparagraph 44(1)(b)(i), (ii), (iii), (iv), (v), (vi), (vii) or (viii);

may lodge a written objection to the grant of PBR with the Secretary at any time after the giving of that public notice of acceptance of the application and before the end of the period of 6 months starting with the public notice of that detailed description.
- (2) An objection must set out:
 - (a) particulars of the manner in which the person considers his or her commercial interests would be affected; and
 - (b) the reasons why the person considers that the Secretary cannot be satisfied of a matter referred to in paragraph (1)(b).
- (2A) An objection is of no effect unless it is accompanied by the prescribed fee.
- (3) The Registrar must give a copy of the objection to the applicant.

36 Inspection of applications and objections

- (1) A person may, at any reasonable time, inspect an application for PBR in a plant variety (including any detailed description of the plant variety given in support of the application) or an objection lodged in respect of that application (including that detailed description).
- (2) A person is entitled, on payment of such fee as is prescribed, to be given a copy of an application for PBR in a plant variety, of an objection to such an application, or of a detailed description of the plant variety.

37 Test growing of plant varieties

- (1) If, in dealing with:
 - (a) an application for PBR that has been accepted; or
 - (b) an objection to such an application for PBR; or
 - (c) a request for revocation of PBR;

the Secretary decides that there should be a test growing or a further test growing of the variety to which the application, objection or request relates, the Secretary must give written notice of that decision:

- (d) to the person who made the application, objection or request; and
- (e) in the case of an objection to an application for PBR—also to the applicant; and
- (f) in the case of a request for revocation of PBR—also to the grantee.

Note: A decision under this subsection to require a test growing is reviewable by the AAT under section 77.

- (2) The notice, in addition to telling the person of the Secretary's decision:

- (a) must specify the purpose of the test growing; and
- (b) may require the person:
 - (i) to supply the Secretary with sufficient plants or sufficient propagating material of plants of the variety, and with any necessary information, to enable the Secretary to arrange a test growing; or
 - (ii) to make arrangements for an approved person to supervise the test growing, to supply the approved person with sufficient plants or propagating material to enable the test growing, to give the Secretary a copy of the records of observations made during the test growing and to certify the records of observations so provided;

whichever the Secretary considers appropriate.

- (3) If a notice under this section contains the requirement referred to in subparagraph (2)(b)(i) and the applicant complies with the request, the Secretary must arrange to have the variety concerned test grown.
- (4) After completion of a test growing arranged by the Secretary, any propagating material of the variety used in, or resulting from, the test growing, that is capable of being transported must be delivered to the person by whom propagating material of that variety was supplied for the purposes of the test growing.
- (5) All of the costs associated with a test growing must be paid:
 - (a) if it is conducted to deal with an application for PBR—by the applicant for PBR; or
 - (b) if it is conducted to deal with an objection to an application for PBR—by the objector; or
 - (c) if it is conducted to deal with a request for revocation of PBR:
 - (i) by the person making the request, where the test growing shows that there are no valid reasons for the revocation; or

- (ii) by the grantee where the test growing shows that there are valid reasons for the revocation.

- (6) If a contracting party, or a national or an organisation of a contracting party, requests the Secretary to conduct in Australia a test growing of a plant variety, the Secretary may decide to conduct the test growing as so requested.
- (7) If the Secretary decides to conduct a test growing under subsection (6), subsections (1), (2), (3), (4) and (5) apply to such test growing as if:
 - (a) the person or organisation requesting the test growing under subsection (6) was an applicant for PBR; and
 - (b) the test growing had been decided on in relation to that application.

38 Characteristics of plant varieties bred or test grown outside Australia

- (1) If:
 - (a) a plant variety (the *subject variety*):
 - (i) was bred outside Australia; or
 - (ii) was bred in Australia but, before an application for PBR was made in Australia, an application for PBR was made in a contracting party other than Australia; and
 - (b) an application under this Act for PBR in the variety has been accepted;

the variety is not to be taken to have a particular characteristic unless subsection (2), (3), (4) or (5) applies to the variety.
- (2) This subsection applies to the subject variety if a test growing in Australia has demonstrated that the variety has the particular characteristic.
- (3) This subsection applies to the subject variety if:
 - (a) a test growing of the variety has been carried out outside Australia; and
 - (b) that test growing has demonstrated that the variety has the particular characteristic; and
 - (c) under an agreement between Australia and the country in which the test growing was carried out, Australia is required to accept that the variety has that particular characteristic.
- (4) This subsection applies to the subject variety if the Secretary is satisfied that:
 - (a) a test growing of the variety carried out outside Australia has demonstrated that the variety has the particular characteristic; and

- (b) that test growing of the variety is equivalent to a test growing of the variety in Australia.
- (5) This subsection applies to the subject variety if the Secretary is satisfied that:
- (a) a test growing of the variety carried out outside Australia has demonstrated that the variety has the particular characteristic; and
- (b) any test growing of the variety carried out in Australia would probably demonstrate that the variety has that characteristic; and
- (c) if a test growing of the variety in Australia sufficient to demonstrate whether the variety has that characteristic were to be carried out, it would take longer than 2 years.

Note: A decision to the effect that the Secretary is, or is not, satisfied of the matters referred to in subsection (4) or (5) is reviewable by the AAT under section 77.

Division 3—Provisional protection

39 Provisional protection

- (1) When an application for PBR in a plant variety is accepted, the applicant is taken to be the grantee of that right for the purposes of Part 5 from the day the application is accepted until:
- (a) the application is disposed of; or
- (b) if the Secretary gives the applicant a notice under subsection (2)—the notice is disposed of;
- whichever occurs first.
- (2) If the Secretary is satisfied in relation to an application for PBR in a plant variety, that:
- (a) PBR will not be granted or is unlikely to be granted to the applicant; or
- (b) the applicant has given an undertaking to a person (whether or not for consideration) not to commence proceedings for infringement of the right of which the applicant is deemed to be the grantee;

the Secretary may notify the applicant, in writing, that this section will cease to apply to that variety on a day specified in the notice unless, before that time the applicant has made a submission to the Secretary providing reasons why this section should not cease to apply.

Note: A decision under this subsection to notify an applicant is reviewable by the AAT under section 77.

- (3) For the purposes of paragraph (1)(b) a notice referred to in that paragraph is not taken to be disposed of until:
- (a) the end of the period within which application may be made to the AAT for a review of the giving of the notice; or

- (b) if such an application is made to the AAT—the application is withdrawn or finally determined, whether by the AAT or a court.
- (4) As soon as practicable after a person ceases to be taken to be the grantee of PBR under this section, the Secretary must give public notice that the person has ceased to be so taken.
- (5) Nothing in this section affects the powers of the Federal Court under subsection 44A(2) of the AAT Act where an appeal is begun in that Court from a decision of the AAT.
- (6) A person who is taken to be the grantee of PBR in a plant variety is not entitled to begin an action or proceeding for an infringement of that right occurring during the period when the person is so taken unless and until that right is finally granted to the person under section 44.

Division 4—Essential derivation

40 Applications for declarations of essential derivation

- (1) If:
- (a) a person is the grantee of PBR in a particular plant variety—the *initial variety*); and
- (b) another person is the grantee of, or has applied for, PBR in another plant variety (the *second variety*); and
- (c) the grantee of PBR in the initial variety is satisfied that the second variety is, within the meaning of section 4, an essentially derived variety of the initial variety; and
- (d) the initial variety has not itself been declared to be an essentially derived variety of another variety in which PBR has been granted;
- the grantee of PBR in the initial variety may make written application to the Secretary for a declaration that the second variety is so derived.
- (2) Nothing in this section implies that a person who is the grantee of PBR in the initial variety may not, in relation to an application by another person for PBR in the second variety that has been accepted but not finally determined:
- (a) make an objection, under section 35, to the granting of PBR in the second variety; and
- (b) in the alternative, if PBR is granted to another person in the second variety—apply under subsection (1) for a declaration that the second variety is essentially derived from the initial variety.
- (3) If the second variety:
- (a) is the subject of an application for PBR; and

- (b) is also the subject of an application for a declaration of essential derivation;
- then, unless and until the Secretary decides to grant the application for PBR:
- (c) the Secretary must not make the declaration of essential derivation; but
- (d) the Secretary may, in his or her discretion:
- (i) examine both the application for PBR and the application for a declaration of essential derivation at the same time; and
- (ii) for the purpose only of examining the application for a declaration of essential derivation—treat the applicant for PBR as the grantee of PBR in the variety.
- (4) An application for a declaration of essential derivation must:
- (a) be in writing; and
- (b) be in an approved form; and
- (c) be lodged with the Secretary in a manner set out in the approved form; and
- (d) be accompanied by the prescribed fee in respect of the application.
- (5) An application must contain such information relevant to establishing a *prima facie* case that the second variety is an essentially derived variety of the initial variety as is required by the form.
- (6) If the initial variety has itself been declared to be essentially derived from another variety, the Secretary must refuse to declare the second variety essentially derived from:
- (a) the initial variety; and
- (b) inform the applicant for the declaration in writing, to that effect, and give the applicant reasons for the decision.
- (7) If the initial variety has not been so declared, the Secretary must determine, on the basis of the application, whether the Secretary is satisfied that there is a *prima facie* case that the second variety is an essentially derived variety of the initial variety.
- (8) If the Secretary is satisfied of that *prima facie* case, the Secretary must:
- (a) inform the applicant and the grantee of PBR in the second variety that the Secretary is so satisfied; and
- (b) inform the grantee of PBR in the second variety that, unless the grantee establishes, within 30 days after being so informed or such longer period as the Secretary allows, that the second variety is not an essentially derived variety of the initial variety, the Secretary will, at the end of that period, declare the second variety to be such an essentially derived variety.
- Note: A decision under this subsection to refuse to extend the period of 30 days is reviewable by the AAT under section 77.
- (9) If the Secretary is not satisfied of that *prima facie* case, the Secretary must inform the applicant, in writing, to that effect, and give the applicant reasons for the decision.
- (10) If, after considering:
- (a) the information presented by the grantee of PBR in the second variety; and
- (b) any information obtained from a test growing conducted in accordance with section 41; and
- (c) any other relevant information obtained by the Secretary;
- the Secretary is not satisfied that the grantee of PBR in the second variety has rebutted the *prima facie* case, the Secretary must:
- (d) declare, in writing, that the second variety is an essentially derived variety of the initial variety; and
- (e) by notice in writing given to the grantee of PBR in the initial variety, tell that grantee of the declaration; and
- (f) by notice in writing given to the grantee of PBR in the second variety, tell that grantee of the declaration and set out the reasons for not being satisfied that the *prima facie* case has been rebutted.
- (11) If, after considering the information referred to in paragraph (10)(a), (b) or (c), the Secretary is satisfied that the grantee of PBR in the second variety has rebutted the *prima facie* case, the Secretary must:
- (a) by notice in writing given to the grantee of PBR in the initial variety, tell that grantee that he or she is so satisfied and set out the reasons for being so satisfied; and
- (b) by notice in writing given to the grantee of PBR in the second variety, tell that grantee that he or she is so satisfied.
- (12) While a declaration that the second variety is essentially derived from the initial variety remains in force, section 19 applies in relation to the second variety as if:
- (a) the references in that section to the grantee, in relation to that variety were references both to the person holding PBR in that variety and to the person holding PBR in the initial variety; and

- holding PBR in the initial variety; and
- (b) the reference in subsection 19(4) to 2 years after the grant of PBR were a reference to 2 years after the grant of PBR in the second variety whether or not the declaration of essential derivation was made at the same time or a later time; and
- (c) a failure by the other person holding PBR in the initial variety or the person holding PBR in the second variety to co-operate in making the second variety available to the public in accordance with the requirements of subsection 19(1) was a failure of the grantee to comply with the requirements of that subsection.

Note: A decision under this section to declare, or not to declare, a plant variety essentially derived is reviewable by the AAT under section 77.

41 Test growing associated with applications for declarations of essential derivation

- (1) If:
- (a) the grantee of PBR in a plant variety (the *initial variety*) applies for a declaration that another variety (the *second variety*) is an essentially derived variety of the initial variety; and
- (b) in the course of that application the grantee of PBR in the initial variety establishes a *prima facie* case that the second variety is essentially derived; and
- (c) on the basis of information supplied by the grantees of PBR in the initial variety and in the second variety, the Secretary comes to the view that a test growing or further test growing is necessary to determine whether the *prima facie* case has been rebutted;

the Secretary must give notice of that decision both to the grantee of PBR in the initial variety and in the second variety.

Note: A decision under this subsection to require a test growing is reviewable by the AAT under section 77.

- (2) The notice must require:
- (a) the grantee of PBR in the initial variety to supply the Secretary with sufficient plants or sufficient propagating material of plants of that variety and with any necessary information; and
- (b) the grantee of PBR in the second variety to supply the Secretary with sufficient plants or sufficient propagating material of plants of that second variety and with any necessary information;
- to enable the Secretary to arrange a test growing.
- (3) After completion of the test growing, any propagating material of a variety used in, or resulting from, the test growing that is capable of being transported must be delivered to the person by whom propagating material of that variety was supplied for the purpose of the test grow-

ing.

- (4) All costs associated with the test growing must be paid by the person who, without the test growing, failed to rebut the *prima facie* case of essential derivation, whether or not the test growing led to rebuttal of that case.
- (5) If the Secretary requires a test growing or further test growing, subsection 40(8) has effect as if the reference in that subsection to 30 days after being so informed were a reference to 30 days after being informed of the results of the test growing.

Part 4—The grant and revocation of Plant Breeder's Right

Division 1—Grant of Plant Breeder's Right

42 PBR not to be granted in excluded varieties

- (1) PBR must not be granted in any variety of plant in a taxon that the regulations declare to be a taxon to which this Act does not apply.
- (2) The Governor-General must not make a regulation for the purposes of subsection (1) unless the Governor-General has been informed by the Minister that the Minister has considered advice given by the Advisory Committee in relation to the desirability of making the regulation.
- (3) If:
- (a) a plant variety is a hybrid; and
- (b) each of the plant varieties from which it is derived is a plant variety included in a taxon to which this Act does not apply;

PBR must not be granted in the hybrid.

43 Registrable plant varieties

- (1) For the purposes of this Act, a plant variety in which an application for PBR is made is registrable if:
- (a) the variety has a breeder; and
- (b) the variety is distinct; and
- (c) the variety is uniform; and
- (d) the variety is stable; and
- (e) the variety has not been exploited or has been only recently exploited.
- (2) For the purposes of this section, a plant variety is distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge.
- (3) For the purposes of this section, a plant variety is uniform if, subject to the variation that may be expected from the particular features of its propagation, it is uniform in its relevant characteristics on propagation.

- (4) For the purposes of this section, a plant variety is stable if its relevant characteristics remain unchanged after repeated propagation.
- (5) For the purposes of this section, a plant variety is taken not to have been exploited if, at the date of lodging the application for PBR in the variety, propagating or harvested material of the variety has not been sold to another person by, or with the consent of, the breeder.
- (6) For the purposes of this section, a plant variety is taken to have been only recently exploited if, at the date of lodging the application for PBR in the variety, propagating or harvested material of the variety has not been sold to another person by, or with the consent of, the breeder, either:
- (a) in Australia—more than one year before that date; or
- (b) in the territory of another contracting party:
- (i) in the case of trees or vines more than 6 years before that date; or
- (ii) in any other case more than 4 years before that date.
- (7) Subsection (6) does not apply to a sale by the breeder of a plant variety of propagating or harvested material of the variety to another person if that sale is a part of, or related to, another transaction under which the right of the breeder to make application for PBR in that plant variety is sold to that other person.
- (8) In addition to any other reason for treating a plant variety as a variety of common knowledge, a variety is to be treated as a variety of common knowledge if:
- (a) an application for PBR in the variety has been lodged in a contracting party; and
- (b) the application is not subsequently refused.
- (9) A plant variety that is to be treated as a variety of common knowledge under subsection (8) because of an application for PBR in the variety is to be so treated from the time of the application.
- (iii) the applicant is entitled to make the application; and
- (iv) the grant of that right is not prohibited by this Act; and
- (v) that right has not been granted to another person; and
- (vi) the name of the variety complies with section 27; and
- (vii) propagating material of that variety has been deposited for storage, at the expense of the applicant, in a genetic resource centre approved by the Secretary; and
- (viii) if the Secretary so requires, a satisfactory specimen plant of the variety has been supplied to the herbarium; and
- (ix) all fees payable under this Act in respect of the application, examination and grant have been paid;
- the Secretary must grant that right to the applicant.
- (2) If:
- (a) an application for PBR in a plant variety is accepted; and
- (b) the plant variety is a variety of a species indigenous to Australia;
- the Secretary must require supply of a satisfactory specimen plant of the variety to the herbarium
- (3) If:
- (a) an application for PBR in a plant variety is accepted; and
- (b) the Secretary is not satisfied of all of the matters referred to in paragraph (1)(b);
- the Secretary must refuse to grant that right to the applicant.

44 Grant of PBR

- (1) If:
- (a) an application for PBR in a plant variety is accepted; and
- (b) after examining the application (including the subsequent detailed description) and any objection to the application, the Secretary is, or continues to be, satisfied that:
- (i) there is such a variety; and
- (ii) the variety is a registrable plant variety within the meaning of section 43; and
- (4) The Secretary must not grant or refuse to grant PBR in a plant variety until at least 6 months after the giving of public notice of the detailed description of the variety.
- (5) If:
- (a) an application for PBR in a plant variety has been varied under section 31; and
- (b) the variation relates to the detailed description of the variety that has been given to the Secretary; and
- (c) the Secretary has given public notice of the variation;

the Secretary must not grant, or refuse to grant, PBR in the variety until 6 months after giving public notice of the variation or of the last such variation.

- (6) If an objection to an application for PBR is made under section 35, the Secretary must give the applicant 30 days, starting when a copy of the objection is given to the applicant, or such longer period as the Secretary considers to be reasonable in the circumstances, to provide an answer to the objection.
- (7) A quantity of propagating material of a plant variety that is lodged with a genetic resource centre must be sufficient to enable that variety to be kept in existence if there were no other propagating material of plants of that variety.
- (8) The delivery and storage of propagating material of a plant variety does not affect the ownership of the material but the material must not be dealt with otherwise than for the purposes of this Act.
- (9) The propagating material of a plant stored at a genetic resource centre may be used by the Secretary for the purposes of this Act, including the purposes of section 19.
- (10) PBR is granted to a person by the issue to that person by the Secretary of a certificate in an approved form, signed by the Secretary or the Registrar, containing such particulars of the plant variety concerned as the Secretary considers appropriate.
- (11) If the PBR is granted to persons who make a joint application for the right, the right is to be granted to those persons jointly.
- (12) If the Secretary refuses to grant PBR in a plant variety, the Secretary must, within 30 days of so refusing, give written notice to the applicant:
 - (a) telling the applicant of the refusal; and
 - (b) setting out the reasons for the refusal.

Note: A decision under this section to grant, or refuse to grant, PBR in a plant variety is reviewable by the AAT under section 77.

45 Grant of PBR to be exclusive

- (1) Subject to subsections (2) and (3), only one grant of PBR may be made under this Act in relation to a plant variety.
- (2) If 2 breeders lodge a joint application for PBR, the Registrar may grant PBR to them jointly.
- (3) If:
 - (a) a person is the grantee of PBR in a plant variety (the *initial variety*); and
 - (b) another person is the grantee of PBR in another plant variety; and

- (c) the Secretary declares the other variety to be an essentially derived variety of the initial variety;

subsection (1) does not prevent PBR in the initial variety extending to the other variety.

46 Grant of PBR to be entered on Register

- (1) When the Secretary grants PBR in a plant variety, the Registrar must enter in the Register:
 - (a) a description, or description and photograph, of a plant of that variety; and
 - (b) the name of the variety and any proposed synonym; and
 - (c) the name of the grantee; and
 - (d) the name and address of the breeder; and
 - (e) the address for the service of documents on the grantee for the purposes of this Act as shown on the application for the right; and
 - (f) the day on which the right is granted; and
 - (g) such other particulars relating to the granting as the Registrar considers appropriate.
- (2) When the Secretary makes a declaration that a variety (the *derived variety*) is essentially derived from another variety (the *initial variety*), the Registrar must enter in the Register both in respect of the derived variety and the initial variety:
 - (a) the fact that the declaration has been made; and
 - (b) the day on which the declaration was made.

47 Notice of grant of PBR

- (1) The Secretary must, as soon as possible after granting PBR to a person, give public notice of the grant in the *Plant Varieties Journal*.
- (2) The Secretary must, as soon as possible after the making of a declaration that a plant variety is an essentially derived variety of another plant variety, give public notice of the making of the declaration in the *Plant Varieties Journal*.

48 Effect of grant of PBR

- (1) If a person is granted PBR in a plant variety:
 - (a) any other person who was entitled to make, but had not made, application for the right in the variety:
 - (i) ceases to be entitled to make such application; and
 - (ii) is not entitled to any interest in the right; and

- (b) any other person who had made application for the right in the variety:
 - (i) ceases to be entitled to have his or her application considered or further considered; and
 - (ii) is not entitled to any interest in the right.
- (2) Subsection (1) does not prevent a person:
 - (a) from applying for a revocation of the rights under section 50; or
 - (b) from instituting proceedings before a court or the AAT in relation to the right; or
 - (c) from requesting the Secretary to make a declaration under section 39 that the plant variety in which the right was granted is essentially derived from another plant variety in which the person holds PBR.
- (3) If:
 - (a) PBR in a particular plant variety is granted to a person; and
 - (b) another person (the *eligible person*) was entitled, at law or equity, to an assignment of the right to make an application for the PBR;

the eligible person is entitled to an assignment of the PBR.

49 PBR may be subject to conditions

- (1) The Minister may, if the Minister thinks it necessary, in the public interest, refer to the Plant Breeder's Rights Advisory Committee the question whether a grant of PBR that the Minister proposes to make, or an existing grant of PBR, should be subject to conditions.
- (2) The Minister may, having regard to the views of the Plant Breeder's Rights Advisory Committee on a matter referred under subsection (1), impose such conditions on PBR that is to be granted or that has been granted as the Minister considers appropriate.
- (3) If the Minister imposes conditions on PBR:
 - (a) the Secretary must give public notice of those conditions and give the grantee a copy of the instrument setting them out; and
 - (b) the Registrar must enter details of those conditions in the Register.

Note: A decision under this section by the Minister to make a grant subject to conditions is reviewable by the AAT under section 77.

Division 2—Revocation of Plant Breeder's Right or declaration of essential derivation

50 Revocation of PBR

- (1) The Secretary must revoke PBR in a plant variety or a declaration that a plant variety is essentially derived from another plant variety if:
 - (a) the Secretary becomes satisfied that facts existed that, if known before the grant of that right or the making of that declaration, would have resulted in the refusal to grant that right or make that declaration; or
 - (b) the grantee has failed to pay a fee payable in respect of that right or of that declaration within 30 days after having been given notice that the fee has become payable.
- (2) The Secretary may revoke PBR in a plant variety if:
 - (a) the Secretary is satisfied that a person to whom that right has been assigned or transmitted has failed to comply with section 21; or
 - (b) the Secretary is satisfied that the grantee has failed to comply with a condition imposed under section 49.
- (3) If the Secretary revokes PBR in a plant variety or a declaration that a plant variety is essentially derived from another plant variety, the Secretary must, within 7 days after the decision to revoke was taken, by notice given to the grantee of the right that has been revoked or of the right that is affected by the giving of the declaration of essential derivation, tell that grantee of the decision and set out the reasons for the revocation.
- (4) The Secretary must not revoke PBR under this section unless:
 - (a) the Secretary has given the grantee, or any person to whom the Secretary believes that right has been assigned or transmitted, particulars of the grounds of the proposed revocation; and
 - (b) the grantee or that other person has had 30 days after being given those particulars to make a written statement to the Secretary in relation to the proposed revocation.
- (5) The Secretary must not under this section, revoke a declaration that a plant variety is essentially derived from another plant variety (the *initial variety*) unless:
 - (a) the Secretary has given the grantee of PBR in the initial variety, or any person to whom the Secretary believes that that PBR has been assigned or transmitted, particulars of the grounds of the proposed revocation of that declaration of essential derivation; and
 - (b) the grantee or that other person has had 30 days after being given those particulars to make a written statement to the Secretary in relation to the proposed revocation.

- (6) The revocation of PBR in a plant variety or of a declaration that a plant variety is essentially derived from another plant variety takes effect:
- (a) if no application for review of the revocation is made to the AAT at the end of the period within which such an application might be made; or
 - (b) if such an application is made at the time when the application is withdrawn, or finally determined, whether by the Tribunal or by a court.
- (7) Nothing in this section affects the power of the Court under subsection 44A(2) of the AAT Act.
- (8) A person whose interests are affected by the grant of PBR in a plant variety may apply to the Secretary, in writing, for the revocation of the right.
- (9) A person whose interests are affected by the making of a declaration that a plant variety is essentially derived from another plant variety may apply to the Secretary, in writing, for a revocation of that declaration.
- (9A) An application under subsection (8) or (9) is of no effect unless it is accompanied by the prescribed fee.
- (10) If the Secretary decides not to revoke PBR in a plant variety in accordance with an application under subsection (8) or not to revoke a declaration of essential derivation in accordance with subsection (9), the Secretary must, within 7 days of making that decision, by notice in writing to the person who applied for the revocation, tell the person of the decision and set out the reasons for the decision.

Note: A decision under this section to revoke, or refuse to revoke, PBR or a declaration of essential derivation is reviewable by the AAT under section 77.

51 Entry of particulars of revocation

- (1) If:
- (a) PBR in a plant variety is revoked in accordance with section 50; or
 - (b) the Secretary is served with a copy of an order of a court given under section 55 revoking that right;
- the Secretary must:
- (c) enter particulars of the revocation in the Register; and
 - (d) give public notice of the revocation.
- (2) If the holder of PBR in a plant variety fails to pay the prescribed annual fee for the renewal of the right by the last day for payment of that fee, the holder is taken to have surrendered the right.
- (3) The Secretary must:
- (a) enter particulars of the surrender in the Register;

and

- (b) give public notice of the surrender.

52 Surrender of PBR

The holder of PBR in a plant variety may, at any time, by written notice to the Secretary, offer to surrender that right.

Part 5—Enforcement of Plant Breeder's Right

53 Infringement of PBR

- (1) Subject to sections 16, 17, 18, 19 and 23, PBR in a plant variety is infringed by:
- (a) a person doing, without, or otherwise than in accordance with, authorisation from the grantee of the right, an act referred to in a paragraph of section 11 in respect of the variety or of a dependent variety; or
 - (b) a person claiming, without, or otherwise than in accordance with, authorisation from the grantee of that right, the right to do an act referred to in a paragraph of section 11 in respect of that variety or of a dependent variety; or
 - (c) a person using a name of the variety that is entered in the Register in relation to:
 - (i) any other plant variety of the same plant class; or
 - (ii) a plant of any other variety of the same plant class.
- (2) If a plant variety (the *derived variety*) has been declared to be an essentially derived variety of another plant variety (the *initial variety*), the reference in paragraphs (1)(a) and (b) to authorisation from the grantee of the right means, in relation to the derived variety, authorisation from both the grantee of PBR in the derived variety and from the grantee of PBR in the initial variety.
- (3) In this section, a reference to the grantee of PBR in a plant variety includes a reference to a person who has, by assignment or transmission, become the holder of that right.

54 Actions for infringement

- (1) An action for infringement of PBR in a plant variety may be begun in the Court.
- (2) A defendant in an action for infringement of PBR in a plant variety may apply, by way of counterclaim, for revocation of that right on the ground that:
- (a) the variety was not a new plant variety; or
 - (b) facts exist that would have resulted in the refusal of the grant of that right if they had been known to the Secretary before the grant of that right.

- (3) If, in an action for infringement of PBR in a plant variety:
- (a) the defendant applies, by way of counterclaim, for the revocation of that right; and
 - (b) the Court is satisfied that a ground for revocation of that right exists;
- the Court may make an order revoking that right.
- (4) If the Court revoked PBR in a plant variety on the counterclaim of a defendant, the Court may order the defendant to serve on the Registrar a copy of the order revoking that right.

55 Declarations as to non-infringement

- (1) A person who proposes to perform an act described in a paragraph of section 11 in relation to the propagating material of a plant variety may, by an action in the Court against the grantee of PBR in a plant variety, apply for a declaration that the performance of that act would not constitute an infringement of that right.
- (2) A person may apply for a declaration whether or not there has been an assertion of an infringement of PBR by the grantee of that right.
- (3) The Court must not make such a declaration unless:
 - (a) the person proposing to perform the act:
 - (i) has applied in writing to the grantee of the PBR concerned for an admission that the proposed performance of the act would not infringe that right; and
 - (ii) has given the grantee full written particulars of the propagating material concerned; and
 - (iii) has undertaken to repay all expenses reasonably incurred by the grantee in obtaining advice in the declaration; and
 - (b) the grantee has refused or failed to make such an admission.
- (4) The costs of all parties in proceedings for a declaration under this section are to be paid by the person seeking the declaration unless the Court otherwise orders.
- (5) The validity of a grant of PBR in a plant variety is not to be called in question in proceedings for a declaration under this section.
- (6) The making of, or the refusal to make, a declaration under this section does not imply that a grant of PBR in a plant variety is, or is not, valid.

56 Jurisdiction of Court

- (1) The Court has jurisdiction with respect to matters in which actions may, under this Part, be begun in the Court.
- (2) That jurisdiction is exclusive of the jurisdiction of all

other courts, other than the jurisdiction of the High Court under section 75 of the Constitution.

- (3) The relief that the Court may grant in an action or proceeding for infringement of PBR includes an injunction (subject to such terms, if any, as the Court thinks fit) and, at the option of the plaintiff, either damages or an account of profits.
- (4) The regulations may make provision in relation to the practice and procedure of the Court in actions under this Act, including provision prescribing the time within which any action may be begun, or any other act or thing may be done, and providing for the extension of any such time.
- (5) Subsection (4) does not limit the power of the Judges of the Court or a majority of them to make rules of Court under section 59 of the *Federal Court of Australia Act 1976* that are consistent with the regulations referred to in that subsection.

57 Innocent infringement

- (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 material of plants of the plant variety, labelled so as to indicate that PBR is held in the variety in Australia, has been sold to a substantial extent before the date of the 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.

Part 6—Administration

58 Registrar of Plant Breeder's Rights

- (1) There is established by this section a Registrar of Plant Breeder's Rights.
- (2) The office of the Registrar of Plant Breeder's Rights is an office in the Department.
- (3) The Registrar has the functions and powers:
 - (a) that are conferred on the Registrar by this Act or by the regulations; or
 - (b) that are delegated to the Registrar by the Secretary under section 59.

59 Delegation

- (1) The Minister may, by signed instrument, delegate to the Registrar, or to an SES employee, or acting SES employee, in the Department, any of the powers or functions of the Minister under this Act.

- (2) The Secretary may, by signed instrument, delegate to the Registrar, or to an SES employee, or acting SES employee, in the Department, any of the powers or functions of the Secretary under this Act.

60 Certain persons not to acquire PBR

- (1) A person must not apply for, or otherwise acquire, except than by will or by operation of law, PBR in a plant variety or an interest in such right if the person has during the 12 months before the application, held, or performed the duties of:
- (a) the office of Secretary; or
 - (b) the office of Registrar of Plant Breeder's Rights; or
 - (c) an office in the Department the duties of which involve providing assistance to the Registrar.

Penalty: 60 penalty units.

- (2) A grant of PBR applied for in contravention of subsection (1) or an acquisition of PBR in contravention of that subsection is void.

61 Register of Plant Varieties

- (1) The Registrar must keep a register, to be known as the Register of Plant Varieties, at a place approved by the Secretary.
- (1A) The Registrar must maintain, for the purposes of this Act, a list of all plant classes to be known as the Registrar's List of Plant Classes.
- (1B) In maintaining that list the Registrar must, for so long as the Union maintains the document presently known as the List of Classes for Variety Denomination Purposes, have regard to that list and to any variations to that list as so maintained.
- (1C) The list maintained by the Registrar must be kept as a part of the Register.
- (2) In order to foster public access to the information contained in the Register, the Registrar may disseminate that information on the Internet or in such other manner as the Registrar considers most likely to enhance its accessibility.

62 Inspection of Register

- (1) A person may inspect the Register at any reasonable time.
- (2) A person is entitled, on payment of such fee (if any) as is prescribed, to be given a copy of an entry in the Register.
- (3) For the purposes of subsection (2), a reference to an entry in the Register does not include a reference to the Registrar's List of Plant Classes or to any part of that list.

Part 7—Plant Breeder's Rights Advisory Committee

63 Establishment of Advisory Committee

- (1) There is established by this section a Committee by the name of the Plant Breeder's Rights Advisory Committee.
- (2) The functions of the Advisory Committee are:
- (a) at the request of the Minister, to advise the Minister on the desirability of declaring:
 - (i) in regulations made for the purpose of subsection 17(2)—that subsection 17(1) does not apply to a particular taxon; or
 - (ii) in regulations made for the purpose of subsection 22(3)—that the duration of PBR in a particular taxon will be longer than provided in subsection 22(2); or
 - (iii) in regulations made for the purpose of subsection 42(1)—that a particular taxon is a taxon to which this Act does not apply; and
 - (b) to advise the Registrar on such technical matters arising under this Act, and such other matters relating to the administration of this Act, as the Registrar refers to the Advisory Committee.

64 Membership of Advisory Committee

- (1) The Advisory Committee consists of:
- (a) the Registrar; and
 - (b) 2 members who, in the opinion of the Minister, are appropriate persons to represent breeders, and likely breeders, of new plant varieties; and
 - (c) one member who, in the opinion of the Minister, is an appropriate person to represent users, and likely users, of new plant varieties; and
 - (d) one member who, in the opinion of the Minister, is an appropriate person to represent the interests of consumers, and likely consumers, of new plant varieties or of the products of new plant varieties; and
 - (e) 2 other members who, in the opinion of the Minister, possess qualifications or experience that are appropriate for a member of the Advisory Committee.
- (2) The members, other than the Registrar, must be appointed by the Minister.
- (3) The members, other than the Registrar, hold office as part-time members.
- (4) Each member, other than the Registrar, holds office for the period, not exceeding 2 years, that is specified in the instrument of appointment, but is eligible for re-appointment.

- (5) The Minister may terminate the appointment of a member, other than the Registrar, for misbehaviour or for physical or mental incapacity.
- (6) The Minister must terminate the appointment of a member, other than the Registrar, if the member:
 - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - (b) fails, without reasonable excuse, to disclose any interest in a matter required to be disclosed under section 66.
- (7) If a person's appointment as a member is terminated under subsection (6), the Minister must give the person a written notice informing the person of the termination and setting out the reasons for the termination.
- (8) A member, other than the Registrar, may resign his or her office by writing signed by the member and delivered to the Minister.
- (3) The Registrar presides at a meeting of the Advisory Committee at which the Registrar is present.
- (4) If the Registrar is not present, the members present must elect one of their number to preside at the meeting.
- (5) Subject to subsection (2), the Advisory Committee may determine the procedure to be followed at a meeting of the Committee.

Part 8—Miscellaneous

68 Public notices

- (1) The Secretary must issue a journal, to be called the *Plant Varieties Journal*, at least 4 times each year.
- (2) Any public notice that the Secretary is required to make under this Act must be published in the Journal.
- (3) Public notice of any matter additional to the matters referred to in subsection (2) that the Secretary considers it necessary or desirable to publicise may also be published in the Journal.
- (4) If the Secretary considers it desirable to give additional public notice of matters by publishing notices of those matters in a periodical other than the Journal, the Secretary may arrange for, or consent to, the giving of additional public notice of those matters in the periodical.

69 Notices inviting submissions in respect of certain regulations

- (1) Regulations must not be made for the purposes of subsection 17(2), 22(3) or 42(1) unless, before the making of the regulations and before the Minister seeks any advice from the Advisory Committee concerning those regulations:
 - (a) the Minister has, in accordance with section 68, given public notice of the Minister's intention to make a regulation for the purposes of that subsection in relation to a particular taxon that is specified in the notice; and
 - (b) the notice has given a broad indication of the objectives of the intended regulations and invited persons to make submissions to the Minister concerning it within a period of 30 days after the publication of the notice.
- (2) If the Minister receives, in accordance with an invitation in a public notice under subsection (1), a submission concerning an intended regulation, the Minister must have regard to the submission so made.
- (3) If the Minister seeks advice of the Advisory Committee concerning an intended regulation, the Minister may comply with subsection (2):

- (a) by providing to the Committee, at the time of requesting the advice of that Committee, a copy of all submissions received; and

65 Remuneration and allowances

- (1) The members referred to in paragraphs 64(1)(b), (c), (d) and (e) must be paid:
 - (a) such remuneration as is determined by the Remuneration Tribunal; and
 - (b) such allowances as are prescribed.
- (2) Subsection (1) has effect subject to the *Remuneration Tribunal Act 1973*.

66 Disclosure of interests

- (1) A member 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.
- (2) A disclosure must:
 - (a) be recorded in the minutes of the meeting of the Advisory Committee; and
 - (b) be made known in any advice given by the Committee in relation to that matter.

67 Meetings

- (1) The Registrar may convene such meetings of the Advisory Committee as are necessary for the purposes of the performance of the functions of the Advisory Committee.
- (2) At a meeting of the Advisory Committee, 4 members constitute a quorum.

- (b) requesting the Advisory Committee to have regard to those submissions in preparing its advice to the Minister.

70 Genetic resource centres

- (1) If, in the opinion of the Secretary, a place is suitable for the storage and maintenance of germplasm material, the Secretary may, by notice in writing, declare that place to be a genetic resource centre for the purposes of this Act.
- (2) The person in charge of a genetic resource centre may do all things necessary to maintain the viability of propagating material stored at that centre.

71 The herbarium

If, in the opinion of the Secretary, an organisation has facilities suitable for the storage of plant specimens, the Secretary may, by notice in writing, declare the organisation to be the herbarium for the purposes of this Act.

72 Agents may act in matters relating to PBR

Subject to any other law of the Commonwealth, including the High Court Rules and the Federal Court Rules, an application, a written submission or any other document may be prepared or lodged, and any business may be transacted, for the purposes of this Act, by one person on behalf of another person.

73 Service of documents

If the Secretary or the Registrar is required by this Act to give a written notice or other document to an applicant for, or a grantee of, PBR, that notice or other document may be given by being posted by pre-paid post as a letter addressed to the applicant or the grantee at the address for service shown on the application or entered in the Register, as the case requires.

74 Infringement offences

- (1) A person must not, in relation to propagating material of a plant variety in which PBR has been granted, intentionally or recklessly do any of the acts referred to in a paragraph of section 11 if such an act would, under section 53, infringe the PBR in the variety.

Penalty: 500 penalty units.

- (2) The fact that an action for infringement has been brought against a person under section 54 in respect of a particular act does not prevent a prosecution under this section in respect of the same act.

75 Offences other than infringement offences

- (1) A person must not intentionally or recklessly make a false statement in an application or other document given to the Secretary or the Registrar for the purposes of this Act.

Penalty: 6 months imprisonment.

- (2) A person who is not the grantee of PBR in a plant variety must not intentionally or recklessly represent to another person that he or she is the grantee of PBR in that variety.

Penalty: 60 penalty units.

- (3) A person must not intentionally or recklessly represent to another person that PBR granted to that first-mentioned person in a plant variety extends to cover another plant variety that is not:

- (a) a dependent variety of the first-mentioned variety; or
- (b) a variety that has been declared to be an essentially derived variety of the first-mentioned variety.

Penalty: 60 penalty units.

- (4) A person must not intentionally or recklessly represent to another person that a plant of a variety in which PBR has not been granted is a plant of a variety in which PBR has been granted.

Penalty: 60 penalty units.

76 Conduct by directors, servants and agents

- (1) If, in proceedings for an offence against section 74 or 75, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:

- (a) that the conduct was engaged in by a director, servant or agent of the body corporate, within the scope of his or her actual or apparent authority; and
- (b) that the director, servant or agent had the state of mind.

- (2) Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority is to be taken, for the purposes of a prosecution for an offence against section 74 or 75, to have been engaged in also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.

- (3) If, in proceedings for an offence against section 74 or 75, it is necessary to establish the state of mind of a person other than a body corporate in relation to a particular conduct, it is sufficient to show:

- (a) that the conduct was engaged in by a servant or agent of the person, within the scope of his or her actual or apparent authority; and
- (b) that the servant or agent had the state of mind.

- (4) Any conduct engaged in on behalf of a person other than a body corporate by a servant or agent of the person

within the scope of his or her actual or apparent authority is to be taken, for the purposes of a prosecution for an offence against section 74 or 75, to have been engaged in also by the first-mentioned person unless the first-mentioned person establishes that the first-mentioned person took reasonable precautions and exercised due diligence to avoid the conduct.

(5) If:

- (a) a person other than a body corporate is convicted of an offence; and
- (b) the person would not have been convicted for the offence if subsections (3) and (4) had not been enacted;

the person is not liable to be punished by imprisonment for that offence.

(6) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:

- (a) the knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

(7) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.

(8) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

(9) A reference in this section to an offence against section 74 or 75 includes a reference to an offence against section 5, 6, 7 or 7A, or subsection 86(1), of the *Crimes Act 1914*, that relates to section 74 or 75 of this Act.

77 Applications for review

(1) Applications may be made to the AAT for review of:

- (a) a decision by the Minister under subsection 49(1); or
- (b) a decision by the Secretary:
 - (i) under subsection 19(7) to exercise a power under subsection 19(3); or
 - (ii) under subsection 19(3) to license, or refuse to license, a person who applied to be so licensed in response to an invitation under paragraph 19(8)(c); or
 - (iii) under subsection 19(10) to make propagating material available; or
 - (iv) under subsection 19(11) to certify, or to refuse to certify, a plant variety; or

(v) under section 30 to accept or reject an application; or

(vi) under section 31 to vary, or refuse to vary, an application; or

(vii) under subsection 34(1) refusing to extend the period for giving a detailed description; or

(viii) under section 37 to require a test growing; or

(ix) under subsection 38(4) to the effect that the Secretary is satisfied of the matters referred to in that subsection; or

(x) under subsection 38(5) to the effect that the Secretary is satisfied of the matters referred to in that subsection; or

(xi) under subsection 39(2) to issue a notice to an applicant; or

(xii) under paragraph 40(8)(b) refusing to extend the period for rebutting the *prima facie* case of essential derivation; or

(xiii) under section 40 in respect of an application for a declaration of essential derivation; or

(xiv) under section 41 to require a test growing; or

(xv) under section 44 to grant, or refuse to grant, PBR in a plant variety; or

(xvi) under section 50 to revoke, or not to revoke, PBR in a plant variety or a declaration that a plant variety is essentially derived from another plant variety; or

(c) a decision of the Registrar under section 21 to amend, or refuse to amend, the Register.

(2) The AAT does not have power under subsection 29(7) of the AAT Act to extend the time for making an application to that Tribunal for a review of a decision referred to in subsection (1).

(3) The Secretary must give public notice of:

- (a) any application made under subsection (1); and
- (b) any decision of the AAT on such an application; and
- (c) any decision of a court in relation to, or arising out of:
 - (i) such an application; or
 - (ii) a decision of the AAT on such an application

(4) In this section:

decision has the same meaning as in the AAT Act.

78 Repeal

The *Plant Variety Rights Act 1987* is repealed.

79 Compensation for acquisition of property

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

80 Regulations

(1) The Governor-General may make regulations prescribing all matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting subsection (1), that subsection includes the power to make regulations:

- (a) prescribing fees including:
 - (i) fees payable in respect of the making of applications for PBR, the examination of those applications and the issue of certificates in respect of the grant of PBR; and
 - (ii) fees payable in respect of the making of applications for declarations of essential derivation, the examination of those applications and the making of those declarations; and
 - (iii) fees payable by grantees of PBR at specified intervals or on specified dates; and
 - (iv) fees payable in respect of costs incurred by the Secretary in respect of the conduct or supervision of the test growing of plants;

and, if the matter is not dealt with by another provision of this Act, specifying the time at which, or the circumstances in which, such fees are to be paid and the manner of payment of such fees; and

- (b) making provision in relation to the refund, in specified circumstances, of the whole or part of a fee paid under this Act; and
- (c) making provision in relation to the remission of, or the exemption of specified classes of persons from the payment of, the whole or a part of a fee; and
- (d) making provision in relation to the amendment of an entry in the Register to correct a clerical error or an obvious mistake; and
- (e) making such transitional and saving provisions as are necessary or convenient as a result of the repeal of the *Plant Variety Rights Act 1987* and the enactment of this Act.

Part 9—Transitional

81 Definitions

In this Part:

commencing day means the day on which, in accordance with section 2, this Act commences.

old Act means the *Plant Variety Rights Act 1987*.

82 Plant variety rights under old Act to be treated as PBR under this Act

(1) If:

- (a) a person was granted plant variety rights in respect of a plant variety under the old Act; and
- (b) those rights were still in force immediately before the commencing day;

then, subject to the regulations, those rights have effect, despite the repeal of the old Act, on and after that day, as if:

- (c) this Act had been in force at the time when those rights were granted; and
 - (d) they had been granted at that time as PBR in that variety.
- (2) Despite subsection (1), rights treated as if they had been granted as PBR under this Act continue in force for so long only as they would have continued in force if the old Act had not been repealed.
- (3) Nothing in this section gives the holder of rights treated as PBR in a particular plant variety under this Act the right to claim PBR in respect of plant varieties that would, under this Act, be dependent plant varieties in relation to that particular plant variety.
- (4) Nothing in this section gives the holder of rights treated as PBR in a particular plant variety under this Act the right to seek a declaration that another plant variety is an essentially derived variety of the particular plant variety unless PBR in that other plant variety was given only on or after the commencing day.

83 Applications for plant variety rights lodged and criminal proceedings begun before commencing day

(1) If, before the commencing day:

- (a) a person has made application for plant variety rights under the old Act; but
- (b) the application has not been finally disposed of under that Act;

the provisions of the old Act are taken to continue in force, for the purpose of dealing with the application,

and any objection that has been made before that day, or is made after that day, in relation to the application.

- (2) If before the commencing day, criminal proceedings had been begun under the old Act but those proceedings had not been finally determined before that day, the provisions of the old Act are taken to continue in force, for the purposes of those proceedings.

84 Other applications and proceedings under old Act

- (1) Subject to the regulations, this Act applies, on and after the commencing day, to any application, request, action or proceeding made or started under the old Act and not finally dealt with or determined under that Act before that day as if the application, request, action or proceeding had been made or started under a corresponding provision of this Act.
- (2) Subsection (1) does not apply in relation to an application for plant variety rights, or to criminal proceedings, covered by section 83.

85 Transitional arrangements for membership and functions of Advisory Committee

- (1) The persons who, under the old Act, were members of the Plant Variety Rights Advisory Committee established under section 44 of that Act are to be taken, with effect from the commencing day, to be members of the Plant Breeder's Rights Advisory Committee established by section 63 of this Act.
- (2) Those members who were appointed by the Minister under section 45 of the old Act continue to hold office as

if they had been appointed by the Minister under section 64 of the new Act on the same terms and conditions for the balance of the term of their respective appointments.

- (3) Any advice given to the Minister or to the Secretary by the Plant Variety Rights Advisory Committee has effect, on and after the commencing day, as if it had been given by the Plant Breeder's Rights Advisory Committee.

86 Register of Plant Varieties

On and after the commencing day, the Register of Plant Varieties under the old Act is taken to form part of the Register of Plant Varieties under this Act.

- (a) The *Plant Breeder's Rights Act 1994* was amended by Schedule 1 (item 733) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:

- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
- (2) Subject to this section, this Act commences at the commencing time.

- (b) The *Plant Breeder's Rights Act 1994* was amended by Schedule 1 only of the *Agriculture, Fisheries and Forestry Legislation Amendment Act (No. 2) 1999*, subsection 2(1) of which provides as follows:

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

NOTE 1

The Plant Breeder's Rights Act 1994 as shown in this compilation comprises Act No. 110, 1994 amended as indicated in the Tables below.

For all relevant information pertaining to application, saving or transitional provisions see Table A.

TABLE OF ACTS

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Plant Breeder's Rights Act 1994</i>	110, 1994	5 Sept 1994	10 Nov 1994: (see <i>Gazette</i> 1994, No. S392)	—
<i>Agriculture, Fisheries and Forestry Legislation Amendment Act (No. 1) 1999</i>	4, 1999	31 Mar 1999	31 Mar 1999	—
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (item 733): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (a)	—
<i>Agriculture, Fisheries and Forestry Legislation Amendment Act (No. 2) 1999</i>	170, 1999	10 Dec 1999	Schedule 1: Royal Assent: (b)	Sch. 1 (item 7)

TABLE OF AMENDMENTS

ad. = added or inserted am. = amended rep. = repealed
rs. = repealed and substituted

Provision affected How affected

S. 3	am. No. 4, 1999
S. 21	am. No. 170, 1999
S. 27	am. No. 4, 1999
S. 35	am. No. 170, 1999
S. 37	am. No. 170, 1999
S. 43	am. No. 170, 1999
S. 50	am. No. 170, 1999
S. 53	am. No. 4, 1999
S. 59	am. No. 146, 1999
S. 61	am. Nos. 4 and 170, 1999
S. 62	am. No. 4, 1999
S. 80	am. No. 170, 1999

(b) the person lodged an application for PBR under the *Plant Breeder's Rights Act 1994* more than 4 years but less than 6 years after the date of that first sale; and

(c) the application was rejected only because of the operation of subsection 43(6) of that Act;

then, despite the terms of that subsection and subject to subitem (2), the Registrar may further consider that application as if the sales of that plant variety occurring after 9 November 1988 but more than 4 years before the application had not taken place.

(2) Subitem (1) does not apply in relation to an application referred to in that subitem unless the applicant in relation to that application, or any successor in title to that applicant, notifies the Registrar, in writing, to take action under this item in relation to that application within 6 months after the commencement of this item.

TABLE A

Application, saving or transitional provisions

Agriculture, Fisheries and Forestry Legislation Amendment Act (No. 2) 1999 (No. 170, 1999)

Schedule 1

7 Transitional provision

(1) If:

- (a) a person first sold a plant variety in the territory of a contracting party other than Australia after 9 November 1988 and before 10 November 1990; and

FINLAND

THE ACT ON PLANT BREEDER'S RIGHT (No. 789/1992, 21.8.1992) as amended*

on Amendments to the Act on Plant Breeder's Right** (No. 238/1999, 5.3.1999)

Consolidated Text of the Act on Plant Breeder's Right

CHAPTER I:

GENERAL PROVISIONS

Section 1

Breeders' Rights

The breeder of a plant variety or the person to whom his right has been transferred (owner of the variety) may, by application for registration, obtain the exclusive right afforded by this Law to exploit the variety.

CHAPTER II:

CONDITIONS FOR PROTECTION

Section 3

Conditions in Respect of the Breeder

Plant breeder's right to a variety may be granted to

- (1) a person who has bred the variety in Finland;
- (2) a person who is a national of a member state of the UPOV organization established to protect new plant varieties, referred to as Association below;
- (3) a breeder who has registered offices in the territory of a member of the Association;
- (4) a breeder who is a national of a member of the World Trade Organization, referred to as Organization below;
- (5) a breeder who has a registered offices within the territory a member of the Organization;
- (6) a person to whom the right granted on the basis of points 1-5 has been transferred.

The provisions laid down in paragraph 1 above also concern an applicant of plant breeder's right who has discovered and developed a plant variety as well as his successor in title.

* Sections 2 and 8 of the Act on Plant Breeder's Right of August 21 1992 (789/1992) shall be abrogated, section 3, paragraph 1, section 4, point 1, introduction to section 5 and point 1, section 6 and 12, section 18, paragraph 1, section 21, title to chapter 5, section 23, paragraph 1, section 27, paragraph 1 and section 28 shall be amended, and a new paragraph 2 shall be added to section 3, by which the present paragraph 2 becomes paragraph 3, and new sections 6 a-6 e, 22 a, 31 a and 34 are added to the Act.

** English text provided by the Government of Finland.

Notwithstanding the provisions of paragraph

- (1) breeders' rights may also be granted in other cases if the Ministry of Agriculture and Forestry deems it justified in view of Finnish plant breeding or the import of the plant variety.

Section 4

Conditions for Protection

Plant breeder's right may only be granted for a variety

- (1) that can be clearly distinguishable from other varieties whose existence is a matter of common knowledge at the time of the filing of the application or where relevant, at the priority date;
- (2) which is sufficiently homogenous and
- (3) the essential characteristics of which are stable when the variety is reproduced in the manner proposed by the breeder.

Section 5

Novelty

Plant breeder's right may not be granted if propagating or harvested material of the variety has been sold or disposed in other way by or with the consent of the breeder for purposes of exploitation of the variety

- (1) in the territory of this country for longer than one year before filing the application or where relevant at the priority date;
- (2) abroad for longer than six years before the application was filed in the case of a vine, fruit tree, forest tree, ornamental tree or the rootstock thereof;
- (3) abroad for longer than four years when the variety in question is a plant other than one referred to in item (2).

CHAPTER III

SCOPE OF PROTECTION

Section 6

Scope of Protection

Other than the owner of the variety may not without the consent of the holder:

- (1) produce propagation material of the variety;
- (2) condition for the purposes of propagation;
- (3) offer propagation material of the variety for sale;
- (4) sell or otherwise market propagation material of the variety;
- (5) export propagation material of the variety from Finland;
- (6) import propagation material of the variety to Finland ; and
- (7) stock propagation material of the variety for any of the purposes mentioned in (1) to (6), above.

The acts referred to in paragraph 1 in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorized use of propagating material of the protected variety shall require the authorization of the holder, unless the holder has had reasonable opportunity to exercise his right in the relation to the said propagating material.

Section 6 a

Extent of the plant breeder's right

The provisions of section 6 shall also apply in relation to

- (1) plants, which are not clearly distinguishable from the protected varieties;
- (2) variety, which is essentially derived from the protected variety (essentially derived variety), where the protected variety is not itself an essentially derived variety; and
- (3) variety whose production requires the repeated use of the protected variety (hybrids).

Section 6 b

Exceptions to the plant breeder's right

Plant breeder's right does not restrict the utilization of the variety

- (1) privately for other than commercial purposes;
- (2) for experimental purposes;
- (3) in acts done for the purpose of breeding or to discover and develop other varieties.

Subject to conditions laid down in section 6 c below, farmers are entitled to use seeds of varieties they have produced for sowing on their own farm.

Section 6 c

Right for a protected variety and obligation concerning the remuneration for this

Farmers may against remuneration use the crop of varieties covered by the legal protection referred to in this act for propagation purposes on their own farm, except for hybrids. This right concerns the propagation of the varieties belonging to the following plant species only: oats, barley, rye, wheat, rye-wheat, turnip rape, rape, oil flax, pea, broad bean, potato and buckwheat.

The level of remuneration shall be sensibly lower than the amount charged for the licensed production of propagating material. The level of the equitable remuneration to be paid to the owner may form the object of a contract between the owner and the farmer concerned or organizations representing them. Where such contract has not been concluded or does not apply, the remuneration to be paid shall be 50 % of the amounts charged for the licensed production of propagating material.

Farmers who do not grow plants on an area bigger than 10 ha may use propagation material of a protected variety in a way referred to in paragraph 1 without remuneration. However in the case of cultivation of a protected potato variety a remuneration must be paid if the area under the variety in question is more than 2 ha or in the case of early varieties cultivated under cover more than 1 ha.

Section 6 d

Obligation to provide cultivation data on the variety

Farmers and processors of propagation material are obliged to provide the necessary data to the authorities and the holder of the variety upon request in order to establish the payment obligation.

Section 6 e

Exhaustion of the plant breeder's right

The plant breeder's right shall not extend to acts concerning any material of the protected variety or of plants covered by the provisions of section 6 a, which has been sold or otherwise marketed by the owner or with his consent in any of the countries belonging to the European free trade area, unless such acts

- (1) involve further propagation of the variety in question; or
- (2) involve an export of material of the variety, which enables the propagation of the variety, into a country which does not protect varieties of the plant genus or species to which the variety belongs, except where the exported material is for final consumption purposes.

For the purposes of paragraph 1, material means, in relation to a variety

- (1) propagating material of any kind;
- (2) harvested material, including entire plants and parts of plants; and
- (3) any product made directly from the harvested material.

Section 7

Ornamental Plants

Breeders' rights shall also extend to the seedlings of ornamental plants or the parts thereof normally marketed for purposes other than propagation when they are used commercially as propagating material in the production of ornamental plants or cut flowers.

CHAPTER IV

APPLICATION FOR REGISTRATION AND ITS CONSIDERATION

Section 9

Register Authority

The register authority is the Plant Variety Board, which shall maintain the plant variety register.

The Plant Variety Board shall be appointed by the Ministry of Agriculture and Forestry. The Board shall have a chairman, a deputy chairman and at most ten members. Each member shall have an alternate. The Board shall be appointed for a term of three years at a time. Further provisions on the Board shall be laid down by Decree.

Section 10

Application

Applications for breeders' rights shall be made in writing to the register authority.

The application shall contain a description of how the variety in question differs from other varieties, and a variety denomination. The application shall state the name of the breeder. If a person other than the breeder of the variety applies for the breeders' rights, such applicant shall demonstrate his right to the variety. The applicant shall state that the variety has not, before the application was filed, been offered for sale or marketed in the manner referred to in Section 5.

The applicant shall pay the application fee.

The date on which the application documents have been furnished to the authority and the application fee has been paid shall be entered as the date of application.

Section 11

Variety Denomination

The variety denomination must enable the variety to be identified. A denomination shall not be accepted for a variety:

- (1) if it consist solely of figures, except where this is an established practise for designating the varieties in question;
- (2) if it is liable to mislead the public;
- (3) if it is against the law, public policy or morality;
- (4) if it is liable to cause confusion with the denomination of a variety that belongs to the same or to a closely related plant species that has been entered or proposed for entry in the official register of varieties or that is used for reproductive material of such a variety;
- (5) if it is liable to cause confusion with a trademark, name, company name or other identifying mark that a person other than the applicant has protected and that would be a bar to the registration of the variety name as a trademark of the reproductive material of the plant variety or of similar products;
- (6) if it is liable to cause confusion with the trademark of plant variety material or of similar products that the applicant has protected.

Section 12

Period of priority

If the owner of the variety has previously applied for plant breeder's right within the territory of a member of the Association, the application, if it is filed within twelve months of the filing of the earlier application (the period of priority), shall be deemed at the request of the applicant to have been filed in Finland at the same time.

Section 13

Supplementing the Application

If the applicant has not followed the provisions and instructions issued on the filing of the application or if there is another reason why the application cannot be considered, the applicant shall be invited by an interim decision to make a statement or to supplement the application.

If the applicant has not made a statement or supplemented the application to remedy the defect within the specified period, the application shall be rejected. This consequence shall be mentioned in the interim decision.

A rejected application shall be reconsidered if, within one month of the end of the term specified in the interim decision, the applicant so requests or undertakes to supplement the application and, within the same period, pays the reapplication fee.

Section 14

Rejection of the Application

If the application cannot be approved even after the applicant has made a statement or supplemented the application, the application shall be rejected, unless there is cause to issue the applicant a new interim decision.

Section 15

Claim to a Better Right

If a person claims to the register authority that he has a better right to the variety than the applicant and the matter is in doubt, the authority shall invite him in an interim decision to institute an action in court within the period determined by the authority. If the claim is not filed within that period, the claim shall be disregarded in the consideration of the application and that fact shall be mentioned in the interim decision.

If the issue of a better right is under consideration by the court, the consideration of the application may be postponed until the issue has been decided on a final basis.

Section 16

Transfer of the Application

If a person demonstrates to the register authority that he has a better right to the variety than the applicant, the register authority shall transfer the application to his name if he so requests. The person to whom the application is transferred shall pay a new application fee.

Until a decision is finally made on the request for transfer, the application may not be withdrawn, rejected or approved.

Section 17

Publication of the Application

If the application meets the requirements, the register authority shall, through publication of the application, provide the public with an opportunity to file claims regarding application.

Claims regarding the application shall be filed in writing with the register authority within the period determined by it.

Section 18

Examination of the variety

The register authority must make sure that the variety is examined, unless this is considered unnecessary for special reasons.

The applicant shall supply the necessary plant material and the necessary information to the entity carrying out the examination.

The applicant who has requested priority on the basis of an application filed in another country shall have four years from

the end of the period of priority to supply the plant material and the necessary data.

Section 19

Decision on the Application

After the period provided for the filing of claims has ended and the necessary examination of the variety has been carried out, the application shall be subjected to continued consideration and the register authority shall decide on the registration of the variety.

The applicant shall be given the opportunity to make a statement on the comments that have been made and the examination that has been carried out.

Section 20

Registration of the Breeders' rights

After the decision of the register authority referred to in Section 19 is no longer subject to ordinary channels of appeal, the variety shall be entered in the plant variety register. The registration shall be published. The applicant shall be given a certificate of registration.

A decision on the rejection of an application shall be published after it is no longer subject to ordinary channels of appeal.

CHAPTER V

PERIOD OF PROTECTION OF THE PLANT BREEDER'S RIGHT AS WELL AS USE AND CHANGING OF THE VARIETY DENOMINATION

Section 21

Period of validity

Plant breeder's right shall be valid from the date on which the register authority has taken its decision on the approval of the variety for registration. The plant breeder's right may be maintained through payment of an annual fee for 25 years, in the case of potatoes, trees and vines for 30 years, from the beginning of the year following the taking of the decision.

Section 22

Use of the Variety Denomination

When reproductive or vegetative propagating material of a registered plant variety is offered for sale, its registered denomination shall be used even after the period of protection has ended or the breeders' rights have otherwise ended.

The registered variety denomination or a denomination that is easily confused with it may not be used for a variety belonging to the same species or to a closely related species or for the reproductive or vegetative propagating material of such a variety as long as the variety denomination is registered.

Section 22 a

Canceling and changing the variety denomination

The register authority must cancel the registered denomination of the variety

- (1) if the denomination of the variety has been registered in violation of this act and the obstacle for the registration still exists;
- (2) if the holder demands this and shows legal grounds for it; or
- (3) if the holder or another person presents a decision by a court in which the use of the denomination of the variety is prohibited.

The registration authority must notify the owner on the demand concerning canceling the denomination and request the owner to propose another denomination within 30 days from receiving the notice on the demand. If the variety is no longer protected, the register authority may propose a new denomination.

A proposal concerning a new denomination must be examined and published as laid down in the Decree on Plant Breeder's Rights (907/1992). The new denomination must be registered and published after approval. The earlier name must be cancelled at the same time.

CHAPTER VI

LICENSES, COMPULSORY LICENSES AND NOTATIONS IN THE REGISTER

Section 23

License

If the owner of the variety has granted permission to another person to use the registered variety (license), such other person may transfer his right to a third person only if agreed.

If the license belongs to a company, it may be transferred in connection with the transfer of the company, unless otherwise agreed.

Section 24

Compulsory Licenses

If the reproductive or vegetative propagating material of a registered variety is not placed on the market under reasonable conditions and to a sufficient extent in view of the food economy or other public interest, a person who wishes to exploit the variety in Finland on a professional basis may obtain a compulsory license to do so, unless the owner of the variety has an acceptable reason for his actions. The compulsory license shall also include the right to receive a sufficient quantity of reproductive or vegetative propagating material of the variety from the owner of the variety.

A compulsory license may be granted only to a person who is deemed to have the prerequisites for exploiting, in an accept-

able manner and under the conditions determined in the compulsory license, the variety that is the subject of the breeders' rights.

The compulsory license shall not prevent the owner of the variety from himself using his right or from granting a license to the variety.

The compulsory license shall be granted by the court, which shall order to what extent the registered variety may be used and determine the remuneration as well as the other conditions of the compulsory license. The court may, at the request of the owner of the variety, withdraw the compulsory license or determine new conditions if required by essential changes in the circumstances.

Section 25

Notations in the Register

When the breeders' rights have been transferred to another or when a license has been granted to another, a notation thereof shall be made in the plant variety register if so requested. The same shall apply to a lien on the breeders' rights. However, the granting of a compulsory license shall always be noted in the register.

If it is shown that the license, lien or compulsory license entered in the register is no longer in force, the notation shall be deleted from the register.

A fee shall be paid for the entry of the notation in the register.

The person who has most recently been entered in the register as the owner of the variety shall be considered the owner of the variety.

CHAPTER VII

TERMINATION OF THE BREEDERS' RIGHTS

Section 26

Renunciation of the Breeders' Rights

The owner of the variety may renounce his right by notifying the register authority thereof in writing, in which case the authority shall delete the variety from the register.

The breeders' rights shall end if the annual fee is not paid within the prescribed period.

Section 27

Nullity of the Rights Protected

The court shall declare the plant breeder's right null and void when it is established at the date of filing of the application or, where relevant, at the date of priority:

- (1) that the variety was not distinct or not new;
- (2) that, where the grant of the plant breeder's right has been essentially based upon information and documents sub-

mitted by the applicant, the variety was not uniform or stable at the same date; or

- (3) that the Community plant variety right is granted for the variety in question; or
- (4) the registered holder of the plant variety is a person who is not entitled to this and it has not been demonstrated to the register authority that a person other than the applicant has a better right to the variety.

The court shall ask the register authority for a statement in cases that concern a declaration of nullity of the plant breeders' rights.

In other cases pertaining to the right of the breeder, the court may ask the register authority for a statement if there is reason for this.

Section 28

Forfeiture of the Rights Protected

The register authority may declare the plant breeder's rights forfeit if

- (1) the owner of the variety is not in a position to produce reproductive or vegetative propagating material of the variety with its characteristics as defined when the protection was granted; or
- (2) the owner of the variety does not, after being requested to do so by the register authority, provide reproductive or vegetative propagating material of the variety, the documents and other information deemed necessary for checking that the variety is maintained appropriately or if the owner of the variety does not allow inspection of the measures which have been taken for the maintenance of the variety; or
- (3) the denomination of the variety has been cancelled after the right was granted and the owner of the variety has not proposed another acceptable denomination for the variety.

CHAPTER VIII

PROTECTION UNDER PRIVATE LAW

Section 29

Prevention of Infringements

If anyone infringes the exclusive right under the breeders' rights, the court may prohibit him from continuing or renewing the act.

Section 30

Action for a Declaratory Judgment

The owner of the variety or the person who, on the basis of license or compulsory license, has the right to exploit the plant variety protected by the breeders' rights may institute a de-

claratory action to establish whether, on the basis of the breeders' rights that have been granted to him, he enjoys protection against others, if there is uncertainty regarding this matter and this uncertainty is to his detriment.

A person who exploits or intends to exploit a plant variety that is subject to the protection granted on the basis of the breeders' rights may, under the same conditions, institute a declaratory action against the holder of the breeders' rights to determine whether the granting of the breeders' rights constitutes a bar to such activity.

Section 31

Damages

A person who infringes the breeders' rights or the provisions of Section 22 on the exploitation of the variety denomination, deliberately or negligently, shall be required to pay damages for the exploitation of the variety and to compensate any other loss caused by the infringement. If the negligence is slight, the amount of the damages may be adjusted.

If the infringement of the breeders' rights or the infringement of the provisions of Section 22 on the exploitation of the variety denomination is not deliberate or negligent, the infringer shall be required to pay damages only to the extent deemed reasonable.

Compensation for infringement of the breeders' rights or for an infringement of the provisions of Section 22 on the exploitation of the variety denomination may be claimed only for the five years preceding the institution of the action for damages.

If the breeders' rights have been declared null and void by a court decision that is no longer subject to ordinary channels of appeal, no claim for damages may be brought and no punishment may be pronounced.

In addition to the provisions of this Section on compensation, the provisions of the Damages Act (1974/412) shall apply as appropriate.

Section 31 a

Farmers' obligation to damage in certain cases

A farmer who neglects the obligation laid down in section 6 c is obliged to pay damage for this. The amount of remuneration is determined according to the provisions concerning Community Plant Variety Rights.

Section 32

Return of Reproductive or Vegetative Propagating Material

On application by the person that has suffered an infringement of his rights, the court may order, as it deems reasonable, that the reproductive or vegetative propagating material of the variety that is the subject of the infringement of rights shall be transferred to the infringed person in return for compensation. This shall not apply to a person who has received the reproductive or vegetative propagating material in good

faith or who has a special right thereto and has not himself infringed the breeders' rights.

The reproductive or vegetative propagating material referred to in the first paragraph above may be confiscated if the person that has suffered an infringement of his rights has requested transfer of the reproductive or vegetative propagating material as provided in Chapter VII of the Execution Act.

Section 33

Interim Protection

If, after the application referred to in Section 10 has been filed, a person other than the applicant uses on a professional basis the variety that is the subject of the application for breeders' rights, the provisions on infringement of breeders' rights shall apply correspondingly if the rights are subsequently granted.

The penalty referred to in Chapter IX of this Law may not be imposed for acts that took place after the application referred to in Section 10 was filed if, although they infringe the breeders' rights, they took place before the breeders' rights had been granted. Damages for an act that took place before publication of the application referred to in Section 17 may be ordered only in accordance with Section 31, second paragraph.

If the action for damages is brought within a year of the granting of the breeders' rights, the provisions in Section 31, third paragraph, shall not apply.

CHAPTER IX

PENAL PROVISIONS

Section 34

Infringement of Breeders' Rights

A person who deliberately infringes the exclusive right referred to in Sections 6, 7 or 8 shall be sentenced for infringement of breeders' rights to a fine or imprisonment of at most six months.

The public prosecutor may not bring charges for an offence unless the injured party has reported the offence for prosecution.

Section 34 a

Failure to comply with the obligation to provide cultivation data on a variety

A farmer or processor who deliberately or negligently neglects the obligation laid down in Section 6 d shall be sentenced for the failure to comply with the obligation to provide the said data to fine.

Section 35

Misuse of a Variety Denomination

A person who deliberately or negligently infringes the provisions of Section 22 on the use of a variety denomination shall

be sentenced, unless the offence is petty, for misuse of a variety denomination to a fine.

CHAPTER X

MISCELLANEOUS PROVISIONS

Section 36

Use of a Agent

If the applicant or the holder of the breeders' rights does not reside in Finland, he shall have an agent in Finland authorized to represent him in all matters pertaining to the breeders' rights and to applications for such rights.

Section 37

Appeal

The final decision of the register authority on the breeders' rights shall be subject to appeal by the applicant or the holder of the breeders' rights, if the decision goes against them. A person that had lodged a claim against the application may appeal a decision approving the application despite the proper lodging of the claim against such application. If the person that had entered an appeal withdraws his appeal, the appeal may nonetheless be considered if there are special reasons.

The applicant may appeal a decision by which a request referred to in Section 16 for the transfer of an application has been approved. The person presenting the claim for transfer of an application may appeal a decision rejecting his request.

The decision of the register authority shall be subject to appeal before the Supreme Administrative Court. Appeal shall be filed within 60 days of the date on which service of the decision was made.

Section 38

Forum

The forum for cases dealt with under this Law is the City Court of Helsinki.

Section 39

Fees

The amount of the fees referred to in this Law shall correspond to the total costs for the State of providing the services (cost price). However, the amount of the registration fee and the annual fee may be determined so that the total amount collected from these is estimated to correspond to the total costs incurred by the State in maintaining the register.

Fees of equal size may be required for similar services by the Plant Variety Board even when the costs incurred by the state in providing the services differ. In determining the amount of such a fixed fee, the average total costs of the service shall be taken in consideration.

The fees may be set in general at an amount that is above or below the cost price or the fee calculated in accordance with the second sentence of the first paragraph or may be waived entirely, if this is due to international agreements, reasons of trade policy or practical reasons.

In other respects, the provisions of the State Cost Assessment Act (150/92) shall apply to the fees.

Section 40

Supplementary Provisions

Further provisions on the implementation of this Law shall be issued by Decree. The Plant Variety Board may issue further regulations on the registration of applications and their examination.

This act {Act on Amendments on Plant Breeder's Right (N:o 238, 5.3.1999)} shall enter into force 15th March 1999.

This act shall also be applied in the case of varieties registered upon its entry into force or that are registered on the basis of applications submitted before this act enters into force, unless otherwise provided below.

An application which has been published prior to the entry into force of this act must be considered and decided according to provisions in force upon the entry into force of this act.

This act shall not apply to measures taken or contracts made prior to its entry into force.

The provision laid down in section 6 e, paragraph 1, point 2 does not concern plant material that has been put in the market prior to the entry into force of this act.

A matter concerning the cancellation of a variety registered prior to the entry into force of this act must be settled according to provisions in force upon the entry into force of this act.

A person who before the entry into force of this act has started to use plant material in a way that on the basis of the earlier act did not require the consent of the holder of the right may continue the planned activity in the necessary and regular extent for no more than five years from the entry into force of this act. A person who has made essential preparations for the exploitation of a variety has the same right.

A farmer who upon the entry into force of this act has used the seeds of a protected variety in a way referred to in section 6 c may continue the utilization of these without any obligation to pay remuneration referred to in the said section for no more than two growing seasons following the entry into force of this act.

In the application concerns a variety belonging to a species for which right could not be granted according to the earlier legislation and the application is submitted within a year from the entry into force of this act, the time laid down in section 5 is four years instead of one.

IRELAND

PLANT VARIETIES (PROPRIETARY RIGHTS)
(AMENDMENT) ACT, 1998

Number 41 of 1998

ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
2. Amendment of section 1 of Principal Act.
3. Amendment of section 2 of Principal Act.
4. Amendment of section 3 of Principal Act.
5. Amendment of section 4 of Principal Act.
6. Amendment of section 5 of Principal Act.
7. Amendment of section 6 of Principal Act.
8. Amendment of section 7 of Principal Act.
9. Amendment of section 8 of Principal Act.
10. Amendment of section 11 of Principal Act.
11. Amendment of section 12 of Principal Act.
12. Amendment of section 23 of Principal Act.
13. Amendment of section 25 of Principal Act.
14. Amendment of First Schedule to Principal Act.
15. Application for breeders' rights.
16. Limitation of protection.
17. Authorisation of holder.
18. Authorisation required for certain acts, etc.
19. Authorisation not required for certain acts, etc.
20. Information notice.
21. Action for infringement of plant breeders' rights.
22. Transitional provisions.
23. Repeals and miscellaneous amendments.
24. Short title, collective citation, construction and commencement.

SCHEDULE

AN ACT TO AMEND AND EXTEND THE PLANT VARIETIES (PROPRIETARY RIGHTS) ACT, 1980, AND TO PROVIDE FOR RELATED MATTERS. [16th November, 1998]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Interpretation

1.-(I) In this Act, except where the context otherwise requires

“the Acts” means the Principal Act and this Act;

“authorisation” has the meaning assigned to it by section 17,

“the Convention” means the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972, on October 23, 1978, and on March 19, 1991;

“the Council Regulation” means Council Regulation (F-C) No. 2100/94 of 27 July 1994 on Community plant variety rights;

“essentially derived variety” has the meaning assigned to it by section 4 of the Principal Act, (inserted by section 5);

“holder” has the meaning assigned to it by section 15;

“hybrid variety” has the meaning assigned to it by section 4 of the Principal Act, (inserted by section 5);

“information notice” has the meaning assigned to it by section 20;

“plant breeders' rights” has the meaning assigned to it by section 4 of the Principal Act, (as amended by section 5);

“the Principal Act” means the Plant Varieties (Proprietary Rights) Act, 1980;

“protected variety” has the meaning assigned to it by section 15;

“unauthorised harvest material” has the meaning assigned to it by section 18;

“the Union” means the International Union for the Protection of New Varieties of Plants founded by the Convention;

“variety of recent creation” has the meaning assigned to it by section 15;

“variety which is not clearly distinguishable” has the meaning assigned to it by section 4 of the Principal Act, (inserted by section 5).

(2) In this Act-

- (a) a reference to a section or a Schedule is a reference to a section of, or a Schedule to, this Act unless it is indicated that reference to some other enactment is intended,
- (b) a reference to a subsection or a paragraph is a reference to the subsection or paragraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended,
- (c) a reference to any enactment is a reference to that enactment as amended, extended or adapted by or under any subsequent enactment.

- (3) In this Act a reference to the Council Regulation shall be construed as a reference to the Council Regulation as amended, adapted or extended.

Amendment of section 1 of the Principle Act

2.- Section 1 of the Principal Act is hereby amended by

- (a) the substitution in subsection (1) of the following definition for the definition of "variety":

"variety" means a 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, may 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 those characteristics, and
- (c) considered as a unit in relation to the suitability of the plant grouping concerned remaining unchanged following the propagation,"
- (b) the deletion in subsection (1) of the definitions of "authorisation", "the Convention", "Convention country", and "holder",
- (c) the insertion of the following definition in subsection(1):
- "Contracting Party" means a state or an intergovernmental organisation which is a party to the Convention or in respect of which a declaration under section 2 of this Act has been made;"

and

- (d) the substitution in subsection (2) of the following paragraph for paragraphs (c) and (d):

"(c) whole plants or parts of plants for planting,"

Amendment of section 2 of Principle Act

3.- Section 2 of the Principal Act is hereby amended by-

- (a) the substitution in subsection (1) –
- (i) of "for the protection of intellectual property or any other relevant international co-operation or agreement for the protection of intellectual property" for "for the protection of plant varieties and plant breeders' rights", and
- (ii) of "Contracting Party" for "convention country" in each place where it occurs,
- and
- (b) the substitution in subsection (2) of "Contracting Party" for "convention country",

and the said subsections (1) and (2), as so amended, are set out in the Table to this section.

TABLE

- (1) For the purposes of enabling any international convention or agreement for the protection of intellectual property or any other relevant international co-operation or agreement for the protection of intellectual property to which the State is a party to be carried into effect, the Government may by order declare one or more foreign countries, which foreign country, or each of which foreign countries, shall be one whose government or any of whose departments of state is a party to the convention or agreement, to be a Contracting Party for the purposes of this Act, and for so long as the order remains in force any foreign country which is one specified in the declaration contained therein shall be a Contracting Party for the purposes of this Act.
- (2) An order under this section may provide that the declaration contained therein shall extend to any territory for the foreign relations of which the government of a foreign country specified in such declaration considers itself responsible, and in case an order under this section so provides then for so long as the order is in force as regards that foreign country the territory to which the declaration is so extended shall for the purposes of this Act be regarded as being a Contracting Party.

Amendment of section 3 of Principle Act

4.- Section 3 of the Principal Act is hereby amended in subsection (12) by the insertion of the following paragraph after paragraph (c):

"(d) authorise the Controller to make arrangements for the supervision of, the acquisition of or access to the findings of tests, trials or examinations in relation to plant breeders' rights carried out by an applicant on the premises of that applicant or, subject to the consent of the Controller, any other premises,"

Amendment of section 4 of Principle Act

- 5- The Principal Act is hereby amended by the substitution of the following section for section 4:

“Plant breeders’ rights

4.-(1) In this Act ‘plant breeders’ rights’ means all proprietary rights in relation to any variety of any plant genus or species which has been independently bred or discovered and developed.

- (2) Plant breeders’ rights which apply to a protected variety shall also apply to-

- (a) a variety which is essentially derived from that protected variety, where that protected variety is not itself an essentially derived variety,
- (b) a variety which, having regard to the First Schedule to this Act (as amended by section 14 of the Plant Varieties (Proprietary Rights) (Amendment) Act, 1998) is not clearly distinguishable from that protected variety, and
- (c) a hybrid variety.

- (3) Subsection (2) shall not apply to an essentially derived variety which was known to exist before the coming into operation of this Act.

- (4) In this Act-

“essentially derived variety” means a variety that is essentially derived from another variety if-

- (a) the essentially derived variety is predominantly derived from that other variety (in this Act referred to as the ‘initial variety’) or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety,
- (b) it is clearly distinguishable from the initial variety,
- (c) it conforms, except for the differences which result from the act of derivation, to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety, and
- (d) it may be obtained, without prejudice to the generality of the foregoing, by the selection of a natural or induced mutant, or of a somaclonal variant, the selection of a variant individual from plants of the initial variety, backcrossing, or transformation by genetic engineering;

‘hybrid variety’ means a variety in respect of which the production of such variety requires the repeated use of the protected variety;

‘variety which is not clearly distinguishable’ means a variety which is not clearly distinguishable from the protected variety.”

Amendment of section 5 of Principle Act

- 6- Section 5 of the Principal Act is hereby amended in subsection (1) by-

- (a) the insertion in paragraph (a) after “or discovered” of “and developed”,
- (b) the insertion in paragraph (a) after “duly assigned” of “or a person who bred or discovered and developed it in the course of his or her employment”,
- (c) the deletion in paragraph (c) of “an Irish citizen or” and “either the State or”,
- (d) the substitution in paragraph (c) of “member of the Union” for “party to the Convention”,
- (e) the insertion in paragraph (c) after “section 2 of this Act applies” of “and a member of the Union means a state party to the International Convention for the Protection of New Varieties of Plants of 1961, 1972 or 1978 or a Contracting Party”, and
- (f) the insertion of the following subsection after subsection (3):

“(4) Where an application for a grant of plant breeders’ rights is made by a person who bred or discovered and developed a variety in the course of his or her employment, the Controller, in determining such application, shall have regard to-

- (a) an agreement, if any, between that person and the employer concerning the entitlement to apply for a grant of plant breeders’ rights, and
- (b) any statutory provisions concerning the relationship between employer and employee for the time being in force in-
 - (i) the country or territory in which such employee is wholly or mainly employed, or
 - (ii) where the identity of such country or territory cannot be determined, the country or territory in which the business of such employer is situate.”

Amendment of section 6 of Principle Act

- 7.-(1) Section 6 of the Principal Act is hereby amended by

- (a) the substitution of the following subsection for (1):

“(1) Where two or more applications are made for plant breeders’ rights for the same variety, the Controller, in considering the order of precedence of such applications, shall have regard to the date of receipt of the applications concerned and, subject to subsection (2) of this section, shall consider the application, having regard to the date of receipt, which was the first such application received by the Controller.”

and

- (b) the substitution of the following subsection for subsection (2):

“(2) Where the applications referred to in subsection (1) of this section were received by the Controller on the same date and the time of such receipt on such date cannot be established, the applications concerned shall rank equally in order of precedence.”

- (2) Section 6 of the Principal Act is hereby amended in subsection (3) by-

- (a) the substitution in paragraph (a) of “Contracting Party” for “convention country”,
- (b) the substitution in paragraph (e) of “may be received” for “is received”,
- (c) the insertion in paragraph (e) after “the documents” of “samples or other evidence”,
- (d) the substitution of “as aforesaid.” for “as aforesaid, and, accordingly;”, and
- (e) the deletion of all words from “the fact that another applicant” to the end of the subsection.

- (3) Section 6 of the Principal Act is hereby amended by-

- (a) the substitution in subsection (4) of “the period of two years” for “the period of four years”, and
- (b) the substitution in subsection (5) of “the period of three years” for “the period of five years”.

Amendment of section 7 of Principle Act

- 8.- The Principal Act is hereby amended by the substitution of the following section for section 7:

“Protection of applicants while application pending.”

7.-(1)The holder shall, following the grant of plant breeders’ rights, be entitled to compensation from any person who has in the relevant period performed any act which such person would be prohibited from performing after the grant of plant breeders’ rights.

- (2) In this section the ‘relevant period’ means the period beginning on the day on which the application for the grant of plant breeders’ rights is published in the Journal and ending on the date of the grant of such plant breeders’ rights.”

Amendment of section 8 of Principle Act

- 9.- Section 8 of the Principal Act is hereby amended by-

- (a) the substitution in subsection (1) of “satisfies him that, in relation to the public interest,” for “satisfies him that”,
- (b) the deletion in subsection (1) of “referred to in section 4(5)(d) of this Act,” and
- (c) the deletion in subsection (2) of “(the name of which variety stands for the time being entered in the register)” and “by a holder”,

and the said subsections (1) and (2), as so amended, are set out in the Table to this section.

TABLE

- (1) Subject to the provisions of this section, if any person applies to the Controller and satisfies him that, in relation to the public interest, a holder has unreasonably refused to grant to the applicant an authorisation or, in granting or offering to grant such art authorisation, has imposed or put forward terms which are either unreasonable or contrary to the public interest. the Controller shall, if he is satisfied that the applicant is in a position, and intends, to exercise rights in a competent manner which would be conferred by such an authorisation, grant to the person in the form of a licence any such rights as respects the relevant plant variety as might have been granted by the holder.
- (2) Subject to the provisions of this section, if any person satisfies him that it is in the public interest that a particular plant variety specified by the person has been distributed in a manner which is not in the public interest, or that Such a plant variety should be widely distributed, or that it is otherwise in the Public interest to do so, the Controller shall grant to the person in the form of a licence any rights as respects that variety as may be granted by the relevant holder.

Amendment of section 11 of Principle Act

- 10- Section 11 of the Principal Act is hereby amended by-

- (a) the substitution of the following subsection for subsection (1):

“(1) The Controller may-

- (a) declare the grant of plant breeders’ rights null and void where the Controller is satisfied that-
- (i) the protected variety concerned did not, at the time of the grant comply with the conditions specified in either or both paragraph 1 or para-

graph 4 of the First Schedule to this Act (as amended by section 14 of the Plant Varieties (Proprietary Rights) (Amendment) Act, 1998),

- (ii) the protected variety concerned did not, at the time of the grant, comply with the conditions specified in either or both paragraph 2 or paragraph 3 of the First Schedule to this Act (as amended by section 14 of the Plant Varieties (Proprietary Rights) (Amendment) Act, 1998) where such grant was obtained on the basis of information or documents or both furnished by the applicant, and
- (iii) the plant breeders' rights were granted to a holder who was not entitled to such grant,

but no such declaration shall be made under subparagraph (iii) of this paragraph if the plant breeders' rights concerned have been transferred to the holder by the person property entitled to such grant,

- (b) cancel plant breeders' rights in relation to a protected variety if the Controller is satisfied that in relation to such protected variety concerned the conditions specified in either or both paragraphs 2 and 3 of the First Schedule to this Act (as amended by section 14 of the Plant Varieties (Proprietary Rights) (Amendment) Act, 1998) are not being complied with,
- (c) cancel the plant breeders' rights in respect of a protected variety if the holder fails, refuses or neglects to pay such fees as may be required to maintain the grant of the plant breeders' rights concerned, or
- (d) cancel plant breeders' rights of a protected variety if the holder does not propose another suitable denomination where the denomination of the protected variety concerned is cancelled.”
- (b) the substitution in subsection (2) of “cancel” for “revoke” and of “cancellation” for “revocation” in each place where it occurs, and
- (c) the substitution in subsection (1) of “cancels” for “revokes” and of “cancellation” for “revocation”.

Amendment of section 12 of Principle Act

11.- Section 12 of the Principal Act is hereby amended in subsection (5) by the substitution of the following paragraph for paragraph (b):

“(b) For the purposes of this section the Minister may prescribe classes and species to which varieties belong,”

Amendment of section 23 of Principle Act

12.- Section 23 of the Principal Act is hereby amended by-

- (a) the substitution in subsections (1), (2) and (3) of “£1,500” for “£500” in each place where it occurs, and
- (b) the insertion after subsection (1) of the following subsection:
“(1A) If a person falsely represents that he or she is entitled to exercise any Community plant variety rights granted under the Council Regulation, in relation to any plant variety and in respect of which Community plant variety rights have or have not been granted under the Council Regulation, and that person knows that the representation is false or makes the representation recklessly, he or she shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500 or, at the discretion of the court, to imprisonment for a term not exceeding three months or to both such fine and such imprisonment.”.

Amendment of section 25 of Principle Act

13- Section 25 of the Principal Act is hereby amended in subsection (1) by the insertion of the following paragraphs after paragraph (d):

- “(e) such fees in respect of any test or examination concerning genetically modified plant varieties,
- (f) such fees in respect of the supervision of any test or examination where such test or examination is carried out on the premises of the breeder concerned or other premises in agreement with the Minister,
- (g) such administrative costs as may be incurred by the Controller concerning applications under the Council Regulation, and
- (h) such other fees,”.

Amendment of First Schedule to Principle Act

14- The First Schedule to the Principal Act is hereby amended by-

- (a) the substitution of the following paragraph for paragraph 1:

“Distinctness

1.(1) The plant variety concerned-

- (a) is not a matter of common knowledge at the time that application for plant breeders' rights is made, and
- (b) is clearly distinguishable from any other plant variety the existence of which is a matter of common knowledge at the time such application is made,

and the distinguishing characteristic of that plant

variety is recognisable and is capable of description and recognition.

- (2) For the purposes of this paragraph, common knowledge of a plant variety shall be established when an application is made-
- (a) for the grant of plant breeder's rights, or
- (b) to enter the plant variety concerned in an official register of plant varieties in any country or territory which is a Contracting Party.”
- (b) the substitution of the following paragraph for paragraph 2:

“Uniformity”

2. The plant variety concerned is sufficiently uniform in respect of the characteristic concerned notwithstanding any variation arising from the propagation of such plant variety.”

- (c) the substitution of the following paragraph for paragraph 3:

“Stability”

3. The characteristic of the plant variety concerned does not alter-

- (a) after repeated propagation, or
- (b) where there is a particular cycle of propagation, at the end of each such cycle”

and

- (d) the substitution of the following paragraph for paragraph 4:

“Novelty”

4. Propagating or harvested material of the plant variety concerned, has not, on the date on which an application for plant breeders' rights is made, been sold or otherwise disposed of to others, by or with the consent of the applicant, for the purposes of exploitation of such plant variety either-

- (a) in the State for a period that is greater than one year before the date of an application for plant breeders' rights, or
- (b) in a territory other than that of the Contracting Party for a period that is greater than four years, or in the case of trees or vines, for a period that is greater than six years before that date.”

Application for plant breeders' rights

- 15.- (1) A person may, subject to the provisions of the Acts,

apply to the Controller for a grant of plant breeders' rights in relation to a variety of any plant genus or species and such application shall be accompanied by the prescribed fee.

- (2) Where, following an application under subsection (1), the Controller makes a grant of plant breeders' rights in relation to a variety (in the Acts referred to as the “protected variety”), the Controller shall as soon as may be-

- (a) issue under the seal of the Controller a certificate in the prescribed form specifying the name, of the variety of plant genus or species concerned,

- (b) publish a notice of the granting of the certificate referred to in paragraph (a) in the Journal, and

- (c) enter the name of the variety of plant genus or species concerned in the register,

and the person to whom such plant breeders' rights are granted shall be known as a “holder”.

- (3) A certificate issued under subsection (2) of this section shall, unless the contrary is shown-

- (a) be deemed to be such certificate, and

- (b) in any legal proceedings be evidence without further proof of the matters stated therein.

- (4) The minimum period in respect of which plant breeders' rights may be exercised by a holder shall-

- (a) in respect of trees, vines and potatoes, be not less than 30 years, and

- (b) in respect of all other varieties be not less than 25 years,

and each such period shall commence on the date of the grant of the plant breeders' rights concerned under this section.

- (5) Subject to subsection (10), the maximum period for which plant breeders' rights may be exercised by a holder shall-

- (a) in respect of trees, vines and potatoes, be 35 years, and

- (b) in respect of all other varieties, be 30 years.

- (6) A statement in the register that a species of plant or each of the plants of a specified group of plants is a fruit tree, forest tree, ornamental tree or grape vine shall, in relation to the species of plant concerned, be evidence without further proof of the matters stated therein unless the contrary is shown.

- (7) The Minister may make regulations for the purpose of giving effect to this section.

- (8) Where, on the date of the coming into operation of this Act, a variety (in this Act referred to as a “variety of recent creation”) exists but an application for plant breeders’ rights for the variety concerned has not been made by that date, an application for a grant of plant breeders’ rights for the variety concerned may be made within the 12 months following the date of the coming into operation of this Act but such plant breeders’ rights shall not be granted in respect of the variety concerned if sale or other disposal of that variety has, with the consent of the applicant, taken place not less than-
- (a) 4 years before the coming into operation of this Act, or
 - (b) 6 years before the coming into operation of this Act if the variety concerned is a tree or vine.
- (9) A holder may assign any plant breeders’ rights granted to him or her under the Acts.
- (10) The Controller, when making a grant of plant breeders’ rights, shall not include a maximum period for the exercise of such plant breeders’ rights unless the plant variety concerned belongs to a plant genus or species in respect of which an order under subsection (71) has been made.
- (11) The Minister may by order specify the maximum period for the exercise of plant breeders’ rights of a plant genus or species,

Limitation of protection

16-(1) Plant breeders’ rights shall not apply to any act referred to in section 18 carried out in relation to any material-

- (a) of the protected variety concerned which has been sold or otherwise offered for sale in the State by the holder or with the consent of the holder, or
 - (b) of an essentially derived variety which has been sold or otherwise offered for sale in the State by the holder or with the consent of the holder, or
 - (c) derived from the material specified in paragraph (a) or (b).
- (2) Subsection (1) shall not apply to an act which involves-
- (a) the further propagation of the protected variety concerned, or
 - (b) the export of any material which enables the propagation of the protected variety into a country which does not protect varieties of the plant genus or species to which the protected variety concerned belongs, unless such export is for the purpose of final consumption.
- (3) In this section “material” includes-

- (a) any propagating material of a variety, and

- (b) any harvested material of a variety, including entire plants and parts of plants.

Authorisation of holder

- 17.-(1) A holder may grant an authorisation to another person to permit variety for which authorisation is required and may include in such authorisation any conditions, limitations or restrictions.
- (2) A reference to an authorisation under this section is an authorisation in writing which has been obtained from the holder by the person referred to in subsection (1) prior to the carrying out of any of the acts for which authorisation is required and “authorisation” shall be construed accordingly.

Authorisation required for certain acts, etc.

18.-(1) A person shall not-

- (a) produce, reproduce or cause; the multiplication of any propagating material of a protected variety,
- (b) clean, process or otherwise condition any propagating material of a protected variety for the purpose of propagation,
- (c) sell or offer for sale, export or import any propagating material of a protected variety, or
- (d) keep a supply of any propagating material of a protected variety for any of the purposes specified in paragraph (a), (b) or (c),

unless that person has obtained the authorisation of the holder.

(2) A person shall not-

- (a) produce, reproduce or cause the multiplication of unauthorised harvest material of a protected variety,
- (b) clean, process or otherwise condition unauthorised harvest material of a protected variety for the purpose of propagation,
- (c) sell or offer for sale, export or import unauthorised harvest material of the protected variety, or
- (d) keep a supply of unauthorised harvest material of the protected variety for any of the purposes specified in paragraph (a), (b) or (c),

unless that person has obtained the authorisation of the holder in relation to the protected variety concerned or the holder has had a reasonable opportunity to exercise his or her plant breeder’s rights in relation to the unauthorised use of such propagating material.

- (3) Where, in accordance with section 4 (2) of the Principal

Act (inserted by section 5), plant breeders' rights apply to a variety specified in either paragraph (a), (b) or (c) of that section, a person shall not-

- (a) produce, reproduce or multiply the propagating material or unauthorised harvest material,
- (b) clean, process or otherwise condition the propagating material or unauthorised harvest material,
- (c) sell or offer for sale, export or import the propagating material or unauthorised harvest material, or
- (d) keep a supply of the propagating material or unauthorised harvest material for any of the purposes specified in paragraph (a), (b) or (c),

of that variety unless the holder has given an authorisation in respect of the matters so specified.

- (4) In this Act "unauthorised harvest material" means the material harvested from an unauthorised use of the propagating material of a protected variety.

Authorisation not required for certain acts, etc.

- 19- (1) An authorisation, in relation to a protected variety, shall not be required for -

- (a) any act done for private and non-commercial purposes,
- (b) any act done for the purpose of breeding experimentation,
- (c) any act done for the purpose of breeding another variety other than a variety specified in section 4 (2) of the Principle Act (inserted by section 5),
- (d) the use by a farmer for propagating purposes of the product of the harvest which that farmer has obtained from propagating material of the protected variety on lands owned or occupied by the farmer (in this section referred to as "farm saved seed") and the protected variety concerned is a variety of plant genus or species specified in an order under subsection (2) and such use is referred to in this Act as the "farm saved seed exemption".

- (2) The Minister may by order specify a variety of any plant genus or species to which the farm saved seed exemption is to apply and the provisions of section 26 (3) of the Principal Act shall apply to the making of such order.
- (3) The Minister may by order amend or revoke an order made under subsection (2).
- (4) Where a farmer uses farm saved seed of a variety specified in an order under subsection (2), the farmer shall be liable to pay the holder remuneration which shall be sensibly lower, within the meaning of Article 14.3 of the

Council Regulation, than the amount charged for the production of propagating material of the protected variety concerned.

- (5) The obligation to pay the remuneration referred to in subsection (4) shall not apply to a farmer who is considered, under Article 14.3 of the Council Regulation, to be a small farmer.
- (6) The Minister may make regulations generally for the purpose of giving effect to the farm saved seed exemption and such regulations may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purpose of the regulations.

Information notice

20.-(1) Where-

- (a) a holder has reasonable grounds for believing that harvested material of a protected variety is being offered for sale, and
- (b) an authorisation has not been granted for the carrying out of-
 - (i) any act specified in section 18(1) in respect of the propagating material of the protected variety, or
 - (ii) any act specified in section 18(2) in respect of the unauthorised harvest material of the protected variety,

the holder may request a person who sells or offers for sale such harvested material to furnish information, in accordance with this section, in respect of such harvested material.

- (2) A holder may serve a notice (in this Act referred to as an "information notice") on a person referred to in subsection (1) which shall be in the prescribed form and, without prejudice to the generality of the foregoing, shall-
 - (a) state the denomination and species of the plant variety so offered for sale and the name and address of the holder,
 - (b) specify the harvested material of the plant variety so offered for sale and to which the information notice relates,
 - (c) require the person to whom it is addressed to provide-
 - (i) the name and address of the producer, the supplier and any prior owners of the harvested material of the plant variety so offered for sale, and
 - (ii) information concerning the quantity of the harvested material of the plant variety so offered

for sale that was produced, ordered and delivered to that person,

and

- (d) require the person to whom it is addressed to furnish the information to the holder within 21 days of the service of such information notice.
- (3) Where an information notice has been served in accordance with this section and the person on whom such information notice has been served has not furnished or has failed to adequately furnish the information so requested, for the purposes of proceedings for an infringement of plant breeders' rights concerning the offering for sale of the harvested material of the plant variety specified in the information notice, it shall be presumed that-
- (a) the harvested material of the plant variety so offered for sale was obtained by means of an unauthorised use of the propagating material of the protected variety, and
- (b) the holder did not have a reasonable opportunity before the harvested material was obtained to exercise plant breeders' rights in relation to the unauthorised use of the propagating material,
- unless the contrary is proved or there are reasonable grounds for not supplying or for failing to adequately supply the information.
- (4) A holder shall not use any information furnished pursuant to an information notice for any purpose other than-
- (a) establishing that there has been an infringement of plant breeders' rights of the protected variety referred to in the information notice, or
- (b) use in proceedings for infringement of plant breeders' rights of the protected variety referred to in the information notice.
- (5) An information notice shall be addressed to the person concerned and served on or given to such person in one of the following ways-
- (a) by addressing it to the person by name and delivering it to that person,
- (b) by leaving it at the address at which the person ordinarily resides or carries on any trade or business or, in a case in which an address for service has been furnished, at that address, or
- (c) by sending it by post in a prepaid registered letter addressed to the person at the address at which that person ordinarily resides or carries on any trade or business.

Action for infringement of plant breeders' rights

21.-(1) An infringement of plant breeders' rights shall be actionable at the suit of the holder and in any proceedings for

such infringement all such relief, by way of damages, injunction, account or otherwise, as is available in any corresponding proceedings in respect of any other proprietary rights shall be available,

- (2) Where, in civil proceedings for an infringement of plant breeders' rights concerning an allegation of the offering for sale of harvested material of a protected variety, an information notice has been served in accordance with section 20 and the person on whom it was served did not furnish the information or failed to adequately furnish the information so requested within the 21 day period so specified, it shall be presumed that the provisions of section 20(3) (a) or 20(3)(b) or both shall apply to such proceedings unless, in accordance with that section, the contrary is proved or the court is satisfied that there were reasonable grounds for failing to supply or adequately supplying such information.

Transitional provisions

22--(1) Where, before the commencement of this Act, an application has been made to the Controller under section 4 of the Principal Act and a certificate under that section has-

- (a) not been issued in respect of that application, or
- (b) been issued under that section, then
- (i) in the case of the application, it shall be deemed to be an application under section 15, and
- (ii) in the case of the certificate, it shall, for the remainder of the period of operation, be deemed to have been granted under section 15.

(2) Where, before the commencement of this Act, an infringement of plant breeders' rights occurred and proceedings for such infringement had been issued under section 4(5) of the Principal Act, such proceedings shall be continued as if they had been issued under this section.

(3) Where, before the commencement of this Act, an infringement of plant breeders' rights occurred and proceedings for such infringement had not been issued under section 4(5) of the Principal Act, such proceedings shall, if issued in respect of such infringement, be deemed to be issued under this section.

(4) Notwithstanding any other provision of this Act, regulations made under the Principal Act shall continue in operation and shall be deemed to have been made under this Act and to be capable of amendment or revocation accordingly.

Repeals and miscellaneous amendments

23.-(1) Sections 1 (4), 6 (3) (c), 12 (3) (b) (ii) and 25 (1) (e) of the Principal Act are hereby repealed.

(2) Each section of or Schedule to the Principal Act specified in column (2) of the Schedule is hereby amended in the manner specified in column (3) of the Schedule opposite the mention of that section or that Schedule in column (2).

*Short title, collective citation,
construction and commencement*

24.--(1) This Act may be cited as the Plant, Varieties (Proprietary Rights) (Amendment) Act, 1998.

(2) The Principal Act and this Act may be cited together as the commencement, Plant Varieties (Proprietary Rights) Acts, 1980 and 1998, and shall be construed together as one Act.

(3) This Act shall come into operation on such day as the Minister may by order appoint.

Section 23

SCHEDULE

Ref. No. (1)	Section of Principle Act (2)	Amendment of Principal Act (3)
1	Section 6	In subsections (3) (b) and (5), "section 15 of the Plant Varieties (Proprietary Rights) (Amendments) Act, 1998" is substituted for "section 4 of this Act".
2	Section 9	In subsection (2) "specified in section 15 of the Plant Varieties (Proprietary Rights) (Amendment) Act, 1998" is substituted for "prescribed under section 4 (10) of this Act".
3	Section 14	In subsection (1) the deletion of "4(8), 4(9), "and "paragraph" is substituted for "Article".
4	Section 15	In subsection (1) the deletion of "4" and the insertion after "of this Act" of "and section 15 of the Plant Varieties (Proprietary Rights) (Amendments) Act, 1998".
5	Section 15	In subsection (1)(a) "section 15 of the Plant Varieties (Proprietary Rights) (Amendments) Act, 1998" is substituted for "the said section 4".
6	Section 15	In subsection (1)(c) "section 15 of the Plant Varieties (Proprietary Rights) (Amendments) Act, 1998" is substituted for "the said section 4".
7	Section 15	In subsections (1)(e) and (1)(k), "section 15 of the Plant Varieties (Proprietary Rights) (Amendments) Act, 1998" is substituted for "section 4 of this Act".
8	Section 15	In subsection (1)(f) the deletion of "4" and insertion after "21 to 22" of "and section 15 of the Plant Varieties (Proprietary Rights) (Amendments) Act, 1998".
9	Section 16	In subsection (1) the deletion of "except such as falls within any genus or species which is excluded from this section by regulations made under this section by the Minister".
10	Section 16	In subsection (3) "section 15 of the Plant Varieties (Proprietary Rights) (Amendments) Act, 1998" is substituted for "section 4 of this Act".
11	Section 19	In subsection (1)(a), the deletion of "4" and the insertion after "of this Act" of section 15 of the Plant Varieties (Proprietary Rights) (Amendments) Act, 1998"
12	Section 19	In subsection (1)(b) "section 15 of the Plant Varieties (Proprietary Rights) (Amendments) Act, 1998" is substituted for "section 4" and the insertion after "or" of "section".
13	Section 23	In subsection (3) the insertion after "section 4 of this Act" of "or section 15 of the Plant Varieties (Proprietary Rights) (Amendments) Act, 1998".
14	Section 24	In subsection (2) "section 15 of the Plant Varieties (Proprietary Rights) (Amendments) Act, 1998" is substituted for "section 4 of this Act".
15	Section 25	In subsection (1)(c) "section 15 of the Plant Varieties (Proprietary Rights) (Amendments) Act, 1998" is substituted for "section 4 of this Act".
16	First Schedule	In paragraph 6 "section 15 of the Plant Varieties (Proprietary Rights) (Amendments) Act, 1998" is substituted for "section 4 of this Act".
17	Second Schedule	In paragraph 1 the deletion of "4" and the insertion after "of this Act" of "section 15 of the Plant Varieties (Proprietary Rights) (Amendments) Act, 1998".
18	Second Schedule	In paragraph 2 "paragraph" is substituted for "Article".

NETHERLANDS

SEEDS AND PLANTING MATERIAL ACT *

Consolidated Text of the Act of October 6, 1966, as Last Amended by the Act of January 28, 1999**

Chapter I. Definitions
1-3

Chapter II. The Netherlands Register of Varieties and the Board
for Plant Breeder's Rights
4-17

Chapter III. The Entry of Varieties in the Netherlands Register
of Varieties
18-28

Chapter IV. The Plant Breeder's Right

Part I. The Entitlement to the Plant Breeder's Right
29-34

Part II. The Granting of the Plant Breeder's Right
35-39

Part III. Rights and Obligations of the Holder of a Plant
Breeder's Right
40-47

Part IV. The Plant Breeder's Right as Part of the Breeder's
Property
48-50a

Part V. Duration and Claiming of the Plant Breeder's Right
51-57

Part VI. Decisions of the Board, Appeals to the Board and
Appeals to the Court of Justice at the Hague
58-70

Part VII. Making and Publishing the Registrations and En-
tries in the Netherlands Register of Varieties

Chapter V. Lists of Varieties
73-79

Chapter VI. Trade in Propagating Material and Testing Insti-
tutions

Part I. Trade in Propagating Material
80-86

Part II. Testing Institutions
87-93

Chapter VII.
94

Chapter VIII. Penal Provisions
95-98

Chapter IX. Transitional and Final Provisions
99-102

Signature

History:

This Act was amended by the Acts of 8 May 1969, Stb. 191, 7 September 1972, Stb. 461, 4 February 1981, Stb. 35, 25 January 1984, Stb. 19, 2 May 1984, Stb. 238, 14 November 1984, Stb. 573, 26 June 1986, Stb. 388, 3 December 1987, Stb. 591, 25 October 1989, Stb. 491 jo 11 December 1991, Stb. 608, 18 April 1991, Stb. 233, 4 June 1992, Stb. 422, 24 June 1992, Stb. 409, 8 October 1992, Stb. 593, 16 December 1993, Stb. 650, 23 December 1993, Stb. 690, 26 April 1995, Stb. 250, 10 July 1995, Stb. 355, 26 June 1996, Stb. 398, 11 December 1996, Stb. 1997, 4, 6 February 1997, Stb. 63, 6 November 1997, Stb. 510, 17 December 1997, Stb. 660, 25 June 1998, Stb. 446, 28 January 1999, Stb. 30

Staatsblad
455

Act of 6 October 1966 containing new regulations governing plant breeders' right and the trade in the propagating material of agricultural and horticultural species

We, JULIANA, by the Grace of God, Queen of the Netherlands, Princess of Orange Nassau, etc.

To all and singular to whom these presents shall come, Greeting! We give notice that:

Whereas We have considered that it is desirable to establish new regulations governing plant breeders' right and the trade in the propagating material of agricultural and horticultural species;

We, therefore, having heard the Council of State, and in consultation with the States General, have approved and decreed as We hereby approve and decree: -

* Full title: Act Containing New Provisions Governing Plant Breeders' Rights and the Trade in the Propagating Material of Agricultural and Horticultural Species (Seeds and Planting Material Act)

** English text provided by the Government of the Netherlands

CHAPTER I

Definitions

Section 1

For the purposes of this Act:

“Our Minister” shall mean Our Minister of Agriculture and Fisheries;

“The Board” shall mean the Board for Plant Breeders’ Rights, referred to in Section 5;

“Union” shall mean the Union for the Protection of New Varieties of Plants, constituted by the States that are party to the International Convention for the Protection of New Varieties of Plants, signed at Paris on December 2, 1961;

“Member State of the Union” shall mean a State that is a member of the Union.

Section 2

For the purposes of this Act:

“Variety” shall mean any group of plants within a single botanical taxon of the lowest known rank, which group, irrespective of whether the conditions for the grant of a plant breeder’s right laid down in this Act are fully met, can be:

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

“Propagating material” shall mean plants or parts thereof that are intended for cultivation by planting or sowing or by any other means;

“Commercialisation” shall mean offering for sale, selling and supplying;

“Putting on the market” shall mean the first act of commercialisation.

Section 3

1. When “agricultural species” are referred to in this Act, they shall include:
 - a. poppy (Papaver somniferum L.), white mustard (Sinapis alba L.), caraway (Carum carvi L.) and white clover (Trifolium repens L.);
 - b. those varieties of pea (Pisum sativum L.), maize (Zea mays L.), turnip (Brasica campestris L. Var. rapa (L.) Hartm.), black radish (Raphanus sativus L. Var. Niger (Mill.) Pers.), dwarf French bean (Phaseolus vulgaris L.) and carrot (Daucus carota

L.) that are not included under ‘horticultural species’ under paragraph (2).

2. When “horticultural species” are referred to in this Act, they shall include:
 - a. in the case of pea, those varieties that are suitable for cultivation solely or mainly for harvesting at the green stage for human consumption;
 - b. in the case of maize, the varieties of pop corn and sweet corn;
 - c. in the case of turnip and black radish, those varieties that are suitable for cultivation solely or mainly for human consumption;
 - d. in the case of dwarf French bean, those varieties that are suitable for cultivation solely or mainly for harvesting at the green stage;
 - e. in the case of carrot, the varieties of red carrot.
3. Horticultural species shall likewise include:
 - a. those varieties of agricultural species that are suitable for cultivation solely or mainly for ornamental purposes;
 - b. silvicultural species.
4. It may be provided by general administrative order that, for the purposes of this Act, cultivated species, varieties or groups of varieties other than those mentioned in the preceding paragraphs shall be regarded as either agricultural or horticultural species.

CHAPTER II

The Netherlands Register of Varieties and the Board for Plant Breeders’ Rights

Section 4

1. There shall be a register for the purpose of entering therein groups of plants for which it has been established that they constitute varieties. The register shall be public and shall be called Netherlands Register of Varieties.
2. The arrangement of the Netherlands Register of Varieties shall be laid down by or by virtue of a general administrative order.

Section 5

1. There shall be a Board for Plant Breeders’ Rights comprising:
 - a. a Central Department;
 - b. an Agricultural Species Department;
 - c. a Horticultural Species Department;

- d. an Appeals Department.
2. The departments may be subdivided into sections by general administrative order.

Section 6

1. The Board shall have:
- a. a President;
- b. three Vice-Presidents;
- c. a minimum of three and a maximum of seven members for each department or section.
2. A Secretary and one or more Assistant Secretaries shall be attached to the Board.

Section 7

1. We shall appoint the President, the Vice-Presidents and other members of the Board. The appointment shall be for a period of five years.
2. The persons referred to in the preceding paragraph shall be eligible for reappointment. They may be discharged by Us at their request.
3. The President shall be sworn in by Our Minister, and the Vice-Presidents and other members shall be sworn in by the President, before they enter upon their duties.
4. The President, Vice-Presidents and other members of shall be discharged as from the first day of the month following the month in which they reach the age of seventy.

Section 8

1. Spouses or registered partners, blood relatives and relatives by marriage up to and including the third degree of relationship may not be members of the same department unless it is subdivided into sections; in that event they may not be members of the same section.
2. If the marriage or the registered partnership has been contracted or the relationship by marriage has come into being after the appointment, the last-appointed member may no longer be a member of the department or section in question, unless our Minister has given his permission.
3. The relationship by marriage or registered partnership shall cease to exist upon the dissolution of the marriage or the registered partnership that established it.
4. Members who have dealt with a case in the first instance shall not take part in the proceedings in the Appeals Department relating to that case.

Section 9

1. The Secretary and Assistant Secretaries shall be appointed by Our Minister.

2. They shall have obtained the degree of doctor of law, or have qualified as lawyers, at a State University or at some other Netherlands University of equivalent status, provided the degree or qualification was awarded on the strength of an examination in Netherlands civil law and commercial law, constitutional law and criminal law.

Section 10

1. Without prejudice to what is stated elsewhere, the President, Vice-Presidents and other members shall be discharged by Us:
- a. if age, permanent physical disability or mental illness has rendered them unfit to perform their duties;
- b. if they have been placed under guardianship.
2. Without prejudice to what is stated elsewhere, the persons referred to in the preceding paragraph may be discharged by Us:
- a. if they have contravened the provisions of Sections 11 and 12;
- b. if they have been declared bankrupt, the personal debt restructuring scheme applies to them or they have been granted suspension of payment or are in prison for debt.
3. Before the person concerned is discharged by virtue of the preceding paragraph, he shall be heard, or at least be duly summoned.
4. In the event of any of the circumstances referred to in paragraph (2) arising, Our Minister shall have the power to immediately suspend the person concerned; suspension shall be for a period not exceeding three months.

The General Expiry of Periods Act shall not apply to this period.

Section 11

The President, Vice-Presidents, members, Secretary and Assistant Secretaries shall be pledged to secrecy in respect of what comes to their knowledge in the course of their duties and in respect of any opinions expressed when a case is being dealt with.

Section 12

The persons referred to in the preceding Section shall not take part in proceedings involving cases in which they have any vested interest whatsoever.

Section 13

Our Minister shall lay down rules for the reimbursement of travel and accommodation expenses and for the payment of an attendance fee to the President, Vice-Presidents, and members. Our Minister may grant an annual fixed sum to the President and the Vice-Presidents in lieu of an attendance fee.

Section 14

1. The Board shall have the power to hear witnesses and experts.
2. Any person called as a witness shall obey the summons.
3. Sections 191 and 203, paragraphs (2) and (3), of the Code of Civil Procedure shall apply mutatis mutandis to witnesses.
4. The Board may order witnesses who, though duly summoned, failed to appear, to be brought before it by the public authorities.
5. The provisions of Sections 197-199, 203 and 205 of the Code of Civil Procedure shall apply mutatis mutandis to the hearing of witnesses.
6. The experts shall be impartial and make their reports in good faith. The Board may impose on them the obligation that they will maintain secrecy.

Section 15

1. Further provisions regarding the composition of and the procedure to be adopted by the Board and the swearing in of members shall be made by or by virtue of a general administrative order.
2. The following shall be regulated, among other things, in the general administrative order:
 - a. the composition of the departments and sections to carry out the tasks entrusted to the Board;
 - b. the calling up of applicants, petitioners and other interested parties, and of witnesses and experts;
 - c. the compensations to be paid to witnesses and experts.

Section 16

1. Our Minister shall fix a tariff of fees payable for work done by the Board when making entries or notes in, and issuing copies of or extracts from, the Netherlands Register of Varieties and for the advice as referred to in Section 41 (4).
2. The Board shall not deal with documents nor furnish applicants with copies of or extracts from, the Netherlands Register of Varieties until the amount due under the preceding paragraph is paid.

Section 17

All documents addressed to or emanating from the Board shall be exempt from stamp duty and from the formality of registration.

CHAPTER III

*The Entry of Varieties in the Netherlands
Register of Varieties*

Section 18

1. The following varieties shall be entered in the Netherlands Register of Varieties:
 - a. varieties for which plant breeders' rights have been granted;
 - b. varieties of agricultural species designated by or on behalf of Our Minister and of horticultural species designated by general administrative order and meeting the requirements of sub-paragraphs (a), (b) and (c) of paragraph (1) of Section 29, but for which plant breeders' rights cannot be granted.
2. Subject to rules to be laid down by general administrative order, varieties other than those referred to in sub-paragraph (b) of paragraph (1) for which a plant breeder's right cannot be granted and which belong to agricultural species designated by general administrative order shall be entered in the Netherlands Register of Varieties at the breeder's request. The rules may impose upon the breeder the obligation to pay an annual fee specified therein.
3. The Board shall enter the variety in the Register by recording the description characterising the variety, determined by the Board, and its denomination.
4. The denomination entered in the Register shall be taken as the generic name of the variety.

Section 19

1. The denomination must enable the variety which it designates to be identified. It may not consist solely of figures, except where this is an established practice for designating varieties. It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. In particular, it must be different from every denomination which designates, in any Member State of the Union, an existing variety of the same or a closely related cultivated species.
2. The denomination must not be contrary to public order or offensive.
3. The denomination shall be the same as that already registered for the variety in any Member State of the Union, provided it is suitable for use in this country.
4. No denomination shall be adopted in respect of which the Board finds that it so closely resembles a trade name or trademark that it would be liable to cause confusion regarding the nature or origin of products.

Section 20

1. Before adopting a denomination, the Board shall publish it in a manner to be determined by Our Minister.
2. Interested parties may lodge objections to a denomination with the Board within eight weeks of the date of its publication on the ground that it resembles a trade name or trademark so closely that it would be liable to cause confusion regarding the nature or origin of products.
3. The Board shall not adopt a denomination until it has until it has decided on the objectives referred to in paragraph(2).
4. The Industrial Property Office, shall, on request, furnish the Board with information concerning the trademarks registered with it.

Section 21

1. The applicant shall propose a denomination for the variety when applying for a plant breeder's right or when making the application referred to in paragraph (2) of Section 18.
2. The applicant may also use a provisional designation. If he does, he shall propose a denomination at a time to be fixed by the Board.
3. The proposed denomination shall be accompanied by a deed stating that the applicant will renounce any right accruing to him in any Member State of the Union with respect to that denomination for identical or similar products in the event of the proposed denomination being registered.

The Board shall send a copy of the deed to the Industrial Property Office and to the Office of the Union when the denomination has been registered.

4. The Board shall adopt the proposed denomination or the denomination referred to in paragraph (3) of Section 19, unless it is of the opinion that doing so would be contrary to the provisions of Section 19. In that event it shall call upon the applicant to propose another denomination.

Section 22

1. The Board may also establish and register a provisional description characterising the variety.
2. The Board may supplement the description and shall register the additional information:
 - a. at the request of the interested party;
 - b. *ex officio*, if such is required in view of the description of some other variety, in which case the interested party shall be heard; or for other reasons, but then only with the interested party's consent.

3. the term 'interested party' used in paragraph (2) shall be understood to mean the holder of a plant breeder's right, or the breeder of a variety of the kind referred to in paragraph (2) of Section 18.

Section 23

1. If the use of a registered denomination for propagating material of the variety for which it was registered is prohibited by the decision of a Court on the ground of a right accruing to another person with respect to that denomination, the President of the Board shall delete the registered denomination at the request of the first party to take action and shall enter a provisional designation to serve as the denomination, if possible in consultation with the holder of the plant breeder's right, or with the breeder of a variety of the kind referred to in paragraph (2) of Section 18.
2. The Board shall adopt a new denomination after having given to the holder of the plant breeder's right, or the breeder of a variety of the kind referred to in paragraph (2) of Section 18, the opportunity to suggest another denomination within a certain time limit and shall register the new denomination.

3. If it is established that a variety cannot be recorded under the registered denomination in the Register of Varieties established by the European Community for the species to which the variety belongs, the President of the Board may, at the request of the holder of the plant breeder's right to that effect, delete a registered denomination and enter a provisional designation to serve as the denomination. The second paragraph shall apply *mutatis mutandis*.

Section 24

1. The applications and requests referred to in this Chapter, and the withdrawal and refusal of such applications and requests, shall be recorded in the Netherlands Register of Varieties.
2. The registrations referred to in this Chapter and the entries pertaining to the applications referred to in paragraph (2) of Section 18, and the withdrawal and refusal of such applications, shall be published in the Nederlandse Staatscourant.

Section 25

The decisions of the Board made pursuant to the provisions of this Chapter shall be communicated to the interested party referred to in Section 20, the applicant referred to in Section 21 or the holder of the plant breeder's right referred to in Sections 22 and 23 or the breeder of a variety of the kind referred to in paragraph (2) of Section 18.

Section 26

1. An appeal against the decisions referred to in Section 25, with the exception of the decisions made pursuant to Section 20 or paragraph (2) of Section 23, may be lodged with the Appeals Department.

2. An appeal against the final decisions made by the Board pursuant to Section 20 or paragraph (2) of Section 23, may be lodged with the Court of Justice at The Hague, which shall sit in chambers. The Clerk of the Court shall inform the Board of the appeal and of the Court's decision within three days.
3. The appeal may be lodged by the person who is to be informed of the decision pursuant to Section 25.
4. The appeal referred to in paragraph (2) shall be made by substantiated petition within six weeks of the date of communication of the decision.

Section 27

Further provisions shall be made by or by virtue of a general administrative order with respect to:

- a. the applications and requests referred to in this Chapter;
- b. the fixing of the date on which the applications and requests referred to under (a) shall be deemed to have been submitted to the Board;
- c. the hearing of interested parties.

Section 28

The registrations and entries referred to in this Chapter and based on decisions against which an appeal may be lodged shall be made when a decision has been taken on the appeal or if the time limit for an appeal has expired without the appeal having been lodged, or if the appeal has been withdrawn by means of a written notification to that effect addressed to the Board.

CHAPTER IV

The Plant Breeder's Right

PART I

The Entitlement to the Plant Breeder's Right

Section 29

1. A plant breeder's right may be granted in respect of a new variety of a plant genus or species. The plant breeder's right shall be granted if:
 - a. at the moment of making the application for a plant breeder's right, the variety is clearly distinguishable from any other variety whose existence is a matter of common knowledge at that time;
 - b. the variety is sufficiently homogeneous, having regard to the particular features of its propagation;
 - c. the variety is stable in such a manner that it remains true to its description, in its essential characteristics, after repeated propagation or, where the breeder has defined a particular cycle of propagation, at the end of each cycle.

2. For the purposes of sub-paragraph (a) of paragraph (1) a variety's existence shall be deemed a matter of common knowledge if, in any country, an application was filed for a plant breeder's right or for the entering of this variety in an official register of varieties, from the date of the application provided that the application leads to the granting of a plant breeder's right or to the entering of the said variety in the official register of varieties, as the case may be.
3. A variety shall not be regarded as new if, at the time of the application for a plant breeder's right, propagating or harvested material of the variety has been sold or otherwise disposed of to others with the consent of the person or his predecessor in title who bred, or discovered and developed the new variety by his own efforts, for purposes of exploitation:
 - a. in the Netherlands earlier than one year before the date of application;
 - b. outside the Netherlands in the case of trees or vines earlier than six years before the date of application;
 - c. outside the Netherlands, in the case of varieties other than those referred to under sub-paragraph (b), earlier than four years before the date of application.
4. The fact that material of a variety has been given to others to test, or has been submitted for registration or registered in an official register, may not be held against the breeder of the variety or his successor in title.

Section 30

1. The entitlement to a plant breeder's right shall accrue to the person or his predecessor in title who bred, or discovered and developed the new variety by his own efforts.
2. If the variety has been bred, or discovered and developed outside the Netherlands by the efforts of a natural person without the Dutch nationality or a legal entity without a registered office in the Netherlands there shall only be an entitlement to a plant breeder's right in so far as the Netherlands is obliged to grant the plant breeder's right under an international agreement.
3. If a variety has been bred, or discovered and developed outside the Netherlands and there is no obligation as that described in paragraph (2), a plant breeder's right may be granted in respect of the variety if Our Minister is of the opinion that granting that right will benefit agriculture or horticulture in the Netherlands. Our Minister may make the granting of the right subject to certain conditions and he may limit the scope of the rights accruing to the breeder under this Act.

Section 31

1. If the person referred to in paragraph (1) of Section 30 has bred, or discovered and developed a variety in the context of his employment or in the context of an agreement with a client to work for payment other than wages

and the nature of the work involves plant breeding activities with respect to the cultivated species to which the variety belongs, the entitlement to the plant breeder's right shall accrue to the employer, the client or the predecessors in title of the said employer or client.

2. In the event referred to in paragraph (1) the person who has done the breeding work shall be entitled to a fair remuneration, unless such remuneration may be deemed to be included in the wages received by him or the benefits enjoyed by him.
3. Any stipulation in derogation from the provisions of paragraph (2) shall be null and void.

Section 32

If two or more persons associated otherwise than in the manner described in Section 31 have together bred, or discovered and developed a new variety, they shall be jointly entitled to the plant breeder's right.

Section 33

If, pursuant to Section 30, two or more persons can lay claim independently of each other to the grant of a plant breeder's right in respect of the same variety, the entitlement to the plant breeder's right shall accrue to the person who applied for it first.

Section 34

1. Any person who, in another Member State of the Union, has filed an application for a plant breeder's right in accordance with the provisions in force in that State shall enjoy a right of priority in respect of the granting of a plant breeder's right in the Netherlands for the same variety, provided that:
 - a. within twelve months of the date of filing of the application in the Member State of the Union, excluding the day on which the application was made, he files a provisional application in the Netherlands and thereby claims the priority in writing, and
 - b. within three months of the date of filing of the provisional application he submits copies of the documents submitted by him in the State of the first application, certified by the competent authority of that State, and
 - c. within two years of the expiry of the period mentioned under (a) he submits a regular application as described in Section 35.
2. Priority has the effect that, notwithstanding the provisions of Sections 29 and 33, such matters as the filing of an application by another person or the commercialisation of propagating material of the variety, occurring in the period between the filing of the application in the other country and the filing of the provisional application in the Netherlands, shall not affect the application made in this country by the person entitled to priority.

PART II

The Granting of the Plant Breeder's Right

Section 35

1. An application for a plant breeder's right shall be addressed to the Board and the right shall be granted by the Board.
2. In addition to the requirements of Section 21 with regard to the denomination, the application shall contain a clear description of the variety and an accurate account of the characteristics distinguishing it from other varieties of the same cultivated species.
3. For the purposes of examination the Board may require the breeder to furnish it with all the necessary material in accordance with its requirements.
4. If the applicant does not reside in the territory of the European Community he shall elect domicile in the Netherlands through a person authorised to that effect, and the election of the domicile shall, for the purpose of this Act, be deemed to remain valid until the Board is informed in writing of a change of domicile.

Section 36

The application and the withdrawal or refusal of the application, shall be recorded in the Netherlands Register of Varieties.

Section 36a

1. The holder of a plant breeder's right shall be entitled to a fair remuneration from any person who, during the period between the filing of the application for the grant of a plant breeder's right and the grant of that right pursuant to Section 37, has been engaged in activities as referred to in Section 40, with respect to the variety for which an application for a plant breeder's right has been filed.
2. The remuneration is only due for the activities engaged in after thirty days from the date the person concerned was notified by means of a summons of the holder's entitlement to the claim by virtue of this Section.
3. The summons shall be accompanied by copies certified by the Board of the documents presented to the Board in respect of the application, or passages thereof, in so far as they exclusively relate to the description of the variety for which the application was filed and the characteristics distinguishing it from other varieties. This does not include a description of the actual breeding process and the genealogical components of the variety.
4. The provisions of paragraph (1) do not apply to the person authorised to carry out the activities under an agreement with the person who pursuant to Section 30 or 31 is entitled to the grant of the plant breeder's right.

Section 37

1. The description characterising the variety and its denomination shall be laid down in the decision granting the plant breeder's right: Sections 19, 20, 21 and 22, paragraph (1), shall apply *mutatis mutandis*.
2. The fact that a plant breeder's right has been granted shall also be recorded when the variety is entered in the Netherlands Register of Varieties.
3. The effective date of the plant breeder's right shall be the date following the day on which the entry and record referred to in the preceding paragraph were made.

Section 38

It may be provided by general administrative order that, for varieties belonging to specified groups of cultivated species and for which plant breeders' rights have been granted, the holder of the right shall be required to pay an annual fee to be fixed by that general administrative order.

Section 39

Further provisions shall be made by or by virtue of a general administrative order with respect to:

- a. applications for plant breeders' rights;
- b. the fixing of the date on which applications for plant breeders' rights shall be deemed to have been filed with the Board;
- c. the hearing of interested parties.

PART III

*Rights and Obligations of the Holder of a
Plant Breeder's Right*

Section 40

1. The holder of the plant breeder's right shall have the exclusive right to produce, reproduce or condition for propagating purposes, propagating material of the variety to commercialise it, to offer it for sale, to export it, import it, to stock it for any of these purposes and to have any or all of these activities performed.
2. Persons other than the holder of the plant breeder's right shall not engage in the activities described in paragraph (1). The ban shall not apply if and in so far as authorisation to engage in them has been granted by or by virtue of this Act or by the holder of the plant breeder's right.
3. The ban shall not apply where
 - a. the activities are carried out for private, non-commercial purposes;

b. the activities are carried out solely for scientific research purposes;

c. the activities are carried out for developing new varieties.

4. The exclusive right shall also apply to activities with respect to harvested material of the variety, including entire plants and parts of plants, obtained through the unauthorised use of propagating material of the protected variety, unless the breeder has had reasonable opportunity to exercise his right in relation to the said propagating material.

5. It may be provided by general administrative order that, for one or more specified species or varieties the exclusive right shall also apply to activities with respect to the products made directly from the unauthorised use of the said harvested material, unless the breeder has had reasonable opportunity to exercise his right in relation to the said harvested material.

Section 41

1. The exclusive right referred to in paragraph (1) of Section 40 shall also apply to the activities referred to in the said paragraph with regard to the material of:

a. varieties essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety;

b. varieties which are not clearly distinguishable in accordance with Section 29 from the protected variety and

c. varieties whose reproduction requires the repeated use of the protected variety.

2. For the purposes of sub-paragraph (a) of paragraph (1) a variety shall be deemed to be essentially derived from another variety when it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.

3. Sub-paragraph (a) of paragraph (1) shall not apply to varieties whose existence is a matter of common knowledge at the time this Section takes effect. Section 29, paragraph (2), shall apply *mutatis mutandis*.

4. On request the Board can provide advice with regard to the question whether or not a variety for which a breeder's right was granted by the Board was derived from another variety for which a breeder's right was granted by the Board or whether another variety specified by the person making the request is derived from the variety for which the breeder's right was granted. The Board shall give a substantiated advice.

Section 41a

1. It may be provided by general administrative order that the exclusive right, referred to in Section 40, shall not extend to the use of a breeder's harvested material of a variety, belonging to a species specified by the said general administrative order, or a variety referred to in Section 41, paragraph 1, (a) or (b), for breeding purposes in a breeder's own nursery.
2. The use of harvested material for breeding purposes in a breeder's own nursery may be subject to conditions and limitations by or by virtue of a general administrative order. These may relate to the maximum quantity of harvested material to be used for breeding purposes and the remuneration the holder of the plant breeder's right is entitled to.

Section 41b

1. The exclusive right, referred to in paragraph (1) of Section 40, shall not extend to the activities concerning any material or derived material of the protected variety, or of a variety covered by Section 41, paragraph 1, which has been sold or otherwise marketed by the breeder or with his consent in the Netherlands or in one of the Member States of the European Union or in another State which is party to the Agreement on the European Economic Area, unless such activities:
 - a. involve further propagation of the variety in question;
 - b. involve an export of material of the variety, which enables the propagation of the variety, into a country which does not protect varieties of the plant genus or species to which the variety belongs, in a manner comparable to that provided for in this Act.

Section 42

1. The holder of a plant breeder's right shall grant such licenses as are necessary to the public interest.
2. The obligation referred to in the preceding paragraph shall include the obligation of the holder of a plant breeder's right to furnish the licensee at a reasonable price with the propagating material he needs if he is to make proper use of the licence.

Section 43

1. If the holder of a plant breeder's right does not fulfil the obligation referred to in Section 42, the license shall be granted by the Board if interested parties so request. Section 36 shall apply *mutatis mutandis* with respect to the request.
2. Before taking a decision the Board shall give the parties an opportunity to reach agreement within a period determined by the Board.
3. If agreement cannot be reached the Board shall decide after having heard the parties. The scope of the license,

the remuneration to be paid to the holder of the plant breeder's right, and the quantity of propagating material to be furnished and the remuneration to be paid for it shall be fixed in the decision. When taking a decision the Board may require the person who has obtained the license to furnish security within a certain period.

4. When the Board has granted the licence and the obligation to provide security, if imposed, has been complied with, the license shall be entered in the Netherlands Register of Varieties. The license shall not operate until the date of its entry. From that date it shall also operate as regards persons who acquired rights on the plant breeder's right after the date of the publication referred to in paragraph (1).

Section 44

1. The holder of a plant breeder's right may make a public offer of licence. The offer shall be published in the Nederlandse Staatscourant through the intermediary of the Board and at the expense of the holder of the plant breeder's right, if the Board agrees to the terms on which the licence is to be granted, having regard to the public interest referred to in Section 42, paragraph (1).
2. Any person wishing to avail himself of the offer shall obtain a licence by informing the Board by registered letter that he accepts the offer.
3. The licence shall be entered in the Netherlands Register of Varieties. The license shall not operate until the date of its entry. From that date it shall also operate as regards persons who acquired rights on the plant breeder's right after the date of the publication referred to in paragraph (1).
4. A public offer shall be irrevocable, subject to the provisions of the following paragraphs.
5. Subject to the Board's approval, the holder of a plant breeder's right may modify the terms on which the licence is granted, but not until one year has elapsed since its entry in the Netherlands Register of Varieties.
6. If the Board is of the opinion that the terms should be modified, it shall inform the holder of the plant breeder's right accordingly. In that event the holder of the plant breeder's right shall propose a modification within a period to be fixed by the Board, which period shall not be less than two months; if he fails to do so, the Board shall modify the terms *ex officio*.
7. The modification shall be published in the Nederlandse Staatscourant through the intermediary of the Board.

Section 45

1. If Our Minister is of the opinion that the public interest so requires he shall communicate this to the holder of the plant breeder's right in writing, stating the reasons for his opinion, and shall give him the opportunity to make a public offer under Section 44 within a period of one month and on such conditions as are approved by Our Minister.

2. If an offer is not made pursuant to paragraph (1), the Board shall make the offer with due observance of the instructions given by Our Minister and shall publish it in the Nederlandse Staatscourant at the expense of the holder of the plant breeder's right.
3. Paragraphs (2) to (7) of Section 44 shall apply mutatis mutandis, it being understood that the Board shall follow the instructions of Our Minister in the exercise of the powers defined in those paragraphs.

Section 46

1. A licence shall authorise the licensee to engage in the activities described therein, which activities may not be engaged in, pursuant to paragraph (1) of Section 40, by persons other than the holder of the plant breeder's right.
2. In the absence of provisions to the contrary a licence shall apply for the entire period of validity of the plant breeder's right and shall extend to all the activities for which the authorisation of the holder of the plant breeder's right are required under this Act.
3. A licence granted otherwise than under Sections 43, 44 and 44 shall be entered in the Netherlands Register of Varieties at the request of the licensee. It shall be valid in respect of third parties after it has been registered.
4. A licence shall not be transferable, unless otherwise provided for.

Section 47

Further provisions shall be made by or by virtue of a general administrative order with respect to:

- a. the requests to the Board referred to in this part;
- b. the fixing of the date when the requests referred to in (a) shall be deemed to have been submitted to the Board;
- c. the hearing of interested parties.

PART IV

The Plant Breeder's Right as Part of the Breeder's Property

Section 48

1. A plant breeder's right and the entitlement to the grant of a plant breeder's right are transferable and inheritable.
2. Transfer of a plant breeder's right and the right resulting from an application for a plant breeder's right shall take place by deed.
3. Any reservation regarding the transfer shall be stated in the deed; in the absence of any such statement the transfer shall be unrestricted.

4. The transfer shall not operate in respect of third parties until the deed has been entered in the Netherlands Register of Varieties.
5. Either party shall be entitled to request the Board to make the entry.

Section 49

1. If a plant breeder's right accrues to more than one person collectively, the position of such persons with respect to each other and their position with respect to third parties shall be governed by what they have settled by agreement; their position with respect to third parties shall be so governed only in so far as it is evident from the Netherlands Register of Varieties.
2. If there is no such agreement or if the agreement does not provide otherwise, any person co-entitled to a plant breeder's right shall be competent to exercise the right and to take action against any infringement of that right.
3. Every any person co-entitled to a plant breeder's right shall offer his rights to his co-participants at a reasonable price before alienating them to a third party.

Section 49a

1. The pledge of a plant breeder's right shall take place by deed and shall not operate in respect of third parties until the deed has been entered in the Netherlands Register of Varieties.
2. The pledgee shall be required to elect domicile in The Hague and inform the Board in writing of the election of this domicile. If he has failed to do so the residence of the Board shall be deemed the domicile of his election.
3. Any stipulation in the said deed with regard to the grant of licences shall not take effect until the date of the deed's entry in the Netherlands Register of Varieties. From that date it shall also operate with respect to third parties. Stipulations relating to fees for licences granted before the date of entry shall be valid from the date the person concerned was notified by means of a summons.
4. On termination of the seizure the deed on which the termination is based shall be entered in the Netherlands Register of Varieties.

Section 50

1. If a plant breeder's right is seized, the report of the seizure shall be entered in the Netherlands Register of Varieties and the relevant provisions in the Code of Civil Procedure pertaining to the forced sale or garnishment of immovable property shall apply mutatis mutandis it being understood that in the report of the seizure instead of the nature and location of the property reference shall be made to the plant breeder's right.
2. After the entry of the report the holder of a plant breeder's right whose right has been seized shall not alienate or

encumber it, or place it under supervision and shall grant no licences.

3. Any licence fees not paid before the entry was made shall be included in the seizure ipso jure after a writ to that effect has been served upon the licensee.

The licence fees shall be paid over to the seisor to serve as payment along with the proceeds from the plant breeder's right referred to under Section 50a, paragraph (2) on the basis of the priorities of the various claims, provided the licensee has expressly been informed. Sections 475c, 476 and 478 of the Code of Civil Procedure shall apply mutatis mutandis.

3. On termination of the seizure the title on which the termination is based shall be entered in the Netherlands Register of Varieties.
4. The entry of the report of the seizure can be deleted from the Netherlands Register of Varieties:
 - a) by virtue of a writ presented for entry stating that the seizure shall be terminated or declared null and void at the request of the seisor;
 - b) by virtue of a written judicial decision presented for entry stating that the seizure shall be terminated.
5. Sections 504a, 538-541, 726, paragraph (2) and 727 of the Code of Civil Procedure shall apply mutatis mutandis to the seizure of a plant breeder's right.

Section 50a

1. The sale of a plant breeder's right that has been seized by a pledgee or a seisor to serve as payment shall be public and shall take place in the presence of a solicitor. Sections 508, 509, 513, paragraph (1), 514, paragraphs (2) and (3), 515-519 and 521-529 of the Code of Civil Procedure shall apply mutatis mutandis, it being understood that what is said with reference to mortgages or mortgage holders shall apply to the pledges and pledges attached to the plant breeder's right.
2. Sections 551 and 552 of the Code of Civil Procedure shall apply mutatis mutandis to the distribution of the proceeds.

PART V

Duration and Claiming of the Plant Breeder's Right

Section 51

The duration of the a plant breeder's right shall be at least twenty years from the date of registration of the plant breeder's right. The duration shall be established by general administrative order for the various species.

Section 52

1. The holder of a plant breeder's right may renounce it.

2. The renunciation of a plant breeder's right shall be by deed only; the deed shall be entered in the Netherlands Register of Varieties.
3. The deed shall not be entered if there are any persons who, according to documents entered in the Register, have obtained rights on the plant breeder's right or licences, or have instituted legal proceedings relating to the right, and if those persons have not agreed to the renunciation.
4. A plant breeder's right shall lapse as from the date on which the deed is entered in the Netherlands Register of Varieties.

Section 53

1. A plant breeder's right shall lapse ipso jure if the annual fee referred to in Section 38 remains unpaid six months after it became due. The fact that the right has lapsed shall be recorded in the Netherlands Register of Varieties.
2. If the fee is not paid within fourteen days of the date on which the right lapsed, the Board shall remind by registered letter the person recorded in the Netherlands Register of Varieties.
3. If payment is not made within one month after the date on which the right lapsed, all the persons who, according to the documents entered in the Netherlands Register of Varieties, have obtained rights on the plant breeder's right or licences, or have instituted legal proceedings relating to the right, shall be informed of this in writing within fourteen days.
4. Any claim by interested parties that they never received the letters referred to in the preceding paragraph shall not be receivable.

Section 54

1. A plant breeder's right shall be declared null and void when it is established:
 - that the variety was not new at the time of the grant of the plant breeder's right;
 - that the condition laid down in subparagraph (a) of paragraph (1) of Section 29 was not complied with at the time of the grant of the plant breeder's right;
 - that, where the grant of the breeder's right has been essentially based upon information and documents furnished by the breeder, the conditions laid down in subparagraphs (b) and (c) of paragraph (1) of Section 29, were not complied with at the time of the grant of the plant breeder's right;

that the breeder's right has been granted to a person who is not entitled to it by or by virtue of this Act unless it is transferred to the person who is so entitled.

2. Any interested party, Our Minister or any person or persons acting on his behalf may at any time submit to the Board a substantiated petition that a plant breeder's right be declared null and void.
3. Annulment of a plant breeder's right deprives the plant breeder's right and any rights derived from it of any further legal implications.

Section 55

1. A plant breeder's right can be claimed in its entirety or partly if it was granted to a person who was not entitled to it or was not alone entitled to it pursuant to Sections 30, 31 or 32.
2. The right to claim a plant breeder's right shall accrue to the person who, pursuant to the said sections, has a full or partial entitlement to the pursuant to the plant breeder's right.
3. The said right shall lapse five years from the date on which the plant breeder's right was registered.
4. The claim shall be made by submitting a substantiated petition to the Board.
5. Licences obtained in good faith before the entry referred to in paragraph (1) of Section 56 was made, shall remain valid in respect of the new holder of the plant breeder's right, who shall be entitled to the fees payable for the licences.

Section 56

1. A request that a plant breeder's right be declared null and void and a request for the award of a claim, and any refusal or withdrawal of such requests, shall be entered in the Netherlands Register of Varieties.
2. As regards the adjudging of the costs, Sections 56 and 57 of the Code of Civil Procedure shall apply mutatis mutandis as far as possible.
3. The decision of the Board to declare a plant breeder's right null and void or to award a claim shall be entered in the Netherlands Register of Varieties.
4. The declaration that a plant breeder's right is null and void and the award of a claim shall have retroactive effect as from the date of the entry in the Netherlands Register of Varieties referred to in paragraph (1).

Section 57

Further provisions shall be made by or by virtue of a general administrative order with respect to:

- a. the requests and petitions addressed to the Board referred to in this Part;
- b. the fixing of the date on which the requests and petitions referred to under (a) shall be deemed to have been submitted to the Board;

- c. the hearing of interested parties.

PART VI

Decisions of the Board, Appeals to the Board and Appeals to the Court of Justice at the Hague

Section 58

(repealed)

Section 59

1. An appeal against the decisions of the Board made pursuant to the provisions of this Chapter, with the exception of the decisions made pursuant to Sections 54 and 55, may be lodged with the Appeals Department.
2. The appeal may be lodged by the person informed of the decision or his predecessor in title, or if the decision was made at the request of a person other than those referred to, also by the person who made the request.

Section 60

1. An appeal against the final decisions made by the Board pursuant to Sections 54 and 55 may be lodged with to the Court of Justice at the Hague.
2. The appeals to the Court of Justice shall be made by writ of summons within three months of the date of dispatch of the decision of the Board for Plant Breeders' Rights.
3. The writ of summons shall be entered in the Netherlands Register of Varieties within eight days from the date it bears. In the event of the writ of summons not being entered within that period, the appellant shall make good the damage suffered by those who, after that period and before the entry was made, obtained in good faith rights affected by the declaration that the plant breeder's right is null and void or the award of a claim.
4. When a decision on an action for a declaration that the plant breeder's right is null and void or for the award of a claim becomes final, or when the action has been discontinued, a note to that effect shall be entered in the Netherlands Register of Varieties at the request of the first party to make the request.

Section 61

1. When holding its deliberations and passing judgement the Court of Justice shall be composed of three judges and two specialists who are not members of the Judiciary. One of the judges shall preside. Judgements passed when the Court is composed of any other number of persons shall be invalid.
2. We shall appoint the persons being referred to in the preceding paragraph who are not members of the Judiciary. We shall also appoint as many deputies as We may think fit. They shall be referred to as 'advisers' and 'deputy advisers' in the Court of Justice at The Hague.

3. Persons shall not be eligible for appointment as advisers in the Court of Justice at The Hague until they have reached the age of thirty.
4. The advisers and deputy advisers shall be appointed for a period of five years. They shall be eligible for re-appointment. They may be discharged by Us at their request.
5. The advisers and deputy advisers shall be sworn in before they enter upon their duties.
6. The advisers and deputy advisers shall be discharged by Us as from the first day of the month following the month in which they reach the age of seventy.

Section 62

(repealed)

Section 63

1. The provisions of Sections 11, 12, 13, paragraphs (1) to (4), 13a, 13b, paragraph (1), and 14a to 14e of the Act on the Organisation of the Judiciary shall be applicable mutatis mutandis to the advisers and deputy advisers in the Court of Justice at The Hague on the understanding that the High Court shall give to the President of the Court of Justice the opportunity to give oral or written information and to express his opinion on a pending complaint under Section 14a of the said Act, in the case where the complaint is directed against an adviser or deputy adviser.

Section 64

(repealed)

Section 65

(repealed)

Section 66

The President of the Court of Justice at The Hague shall have the power to admonish, either ex officio or at the request of the Public Prosecutor's Office, advisers and deputy advisers in the Court of Justice who act in a manner detrimental to the dignity of their office, neglect their official duties or commit a breach of the obligations imposed on them under Section 67, after having given them an opportunity to be heard.

Section 67

1. The advisers and deputy advisers in the Court of Justice at The Hague shall not, either directly or indirectly, engage in any special interview or conversation, or establish contact with the parties, their Counsels, attorneys or proxies, on any matter which they are dealing with or which they know or have reason to believe will be dealt with by them, nor accept any special instructions, memoranda or other writings regarding that matter.

2. The advisers and deputy advisers shall not do any consulting on or take up the defence of cases which they are dealing with or which they know or have reason to believe will be dealt with by them.
3. The advisers and deputy advisers shall be pledged to secrecy as to opinions expressed in chambers.
4. The advisers and deputy advisers shall not do any consulting on or take up the defence of cases which they are dealing with or which they know or have reason to believe will be dealt with by them.

Section 68

1. Regulations governing the implementation of the provisions of this Part shall be laid down by general administrative order.
2. The travel and accommodation expenses incurred by advisers and deputy advisers in the Court of Justice at The Hague shall be reimbursed and they shall be entitled to further compensation in accordance with rules to be laid down by general administrative order.

Section 69

1. An appeal against the decisions of the Court of Justice may be lodged with the Supreme Court of the Netherlands.
2. Paragraphs (2), (3) and (4) of Section 60 shall be applied mutatis mutandis.

Section 70

Copies of every judicial ruling on plant breeder's rights shall be sent within one month of the date of the ruling and free of charge to the Board by the Clerk of the tribunal which gave the ruling.

PART VII.

Making and Publishing the Registrations and Entries in the Netherlands Register of Varieties

Section 71

The registrations referred to in this Chapter and the entries based on decisions against which an appeal may be lodged, shall be made when a decision has been taken on the appeal or if the time limit for an appeal has expired without the appeal having been lodged, or if the appeal has been withdrawn by means of a written notification to that effect addressed to the Board.

Section 72

Notice on the following shall be published in the Nederlandse Staatscourant:

- a. the registrations referred to in this Chapter, except the registrations made pursuant to paragraph (4) of

Section 43, paragraph (3) of Section 44 and paragraph (3) of Section 46;

- b. the entries made pursuant to Sections 36, 37, paragraph (1) of Section 53, paragraphs (1) and (3) of Section 56 and paragraph (4) of Section 60.

CHAPTER V

Lists of Varieties

Section 73

A List of Varieties shall be kept for the cultivated species or groups of cultivated species to be designated by Us, in which shall be entered the varieties and other groups of plants which belong to those cultivated species and whose growing in the Netherlands is deemed important by a committee to be set up by Us or by an institution to be designated by Us.

Section 74

The characteristics and other particulars which in the committee's or institution's view should be made generally available shall be entered when the varieties and the other groups of plants are put on the List of Varieties.

Section 75

1. Entry on the List of Varieties, classification in the List, modification of the classification and removal from the List shall be carried out by the committee or the institution *ex officio*, subject to the provisions of Section 76.
2. Before making any entry, classifying, modifying any classification or removing any entry from the List of Varieties, the committee or the institution shall carry out an expert's examination or have such an examination carried out.
3. The committee or institution shall not make any entry on the List of Varieties, transfer any entry to the 'for export only' class or remove any entry from the List before it has heard, or at least duly summoned, the holder of the plant breeder's right, the authorised maintainer or the breeder of a variety registered by virtue of paragraph (2) of Section 18.

Section 76

1. The holder of the plant breeder's right in respect of a variety and the breeder of a variety registered by virtue of paragraph (2) of Section 18, may submit a substantiated request to the committee or institution that his variety be put on the List of Varieties.
2. If a variety of an agricultural species has been put in the 'for export only' class, the holder of the plant breeder's right, the authorised maintainer or the breeder of a variety registered by virtue of paragraph (2) of Section 18 may, within three months of the date of publication of the edition of the List of Varieties concerned, submit to

the committee a substantiated request that the classification of the variety be modified.

3. Before deciding on a request as referred to in paragraphs (1) and (2) the committee or institution shall carry out an expert's examination or have such an examination carried out.
4. The committee or institution shall not refuse a request before it has heard the petitioner, or at least duly summoned him.

Section 77

(repealed)

Section 78

1. Any person who has received a communication as referred to in Section 75, paragraph (1) and 76, paragraphs (1) and (2) may address a substantiated petition to our Minister.
2. Our Minister shall decide whether any modifications and, if so, what modifications shall be made to the List of Varieties in the light of the petition addressed to him.
3. Our Minister can have modifications made to the List of Varieties *ex officio*.

Section 79

Our Minister may make further provisions governing the arrangement, composition, classification and publication of a list of varieties, in respect of the particulars referred to in Section 74, and governing the submission of requests as referred to in Sections 76 and 77 and petitions as referred to in Section 78, the examinations and the publication of the results of examinations.

CHAPTER VI

Trade in Propagating Material and Testing Institutions

PART I

Trade in Propagating Material

Section 80

1. Without prejudice to the right to use a trade name or trademark, propagating material of a variety entered in the Netherlands Register of Varieties shall not be out on the market, further commercialised, and, subject to the provisions of paragraphs (2) and (3), exported otherwise than under the denomination entered in the Register.
2. If, in any other country, a name different from the one registered in this country is prescribed for a variety, propagating material of that variety may only be exported to that country under the denomination prescribed there.
3. Unless paragraph (2) of this Section is applicable, propagating material of a registered variety may be exported

to States other than Member States of the Union under the denomination customarily used in the country of importation, provided the denomination registered in this country is also stated.

4. The registered denomination or a similar term shall not be used for other propagating material from the same or a related cultivated species.

Section 81

1. In the case of agricultural species, only propagating material of registered varieties shall be put on the market, further commercialised and exported.
2. It may be provided by general administrative order that the preceding paragraph shall not apply to certain agricultural species.
3. It may be provided by general administrative order that, in the case of horticultural species, only propagating material of registered varieties shall be put on the market, further commercialised and exported.

Section 82

Our Minister may, after having heard the committee or institution referred to in Section 73, decree that notwithstanding the provisions of, or made by virtue of, Section 81, propagating material of groups of plants to be specified by him that are not registered, may also be put on the market, further commercialised and exported.

Section 83

1. It may be provided by general administrative order that in the case of an agricultural species to which paragraph (1) of Section 81 applies, only propagating material of varieties or other groups of plants put on the List of Varieties shall be put on the market, further commercialised and exported.
2. Our Minister shall make further provisions governing the putting on the market and further commercialisation of the propagating material of varieties or other groups of plants entered in the 'for export only' class.

Section 84

1. It shall be specified by or by virtue of a general administrative order what categories of propagating material of varieties belonging to an agricultural species designated by virtue of Section 87 may be put on the market, further commercialised and exported.
2. For technical, plant breeding reasons it may be provided by general administrative order that, in the case of species specified in that order and of the kind referred to in paragraph (1), some categories of propagating material of varieties belonging to those species and specified in that order shall be produced and put on the market exclusively by the holder of the plant breeder's right in respect of the variety concerned or, if there is no plant

breeder's right in respect of that variety, by the maintainers designated for the variety.

3. The maintainers shall be designated by the Board. The Board shall designate a single maintainer if this is necessary for technical, plant breeding reasons. The latter shall be obliged to make foundation stock suitable for the production of propagating material available to any person who has expressed a wish to receive it, on terms and conditions to be specified by the Board.

Section 85

Propagating material of a variety registered by virtue of paragraph (2) of Section 18 shall be put on the market, further commercialised and exported only by the breeder of the variety and by any person who has obtained from the breeder foundation stock suitable for the production of propagating material.

Section 86

Propagating material of a group of plants that may not be put on the market pursuant to the provisions of the preceding Sections may nevertheless be put on the market and exported for purposes of testing by or on behalf of the person who, by his own efforts, has developed the group of plants to which the propagating material belongs, provided that the testing institution designated by virtue of Section 87 has given permission.

PART II

Testing Institutions

Section 87

1. It may be provided by general administrative order, with respect to a cultivated species, that only the persons who are members of a testing institution designated for that cultivated species in the general administrative order shall be authorised to engage in the production, storage and processing of propagating material for business purposes other than use on those persons' own premises, and in the putting on the market, further commercialisation, importation, exportation and offering for export of that material, or to have these activities performed for business purposes.
2. It may be provided by the general administrative order referred to in the preceding paragraph that for the purposes of that order seed not intended to be sown for the production of a crop shall also be regarded as propagating material.
3. Our Minister shall have the power to grant dispensation or exemption from the provisions of paragraph (1) in such cases or groups of cases as he may determine.

Section 88

The following shall be required of an institution to be taken into consideration for designation as a testing institution pursuant to the preceding Section:

1. the institution shall, according to its statute:
 - a) have been set up to promote by means of tests the putting on the market, further commercialisation and exportation of reliable propagating material;
 - b) be non-profit-making;
 - c) have a board on which the interested parties or the groups of interested parties are adequately represented;

2. the statute of the institution shall provide that:
 - a) the statute and the generally applicable rules, and any amendments to them and the repeal thereof, shall require Our Minister's approval before becoming operative;

- b) the chairman of the Board shall be appointed by Our Minister, after having heard the views of the Board of the testing institution;

- c) any person shall be admitted as a member upon application;

- d) if a member does not comply with any of the obligations imposed by the statute or the generally applicable rules referred to under (a), one or more of the following disciplinary measures may be imposed: a reprimand, a fine not exceeding ten thousand guilders, the placing of the member under more stringent supervision for a period not exceeding two years at his own expense, the disciplinary order being published; if, during the five years immediately preceding the non-compliance with any of the obligations referred to above, a member was either put under more stringent supervision at his own expense or was fined twice, he may be suspended from membership for a period not exceeding three years;

- e) members shall have the right to appeal to an Appeals Tribunal against any decisions other than those referred to in (g), taken by any of the organs of the testing institution within one month of the announcement of the decision; the composition of and the procedure followed by the Appeals Tribunal shall be laid down in regulations governing appeals; generally applicable rules shall not be regarded as decisions;

- f) Our Minister shall appoint the Chairman, the members and the Secretary of the Appeals Tribunal;

- g) the members shall have the right to appeal to an Appeals Commission on Testing Matters against decisions taken in connection with testing;

- h) the testing institution shall submit to Government supervision carried out on behalf of Our Minister in accordance with rules to be laid down by him, and shall undertake to furnish all relevant informa-

tion and co-operate in every possible manner to ensure that such supervision be effective;

- i) the Government officers who have to carry out the supervision shall have the right to attend the meetings of the Board and of the Executive Committee, and shall always receive invitations to those meetings together with all the relevant documents.

Section 89

1. The testing institution shall be supervised on behalf of our Minister in accordance with rules to be laid down by him. It shall be obliged to furnish all relevant information and to co-operate in every possible manner to ensure that such supervision be effective.

2. The testing institution shall supply annually the holder of a plant breeder's right in respect of a variety of an agricultural species, at his request, with a list of members who have produced propagating material of his variety, stating the quantities concerned, and shall, if so requested, assist him in collecting the licence fees.

Section 90

1. The Appeals Tribunal referred to in subparagraph (e) of paragraph 2 of Section 88 shall have absolute discretion when judging the decisions referred to in that Section taken by any of the organs of the testing institution.

2. Judgements of the Appeals Tribunal shall have the force of binding recommendations.

Section 91

1. Without prejudice to the powers of the production and industrial boards as referred to in paragraph (4) of Section 66 of the Industrial Organisation Act the testing institution shall have the authority to lay down rules with respect to the cultivated species for which it has been designated governing:
 - a) the health, purity and quality of the propagating material;
 - b) the grading, classification, treatment, packing, shipping and description of the propagating material in so far as those factors affect any of the aspects mentioned in (a);
 - c) the use of the documents and distinguishing marks relating to the propagating material which are required for one or more of the activities referred to in paragraph (1) of Section 87;
 - d) the technical set-up and the management of the business, and also the technical aspects of conducting it;
 - e) the checking of the observance of the rules concerning the matters referred to in (a), (b), (c) and (d) and the testing of the propagating material;

2. In so far as the rules concerning the matters referred to in (a), (b), (c) and (d) relate to exports, Our Minister may decree that the checking of their observance shall be entrusted to an authority to be designated by him.
3. Our Minister may quash the rules laid down by the testing institution concerning the matters referred to in (a), (b), (c).
4. If no testing institution has been designated or if an institution cannot provide the rules of the kind described in paragraph (1) or cannot provide all of them, such rules may be provided by or by virtue of a general administrative order.
5. A general administrative order issued in the circumstance referred to in paragraph (4) shall be repealed in so far as the testing institution designated by virtue of Section 87 has made the necessary rules and these rules have been approved by Our Minister.
6. The decree referred to in paragraph (2) shall be published in the Nederlandse Staatscourant.

Section 92

1. The testing institution shall forbid a member to commercialise propagating material and shall prohibit trade in that material if it finds that the material does not belong to the group of plants the member claimed it belonged to when he offered it, or that it does not comply with the rules made by virtue of Section 91.
2. In such special cases or groups of cases as he may specify Our Minister may grant dispensation or exemption from the rules made by virtue of Section 91, either on conditions to be specified by him, or not.
3. If it is evident from a member's method and the results it produces that the production, storage and processing of the propagating material are not being carried out with sufficient adequacy, the testing institution may defer the testing of that member's propagating material for a period not exceeding three years, as often as is necessary.

Section 93

Our Minister shall determine the distinguishing marks, signs, pieces of evidence and seals to be prescribed under this Act.

CHAPTER VII

Section 94

(repealed)

CHAPTER VIII

Penal Provisions

Section 95

1. If the findings in a civil or criminal case depend on the determination of the variety to which a group of plants

must be deemed to belong, the Board shall be heard. The Board's advice shall give the grounds on which it is made.

2. The Board shall give absolute priority to the matter referred to in paragraph (1).

Section 96

1. Any person intentionally acting in contravention of the provisions made by or by virtue of Sections 40, 41, paragraph (1), 41a, 41b, 80, 81, 83-85, 87 and 91, paragraph (4), Article 13, paragraph (2), Article 17, paragraphs (1) and (2) and Article 18, paragraph (3) of Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (OJ No L 227) shall be guilty of a criminal offence.
2. Any person acting in contravention of the provisions made by or by virtue of Sections 40, 41, paragraph (1), 41a, 41b, 80, 81, 83-85, 87 and 91, paragraph (4), Article 13, paragraph (2), Article 17, paragraphs (1) and (2) and Article 18, paragraph (3) of Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (OJ No L 227) shall be guilty of an offence.

Section 97

Amended in other regulations.

Section 98

In the event of non-compliance with an obligation as referred to in subparagraph (d) of paragraph (2) of Section 88 resulting in an economic offence as well, the Public Prosecutor shall, after having consulted the testing institution, decide whether or not disciplinary action shall be taken by the testing institution in respect of the offence.

CHAPTER IX.

Transitional and Final Provisions

Section 99

1. The contents of the Central Register of Varieties referred to in Section 2 of the Plant Breeder's Ordinance, 1941, at the time of the entry into force of this Act, shall as from that date be absorbed *ex officio* by the Netherlands Register of Varieties. Plant breeders' rights obtained by entry in the Central Register of Varieties and any plant breeders' rights valid at the time of the entry into force of this Act, shall remain effective, on the understanding that, notwithstanding the provisions of paragraph (3) of Section 37, those plant breeders' rights shall be dated as from the date of entry of the variety in the Central Register of Varieties and that, notwithstanding the provisions Section 51, the validity of these rights shall be twenty-five years, and for roses seventeen years.
2. The provisions of Section 7, paragraph (2), item 2^c, 40 to 44 and 46 of the Plant Breeder's Ordinance, 1941,

- shall remain applicable to varieties to which the provisions of Section 7, paragraph (2), item 2^e, or Section 46 of that Decree were applicable at the time of the entry into force of this Act, notwithstanding the provisions made by or by virtue of this Act, until July 1st of the year following the year in which this Act enters into force or until such later date as shall be specified by general administrative order. Our Minister shall ensure that at the time when the aforementioned Sections of the Plant Breeder's Ordinance, 1941, cease to be applicable to any variety of potato which had been recorded in the Central Register of Varieties for five years or more at the time of the entry into force of this Act, licenses shall become operative for that variety, by virtue of a public offer made in the manner described in Section 45, for the remainder of the validity of the plant breeder's right.
3. The lists of varieties drawn up by virtue of Section 31 of the Plant Breeder's Ordinance, 1941, at the time of the entry into force of this Act, shall as from that date be deemed to be lists of varieties within the meaning of Section 73.
 4. The applications and requests pending at the time of the entry into force of this Act before the Board for Plant Breeder's Rights referred to in Section 6 of the Plant Breeder's Ordinance, 1941, shall, as from that date, be ipso jure before the Board in the state in which they are at the time, provided that:
 - a. an application for registration in the Central Register of Varieties shall be deemed to be an application for a plant breeder's right, and
 - b. an application relating to a variety as referred to in paragraph (2) of Section 18 shall be deemed to be an application for registration of the variety in the Netherlands Register of Varieties, and
 - c. a request for the transfer of a registration in the Netherlands Register of Varieties shall be deemed to be tantamount to a claim to a plant breeder's right within the meaning of Section 55.
- The Board shall ensure that the necessary entries are made in the Netherlands Register of Varieties.
5. The cases pending at the time of entry into force of this Act before the Plant Breeders' Rights Appeals Tribunal referred to in Section 23 of the Plant Breeder's Ordinance, 1941, shall be ipso jure before the Appeals Department in the state in which they are at the time. The Board shall ensure that the necessary entries are made in the Netherlands Register of Varieties.
 6. The cases pending at the time of entry into force of this Act before the Appeals Tribunal, the Court of Justice at The Hague or the Supreme Court pursuant to Sections 23, 24 or 28 of the Plant Breeder's Ordinance, 1941, shall be dealt with and decided on in accordance with the provisions of the Plant Breeder's Ordinance, 1941.
7. The provisions of paragraph (1) of Section 81 shall not apply to varieties appearing on a list of varieties at the time of the entry into force of this Act:
 - a. if, at that time, an application as referred to in subparagraph (a) or subparagraph (b) of paragraph (4) is pending with respect to the variety, until such time as the Board has decided on the application;
 - b. until one month after the entry into force of this Act, or if within that month an application has been received for a plant breeder's right or for registration in the Netherlands Register of Varieties under paragraph (2) of Section 18, until such time as the Board has decided on the application.
- Section 100
- Amended in other regulations.
- Section 101
1. The following regulations made by the German occupation authorities shall be cancelled:
 - a. The Plant Breeders Ordinance, 1941, Verordeningenblad 1942, 8;
 - b. The order of the Secretary-General of the Agriculture and Fisheries Department of June 24, 1942, concerning the entry into force of the Plant Breeders Ordinance, 1941, Staatscourant 1942, 120.
 2. The following Acts shall be repealed:
 - a. The Horticultural Seeds and Planting Material Testing Act;
 - b. The Act of December 31, 1920, Stb, 957.
- Section 102
1. This Act may be cited as the Seeds and Planting Materials Act.
 2. It shall enter into force on a date to be specified by Us.
- We direct and ordain that these presents be published in the Staatsblad and that all Ministerial Departments, Authorities, Bodies and Officials whom they may concern diligently implement them.
- Given at the Palace of Soestdijk, 6 October 1966.
- Published 10 November 1966.
- The Minister of Justice,
SAMKALDEN.

**Dr. Rolf Jördens succeeds Mr. Barry Greengrass
as Vice Secretary-General of UPOV**

The Council of the International Union for the Protection of New Varieties of Plants (UPOV) appointed on April 7, 2000, Dr. Rolf Jördens, a German national, to the post of Vice Secretary-General. Dr. Jördens succeeds Mr. Greengrass, a national of the United Kingdom, who will retire at the end of June 2000 after twelve years of service with UPOV.

The Secretary-General, on behalf of the UPOV staff members, would like to express his gratitude and thanks to Mr. Greengrass for his efficiency in guiding the UPOV Office and its tasks worldwide. Thanks to Mr. Greengrass's excellent knowledge in the field of plant variety protection, his diplomatic way of dealing with UPOV matters and his warmth and enthusiasm at all levels, the number of member States had grown to a total of 45 at the end of June 2000.

I should like to take this opportunity, along with the staff members of UPOV, to wish Mr. Greengrass a long and happy retirement.

We are convinced that Dr. Jördens will continue to further develop UPOV and to build on the experience of the UPOV team to bring a new impetus to the field of plant variety protection based on his professional experience and educational background. We wish him the best of success in his new function as Vice Secretary-General of UPOV and look forward to working with him.

The Secretary-General of UPOV



Dr. Kamil Idris

and the staff of UPOV