

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



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GOVERNMENT GAZETTE

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[No. 8663

KAAPSTAD, 20 APRIL 1983

OFFICE OF THE PRIME MINISTER

KANTOOR VAN DIE EERSTE MINISTER

No. 820.

20 April 1983

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 38 of 1983: Plant Breeders' Rights Amendment Act, 1983.

No. 820.

20 April 1983

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 38 van 1983: Wysigingswet op Planttelersregte, 1983.

Act No. 38, 1983

PLANT BREEDERS' RIGHTS AMENDMENT ACT, 1983

GENERAL EXPLANATORY NOTE:

[Words in bold type in square brackets indicate omissions from existing enactments.

Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the Plant Breeders' Rights Act, 1976, so as to substitute certain definitions; to authorize the entering into of certain agreements in connection with the exchange of the results of tests and trials with new varieties; to further regulate the consideration and examination of applications for plant breeders' rights; to make the payment of certain fees a prerequisite for the granting of plant breeders' rights; and to further regulate the prohibition of the disclosure of certain information; and to provide for incidental matters.

*(English text signed by the State President.)
(Assented to 13 April 1983.)*

BE IT ENACTED by the State President and the House of Assembly of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 15 of 1976, as amended by section 1 of Act 5 of 1980 and section 1 of Act 14 of 1981.

1. Section 1 of the Plant Breeders' Rights Act, 1976 (hereinafter referred to as the principal Act), is hereby amended—
- (a) by the substitution for the definition of "department" 5 of the following definition:
"department" means the Department of Agriculture **[and Fisheries]**;"
 - (b) by the substitution for the definition of "Minister" of 10 the following definition:
"Minister" means the Minister of Agriculture **[and Fisheries]**;"
 - (c) by the substitution for the definition of "officer" of the 15 following definition:
"officer" means an officer or an employee as defined in section 1 of the Public Service Act, 1957 (Act No. 54 of 1957);" and
 - (d) by the substitution for the definition of "registrar" of 20 the following definition:
"registrar" means the officer designated as Registrar of Plant Breeders' Rights in terms of section 3 **[, and includes an officer acting under a delegation from or under the control or direction of the registrar]**;"

Insertion of section 5A in Act 15 of 1976.

2. The following section is hereby inserted after section 5 of 25 the principal Act:

"Entering into of certain agreements by registrar.

5A. The registrar may, with the approval of the Minister, granted with the concurrence of the Minister of Foreign Affairs and Information and the Minister of Finance, enter into an agreement with the 30 appropriate authority in a convention country or an agreement country in terms of which the registrar may—

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- (a) obtain results of tests and trials undertaken by any such authority with a variety referred to in section 19 (2) of this Act, from such authority;
- (b) furnish the results of tests and trials—
- (i) undertaken by him in terms of section 19 (2) (a) of this Act with a variety referred to in that section; or
 - (ii) undertaken by him with a variety in respect of which the appropriate authority concerned has submitted propagating material to him for such purpose, to the authority concerned, if an application for the protection of the variety has been made in that other country in accordance with the laws in force in the country concerned; and
- (c) submit propagating material of a variety in respect of which application for a plant breeders' right has been made to him, to the authority concerned in order to have the necessary tests and trials undertaken therewith and to furnish the results thereof to him, against payment of the fees mentioned in the agreement."

Amendment of section 19 of Act 15 of 1976, as amended by section 12 of Act 5 of 1980.

3. Section 19 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (b) of subsection (1) of the following paragraph:
- "(b) Where an objection has been lodged under section 17, or an undertaking or a guarantee is required in terms of subsection (4) (b), the registrar shall delay considering the relevant application until the objection has been disposed of or the required undertaking or guarantee has been furnished."
- (b) by the substitution for subsection (2) of the following subsection:
- "(2) The registrar shall—
- (a) undertake such tests and trials as he may deem necessary with a variety in respect of which an application is being considered under subsection (1); or
 - (b) **[have such]** use the results of tests and trials **[undertaken]** obtained from the appropriate authority in a convention country or an agreement country in terms of an agreement referred to in **[subsection (6)]** section 5A,
- in order to enable him to determine whether such a variety is a new variety."
- (c) by the substitution for paragraph (a) of subsection (3) of the following paragraph:
- "(a) pay, subject to the provisions of subsection (4), the appropriate prescribed examination fee; and"
- (d) by the substitution for subsection (4) of the following subsection:
- "(4) (a) **[Notwithstanding the provisions of subsection (2) the registrar may accept results of tests and trials with the variety in question which were undertaken by the appropriate authority in a convention country or an agreement country. (b)]** The costs involved in obtaining the results **[under paragraph (a)]** referred to in subsection (2) (b) shall be paid to the registrar by the person whose application is being considered at the time and place determined by the registrar.
- (b) **The registrar may require that a person whose application for a plant breeder's right is being considered, furnish him with a written undertaking or a**

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suitable guarantee regarding a payment referred to in paragraph (a), before he takes steps to obtain the results of tests and trials with the variety concerned in terms of an agreement referred to in section 5A.”; and

(e) by the deletion of subsections (5) and (6).

Amendment of section 20 of Act 15 of 1976.

4. Section 20 of the principal Act is hereby amended by the substitution in subsection (1) for the words immediately following upon paragraph (c) of the following words:

“and that no moneys are due by the applicant in terms of section 19, he shall grant a plant breeder's right in respect of such new variety.”

Substitution of section 40 of Act 15 of 1976.

5. The following section is hereby substituted for section 40 of the principal Act:

“Secrecy.

40. No person shall, except—

(a) **[to the Minister, the board, the registrar or any other person]** for the purpose of carrying out his duties or the performance of his functions under this Act;

(b) **[to a police official]** for the purpose of **[an inquiry relating to the enforcement of the provisions of]** legal proceedings under this Act or any other law; or

(c) when required to do so by any court or under any law,

disclose any information acquired by him in the carrying out of his duties or the performance of his functions under this Act in relation to any new variety for which an application for the grant of a plant breeder's right has been made or in respect of which such right has been granted, or in relation to the business affairs of an applicant or the holder of such right.”

Short title.

6. This Act shall be called the Plant Breeders' Rights Amendment Act, 1983.