



PLANT VARIETY PROTECTION

GAZETTE AND NEWSLETTER

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RATIFICATIONS OF THE 1991 ACT OF THE UPOV CONVENTION

FRANCE

On April 27, 2012, the Government of France deposited its instrument of ratification of 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.

France has been a member of UPOV since October 3, 1971.

The 1991 Act entered into force for France on May 27, 2012, one month after the deposit of its instrument of ratification.

According to the notification deposited with the Secretary-General together with the instrument of ratification, the legislation governing breeders' rights of France applies to all genera and species.

IRELAND

On December 8, 2011, the Government of Ireland deposited its instrument of ratification of 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.

Ireland has been a member of UPOV since November 8, 1981.

The 1991 Act entered into force for the Ireland on January 8, 2012, one month after the deposit of its instrument of ratification.

According to the notification deposited with the Secretary-General together with the instrument of ratification, the legislation governing breeders' rights of Ireland applies to all genera and species.

NOTIFICATIONS CONCERNING GENERA AND SPECIES

BELGIUM

On January 20, 2012, the Office of the Union received a notification that the legislation governing breeders' rights of Belgium applies to the following consolidated list of genera and species:

	Taxa		Duration
Abutilon	Abutilon Mill.	Abutilon	20
Achillée	Achillea L.	Achillea	20
Aconit	Aconitum L.	Monnikskap	20
Kiwi	Actinidia chinensis Planch.	Kiwi	20
Ageratum	Ageratum L.	Ageratum	20
Agrostide des chiens	Agrostis canina L.	Kruipend struisgras	20
Agrostide géante	Agrostis gigantea Roth.	Hoog struisgras	20
Agrostide stolonifère	Agrostis stolonifera L.	Fioringras	20
Agrostide commune	Agrostis tenuis Sibth.	Gewoon struisgras	20
Poireau, oignon géant, échalotte, oignon, ciboulette	Allium L.	Prei, sierui, sjalot, ui, bieslook	20
Alstroemère	Alstroemeria L.	Incalelie	20
Amélanchier	Amelanchier Medik.	Krenteboom	20
Anémone	Anemone L.	Anemoon	20
Aneth	Anethum graveolens L.	Dille	20
Anigozanthos	Anigozanthos Labill.	Kangoeroepoot	20
Cerfeuil	Anthriscus cerefolium (L.) Hoffm.	Kervel	20
Céleri-branche, céleri-rave	Apium graveolens L.	Bleekselder, knolselder	20
Aracées (Anthurium, Dieffenbachia, Philodendron, Spathiphyllum, syngonium)	Araceae Juss.	Aronskelk-achtigen (Anthurium, Dieffenbachia, Philodendron, Spathiphyllum, syngonium)	20
Araliacées (Dizygotheca, Schefflera)	Araliaceae Juss.	Aralia-achtigen (Fijnbladige vingerplant, Schefflera)	25
Fromental	Arrhenatherum elatius (L.) P. Beauv.ex.J.S. et K.B.Presl.	Frans raagrass	20
Asperge	Asparagus officinalis L.	Asperge	20
Aster	Aster L.	Aster	20
Astilbe	Astilbe Buch-Ham.ex D.Don.	Astilbe	20
Avoine d'Algérie	Avena byzantins K.Koch.	Byzantijnse haver	20
Avoine nue	Avena nuda L.	Naakte haver	20
Avoine	Avena sativa L.	Haver	20
Bégonia elatior, bégonia tubéreux, bégonia semperflorens	Begonia L.	Elatior-begonia, knolbegonia, Begonia semperflorens	20
Berberis, épine-vinette	Berberis L.	Berberis	20
Bouleau	Betula L.	Berk	25
Bourrache	Borago L.	Bernagie	20
Bougainvillier	Bougainvillea Comm.	Bougainvillea	20
Colza fourrager d'hiver, chou-navet, colza à huile	Brassica napus L.	Bladkool, koolraap onder de grond, koolzaad	20
Broccoli (à jets), chou-rave, chou moëllier, chou frisé, chou fourrager, chou-fleur, chou cabus, chou rouge, chou de Milan, chou de Bruxelles	Brassica oleracea L.	Broccoli, raapkool, mergkool, boerenkool, voederkool, bloemkool, witte kool, rode kool, Savooiekool spruitkool	20
Navet, navette	Brassica rapa L.	Raap, raapzaad	20

	Taxa		Duration
Bromeliacées appartenant aux genres et à leurs hybrides mutuels	Bromeliaceae Juss. Aechmea Ruiz et Pav., Cryptanthus Otto et A.Dietr., Guzmania Ruiz et Pav., Neoregelia L.B. Sm., Tillandsia L., Vriesea Lindl.	Bromelia-achtigen behorende tot de geslachten en hun onderlinge hybriden	20
Brome de Schrader	Bromus catharticus Vahl	Paardegras	20
Buddleia	Buddleja L.	Herfstsering, buddleia	20
Aster, reine-marguerite	Callistephus chinensis (L.) Nees	Zomeraster	20
Bruyère, callune	Calluna Salisb.	Struikheide	20
Piment, poivron	Capsicum annuum L.	Spaanse peper	20
Carvi, cumin des prés	Carum carvi L.	Karwij	20
Célosie, crête de coq	Celosia L.	Hanekam	20
Cognassier du Japon	Chaenomeles Lindl.	Japanse dwergkwee	25
Chamaecyparis	Chamaecyparis Spach.	Dwergcipres	25
Chrysanthème, marguerite	Chrysanthemum L.	Chrysant, struikmargriet	20
Chicorée frisée, scarole	Cichorium endivia L.	Andijvie	20
Chicorée amère, chicon; chicorée rouge; chicorée verte; chicorée à café	Cichorium intybus L.	Witloof; rood loof; groen Loof; koffiecichorei	20
Pastèque	Citrullus lanatus (Thunb.) Matsum. Et Nakai	Watermeloen	20
Clématite	Clematis L.	Clematis	20
Clivia	Clivia Lindl.	Clivia	20
Cordylone	Cordylone Comm. Ex Juss.	Cordylone	20
Corynocarpus	Corynocarpus J.R. et G.Forst	Corynocarpus	20
Cotoneaster	Cotoneaster Medik.	Cotoneaster	20
Crocus	Crocus L.	Crocus	20
Melon	Cucumis melo L.	Meloen	20
Concombre, cornichon	Cucumis sativus L.	Komkommer, augurk	20
Courge, courgette; potiron, giraumon	Cucurbita L.	Courgette; pompoen	20
Cyprès de Leyland	X Cupressocyparis Dallim.	Leyland cipres	25
Cyprès de l'Arizona, cyprès de Duprez, cyprès de Provence	Cupressus L.	Arizona cipres, Duprez Cipres, echte cipres	25
Cyclamen	Cyclamen L.	Cyclamen	20
Cognassier	Cydonia Mill.	Kweeper	25
Crételle	Cynosurus cristatus L.	Kamgras	20
Dactyle	Dactylis glomerata L.	Kroop	20
Dahlia	Dahlia Cav.	Dahlia	20
Carotte	Daucus carota L.	Peen	20
Pied d'alouette	Delphinium L.	Ridderspoor	20
Oeillet	Dianthus caryophyllus L.	Anjer	20
Bruyère	Erica L.	Dopheide	20
Panicaut	Erythronium L.	Kruisdistel	20
Escallonia	Escallonia Mutis ex L.f.	Escallonia	20
Fusain	Euonymus L.	Kardinaalsmuts	25
Euphorbia fulgens	Euphorbia fulgens Karw.	Koraalrank	20
Epine du Christ	Euphorbia-Milii-Hybridi	Christusdoorn	20
Poinsettia	Euphorbia pulcherrima Willd.ex.Klotzsch	Kerstster	20
Exacum	Exacum L.	Exacum	20
Fétuque élevée	Festuca arundinacea Schreb.	Rietzwenkgras	20
Fétuque durette, Fétuque ovine	Festuca ovina L.sensu lato	Hardzwenkgras, schaapegras	20
Fétuque des prés	Festuca pratensis Huds.	Beemdlangbloem	20
Fétuque rouge	Festuca rubra L.	Roodzwenkgras	20
Ficus benjamins; Ficus, caoutchouc	Ficus L.	Waringin; Rubberplant	20
Fittonia	Fittonia Coëm.	Fittonia	20
Fenouil	Foeniculum vulgare P.Mill.	Venkel	20

	Taxa		Duration
Forsythia	Forsythia Vahl	Chinees klokje, forsythia	20
Fraisier	Fragaria L.	Aardbei	20
Frêne élevé	Fraxinus excelsior L.	Es	25
Freesia	Freesia Eckl.ex.Klatt.	Freesia	20
Fritillaria	Fritillaria L.	Fritillaria	20
Fuchsia arbustif	Fuchsia magellanica Lam. var- macrostemma (Ruiz et Pav.) Munz	Fuchsia	20
Gentiane	Gentiana L.	Gentiaan	20
Gerbera	Gerbera L.	Gerbera	20
Gesnériacées	Gesneriaceae	Gloxinia-achtigen	20
dont Kohleria, Aeschynanthus	Kohleria Regel, Aeschynanthus Jack	waarvan Kohleria, Aeschynanthus	
Glaïeul	Gladiolus L.	Gladiool	20
Gloriosa	Gloriosa L.	Gloriosa	20
Gypsophile	Gypsophila L.	Gipskruid	20
Tournesol	Helianthus annuus L.	Zonnebloem	20
Helichrysum	Helichrysum Mill.corr.Pers.	Helichrysum	20
Hellébore, rose de Noël	Helleborus L.	Kerstroos	20
Amaryllis	Hippeastrum Herb.	Amaryllis	20
Orge	Hordeum vulgare L.sensu lato	Gerst	20
Houblon	Humulus lupulus L.	Hop	25
Jacinthe	Hyacinthus orientalis L.	Hyacint	20
Hortensia	Hydrangea L.	Hortensia	20
Houx	Ilex L.	Hulst	25
Impatiente de Nouvelle-Guinée	Impatiens-Neu-Guinea-Hybridi	Nieuw-Guinea-Impatiens	20
Iris	Iris L.	Iris	20
Genévrier	Juniperus L.	Jeneverbes	25
Kalanchoë	Kalanchoë Adans.	Kalanchoë	20
Laitue	Lactuca sativa L.	Sla	20
Mélèze	Larix Mill.	Lork	25
Pois de senteur	Lathyrus odoratus L.	Reukerwt	20
Cresson alénois	Lepidum sativum L.	Tuinkers	20
Liatris	Liatris Gaertn.ex Schreb.	Liatris	20
Lis	Lilium L.	Lelie	20
Lin	Linum usitatissimum L.	Vlas	20
Lobélie	Lobelia L.	Lobelia	20
Ray-grass	Lolium L.	Raaigras	20
Lupin blanc	Lupinus albus L.	Witte lupine	20
Lupin bleu	Lupinus angustifolius L.	Blauwe lupine	20
Lupin jaune	Lupinus luteus L.	Gele lupine	20
Tomate	Lycopersicon lycopersicum L.	Tomaat	20
Mahonia	Mahonia Nutt.	Mahonia	20
Pommier, y compris les porte-greffes et variétés ornementales	Malus Mill.	Appel, onderstammen en sierrassen inbegrepen	25
Marantacées	Marantaceae Petersen	Maranta-achtigen	20
Giroflée	Matthiola R.Br.corr.Spreng.	Violier	20
Luzerne lupuline	Medicago lupulina L.	Hopperupsklaver	20
Luzerne	Medicago sativa L. Medicago x varia Martyn.	Luzerne	20
Narcisse, jonquille	Narcissus L.	Narcis	20
Nepenthes	Nepenthes L.	Nepenthes	20
Onagre	Oenothera L.	Teunisbloem	20
Orchidées	Orchidaceae Juss.	Orchideeën	20
Oeillette, Pavot	Papaver somniferum L.	Blauwmaanzaad	20
Pelargonium des fleuristes	Pelargonium-grandiflorum-Hybridi	Franse geranium	20
Géranium-lierre	Pelargonium-Peltatum-Hybridi	Hanggeranium	20

Taxa		Duration
Géranium, Pélargonium zonale	Pelargonium-Zonale-Hybridi	Tuingeranium 20
Hybrides de pelargonium-Peltatum x P.-Zonale	Pelargonium-Peltatum x P.-Zonale-Hybridi	Hybriden van Pelargonium-Peltatum x P.-Zonale 20
Pentas	Pentas lanceolata (Forsk) Deflers	Pentas 20
Persil	Petroselinum crispum (Mill.) Nym.ex A.W.Hill	Peterselie 20
Pétunia	Petunia Juss.	Petunia 20
Phacélie à feuilles de tanaïs	Phacelia tanacetifolia Benth.	Phacelia 20
Haricot d'Espagne	Phaseolus coccineus L.	Pronkboon 20
Haricot	Phaseolus vulgaris L.	Boon 20
Fléole diploïde	Phleum bertolonii D.C.	Kleine timothee 20
Fléole des prés	Phleum pratense L.	Lammerstaart 20
Phlox	Phlox L.	Vlambloem 20
Epicéa	Picea A.Dietr.	Spar 25
Pois	Pisum sativum L. sensu lato	Erwt 20
Pâturin annuel	Poa annua L.	Tuintjesgras 20
Pâturin comprimé	Poa compressa L.	Plat beemdgras 20
Pâturin des bois	Poa nemoralis L.	Schaduwgras 20
Pâturin des marais	Poa palustris L.	Moerasbeemdgras 20
Pâturin des prés	Poa pratensis L.	Veldbeemdgras 20
Pâturin commun	Poa trivialis L.	Ruwbeemdgras 20
Peuplier	Populus L.	Populier 25
Potentille ligneuse	Potentilla fruticosa L.	Potentilla 20
Primevère	Primula L.	Sleutelbloem 20
Cerisier, prunier, abricotier, myrobolan, pêcher; pour ces espèces, y compris les porte-greffes et les variétés ornementales	Prunus L.	Kers, pruim, abrikoos, kerspruim, perzik; voor deze soorten onderstammen en sierrassen inbegrepen 25
Laurier-cerise	Prunus laurocerasus L.	Laurierkers 25
Sapin de Douglas	Pseudotsuga Carr.	Douglasspar 25
Pyracantha	Pyracantha M.J.Roem.	Vuurdoorn 20
Poirier, y compris les porte-greffes et variétés ornementales	Pyrus L.	Peer, onderstammen en sierrassen inbegrepen 25
Chêne	Quercus L.	Eik 25
Radermachera	Radermachera Zoll. et Mor.	Radermachera 20
Renoncule	Ranunculus L.	Ranonkel 20
Radis d'été, d'automne et d'hiver	Raphanus sativus L.var. niger (Mill.) S.Kerner	Ramenas 20
Radis oléifère fourrager	Raphanus sativus L.var. oleiformis Pers.	Bladramenas 20
Radis de tous les mois	Raphanus sativus L.var. sativus	Radijs 20
Rhubarbe	Rheum rhabarbarum L.	Rabarber 20
Azalée, rhododendron	Rhododendron L.	Azalea, rhododendron 20
Cassis, groseilliers groseillier à maquereau et hybrides de ces espèces; les variétés ornementales y comprises pour toutes ces espèces		rode trosbes, kruisbes en hybriden van deze soorten; sierrassen inbegrepen voor al deze soorten
Robinier faux-acacia	Robinia pseudoacacia L.	Acacia 25
Rosier	Rosa L.	Roos 20
Framboisier; ronce fruitière et ornementale	Rubus L.	Framboos; braambes (fruit- en sierrassen) 25
Saintpaulia	Saintpaulia ionantha H.Wendl.	Kaaps viooltje 20
Saule	Salix L.	Wilg 25
Sauge	Salvia L.	Salie 20
Scabiosa caucasica	Scabiosa caucasica M.B.	Scabiosa caucasica 20
Scaevola aemula	Scaevola aemula R.Br.	Scaevola aemula 20
Scorsonère	Scorzonera hispanica L.	Schorseneer 20
Seigle	Secale cereale L.	Rogge 20

	Taxa		Duration
Séneçon	Senecio L.	Kruiskruid	20
Moutarde blanche	Sinapis alba L.	Gele mosterd	20
Aubergine	Solanum melongena L.	Aubergine	20
Pomme de terre	Solanum tuberosum L.	Aardappel	25
Verge d'or	Solidago L.	Guldenroede	20
Epinard	Spinacia oleracea L.	Spinazie	20
Streptocarpus	Streptocarpus Lindl.	Draaivrucht	20
Symphorine	Symphoricarpos Duham.	Sneeuwbes	20
Lilas	Syringa L.	Sering	25
Syzygium	Syzygium Gaertn.	Syzygium	25
Tagète, oeillet d'Inde, rose d'Inde	Tagetes L.	Afrikaanse tagetes	20
Thuya	Thuya L.	Thuya	25
Tilleul	Tilia L.	Linde	25
Trèfle hybride, trèfle incarnat, trèfle violet, trèfle blanc	Trifolium L.	Bastaardklaver, inkarnaat klaver, rode klaver, witte klaver	20
Triticale	X Triticosecale Wittmack	Triticale	20
Blé tendre	Triticum aestivum L. emend. Fiori et Paol.	Zachte tarwe	20
Blé dur	Triticum durum Desf.	Harde tarwe	20
Epeautre	Triticum spelta L.	Spelt	20
Tulipe	Tulipa L.	Tulp	20
Orme	Ulmus L.	Iep	25
Myrtille	Vaccinium corymbosum L.	Bosbes	20
Mâche	Valerianella locusta (L.) Laterrade	Veldsla	20
Verveine	Verbena L.	Ijzerhard	20
Viorne	Viburnum L.	Sneeuwbal	20
Fève	Vicia faba L. var. major. Harz.	Tuinboon	20
Féverole	Vicia faba L. var. minor. Harz.	Veldboon	20
Vesce commune	Vicia sativa L.	Voederwikke	20
Violette, pensée	Viola L.	Viooltje	20
Vigne	Vitis L.	Wijnstok	25
Weigela	Weigela Thunb. (Diervilla Mill.)	Weigelia	20
Maïs	Zea mays L.	Maïs	20
Cactus à tiges à articles appartenant aux genres et à leurs hybrides mutuels	Zygocactus K. Schum., Schlumbergera Lem., Epiphyllopsis Berger, Rhipsalidopsis Britt et rose	Lidcactus behorende tot de geslachten en hun onderlinge hybriden	20

KENYA

On December 21, 2011, the Office of the Union received a notification that the legislation governing breeders' rights of Kenya applies to all genera and species, except bacteria and algae (the Seeds and Plant Varieties Act - CAP 326).

REPUBLIC OF KOREA

On January 4, 2012, the Office of the Union received a notification that the legislation governing breeders' rights of the Republic of Korea applies to all genera and species, from January 7, 2012.

LITHUANIA

On June 12, 2012, the Office of the Union received a notification that the legislation governing breeders' rights of Lithuania applies to all genera and species, according to the Law on the Protection of Plant Varieties No IX-618 of November 22, 2001, amended on October 19, 2007, by Law No X-862, and last amended on April 26, 2012, by Law No XI-1994.

MOROCCO

On January 18, 2012, the Office of the Union received a notification that the legislation governing breeders' rights of Morocco applies to the following consolidated list of genera and species:

Genres et Espèces des variétés protégeables أجناس وأنواع الأصناف القابلة للحماية			Eléments sur lesquels porte le droit de l'obtenteur العناصر التي يشملها حق المستنبط	Durée de la protection مدة الحماية
Nom commun الاسم المشترك		Nom Scientifique (latin) الاسم باللاتينية		
CEREALES	الحبوب		Matériel de reproduction عناصر التوالد	20 ans 20 سنة
Blé dur	قمح الصلب	Triticum durum Desf	"	"
Blé tendre	قمح الطري	Triticum aestivum L.	"	"
Orge	الشعير	Hordeum vulgar L	"	"
Avoine	الخرطال	Avena sativa L	"	"
Avoine nue	الخرطال العاري	Avena nuda L.	"	"
Seigle	الشيلم	Secale cereale L.	"	"
Triticale	التريتيكال	X Triticosecale	"	"
Maïs	الذرة	Zea mays L.	"	"
LEGUMINEUSES	القطاني		Matériel de reproduction عناصر التوالد	20 ans 20 سنة
Fève	القول	Vicia faba L. var major Harz	"	"
Lentille	العدس	Lens culinaris Medik	"	"
Pois chiche	الحمص	Cicer arietinum L	"	"
Petit pois	الجلبان	Pisum sativum L. partim	"	"
Haricot	الفصوليا	Phaseolus vulgaris L	"	"
CULTURES FOURRAGERES			Matériel de reproduction عناصر التوالد	20 ans 20 سنة
Féverole	فول مصري	Vicia faba L. var. minor Harz	"	"
Févette	فول صغير	Vicia fava L. var equina	"	"
Pois fourrager	الجلبان العلفي	Pisum sativum L. partim	"	"
Vesce commune	ببقة بلدية	Vicia sativa L	"	"
Vesce velue	ببقة متشعرة	Vicia villosa Roth	"	"
Vesce de Narbone	ببقة النربون	Vicia narborans L	"	"
Luzerne pérenne	الفصة	Médicago sativa L	"	"
CULTURES INDUSTRIELLES	الزراعات الصناعية		Matériel de reproduction عناصر التوالد	20 ans 20 سنة
Tournesol	عباد الشمس	Helianthus annuus L	"	"

Genres et Espèces des variétés protégeables أجناس وأنواع الأصناف القابلة للحماية			Eléments sur lesquels porte le droit de l'obtenteur العناصر التي يشملها حق المستنبط	Durée de la protection مدة الحماية
Nom commun الاسم المشترك		Nom Scientifique (latin) الاسم باللاتينية		
Colza	الكولزا	Brassica napus (L)..ssp oleifera. Metzg Sinsk	"	"
Carthame	الكرثمان	Carthamus tinctorius L	"	"
Cotonnier	القطن	Gossypium barbadense L.	"	"
Cotonnier	القطن	Gossypium hirsutum L	"	"
Soja	الصوج	Glycine max (L) Mersill	"	"
Lin	زريعة الكتان	Linum usitaissimum L.	"	"
CULTURES POTAGERES	زراعة الخضراوات		Matériel de reproduction et de multiplication végétative عناصر التوالد والتكاثر الإعاشي	20 ans 20 سنة
Aubergine	البانجال	Solanum melongena L	"	"
Tomate	الطماطم	Lycopersicon lycopersicum (L) Karst. ex Farwell	"	"
Artichaut,	الخرشوف	Cynara scolymus L	"	"
Cardon	الخرشوف	Cynara cardunculus	"	"
Carotte	الجزر	Daucus carota L.	"	"
Chicorée	الهندباء	Cichorium endivia L.	"	"
Chicorée industrielle	الهندباء الصناعي	Cichorium intybus L.partim	"	"
Chicorée à feuilles	الهندباء الورقي	Cichorium intybus L.partim	"	"
Chou fleur	قرنبيط	Brassica oleracea L. convar. Botrytis (L.) Alef. Var. Botrytis.L.	"	"
Chou frisé	كرنب مجعد	Brassica oleracea L.var. Sabellica L.	"	"
Concombre	خيار	Cucumis sativus L.	"	"
Courge et courgette	يقطينة وكوسى	Cucurbita pepo L.	"	"
Epinard	سبانخ	Spinacia oleracea L.	"	"
Laitue	الخس	Lactuca sativa L.	"	"
Melon	البطيخ	Cucumis melo L.; Melo Sativus Sarg	"	"
Oignon	البصل	Allium cepa	"	"
Pastèque	البطيخ الأحمر	Citrullus lanatus (Thunb.) Matsum. et Nakai.	"	"
Piment-poivron	الفلفل	Capsicum annuum L.	"	"
Poireau	الكراث	Allium porrum L.	"	"
Radis d'été	فجل الصيفي	Raphanus sativus L.var. niger (Mill) S. kerner.	"	"
Radis de tous les mois	فجل كل الشهور	Raphanus sativus L.var.sativus Pers.	"	"

Genres et Espèces des variétés protégeables أجناس وأنواع الأصناف القابلة للحماية			Eléments sur lesquels porte le droit de l'obtenteur العناصر التي يشملها حق المستنبط	Durée de la protection مدة الحماية
Nom commun الاسم المشترك		Nom Scientifique (latin) الاسم باللاتينية		
Radis oléifère	فجل	Raphanus sativus L.var.oleiformis Pers.	"	"
Pomme de Terre	البطاطس	Solanum tuberosum L.	"	"
Fraisier	توت الأرض	Fragaria x Ananassa Duch	"	"
Framboisier	التوت	Rubeus idaeus L.	"	"
ESPECES FLORALES ET ORNEMENTALES	أنواع الزهور والنباتات التزيينية		Matériel de reproduction et de multiplication végétative عناصر التوالد والتكاثر الإعاشي	25 ans 25 سنة
Rosier	الورود	Rosa L	"	"
Œillet	القرنفل	Dianthus ssp	"	"
Géranium	إبرة الراعي	Geranium ssp	"	"
Chrysanthème	أفحوان	Dendranthema (DC) Desmoul.	"	"
Oiseau du paradis	عصفور الجنة	Strelitzia Ait.	"	"
Laurier	الرند	Nerium oleander	"	"
ESPÈCES ARBORICOLES-VIGNES	الأنواع الشجرية والكروم		Matériel de reproduction et/ou de multiplication végétative عناصر التوالد أوالتكاثر الإعاشي أو هما معا	25 ans 25 سنة
Avocatier	كثري التمساح	Persea americana Mill.	"	"
Oranger doux	البرتقال	Citrus sinensis (L) Obs.	"	"
Mandarinier	الماندرين	Citrus reticulata blanco	"	"
Clémentinier	الكليمانتين	Citrus clementina Hort. ex Tan.	"	"
Citronnier	الليمون الحامض	Citrus limon (L.) Burm	"	"
Pomelo	بوميلو	- Citrus paradisi Macf	"	"
Hybrides de mandarinier	هجين الماندرين	C.reticulata Blanco x C. paradisi Macf	"	"
Hybrides de mandarinier	هجين الماندرين	C.reticulata Blanco x C. sinensis (L.) Obs	"	"
Hybrides de mandarinier	هجين الماندرين	C.reticulata Blanco x C.clementina Hort.ex Tan	"	"
Hybrides d'oranger	هجين البرتقال	C.sinensis (L) Obs.x C.clementina Hort ex Tan	"	"
Satsuma	سنسوما	Citrus inshiu (Marc.) Marc.	"	"
Limettiers	ليميت	Citrus aurantifolia	"	"
Citranges	سيترانج	Poncirus trifoliata (L.) Raf x C. sinensis (L.) Obs	"	"
Citrumelo	سيتروميلو	Poncirus trifoliata (L.) Raf x C. paradisi Macf	"	"
Hybrides de bigaradier	هجين النارج	C. aurantium L. x P. trifoliata (L.) Raf	"	"
Hybrides de mandarinier	الماندرين هجين	C.reticulata Blanco xP.trifoliata (L.) Raf	"	"

Genres et Espèces des variétés protégeables أجناس وأنواع الأصناف القابلة للحماية			Eléments sur lesquels porte le droit de l'obtenteur العناصر التي يشملها حق المستنبط	Durée de la protection مدة الحماية
Nom commun الاسم المشترك		Nom Scientifique (latin) الاسم باللاتينية		
Hybrides de M.Cléopâtre	هجين ماندرين كليوباترا	Citrus reshni Hort. ex Tan x P.trifoliata (L) Raf	"	"
Hybrides de M.Cléopâtre	هجين ماندرين كليوباترا	Citrus reshui Hort. ex Tan x P.trifoliata (L.) Raf x C.sinensis Obs	"	"
Hybrides de Roughlemon	هجين روفلمون	Citrus jambhiri Lush. x P.trifoliata (L)Raf	"	"
Abricotier	المشمش	Prunus armeniaca L.	"	"
Amandier	اللوز	Prunus amygdalus Bartock	"	"
Cerisier	حب الملوك	Prunus, avium L.	"	"
Cerisier	حب الملوك	Prunus cerasus L.	"	"
Cerisier	حب الملوك	Prunus mahaleb	"	"
Olivier	الزيتون	Olea europaea L.	"	"
Palmier dattier	نخيل التمر	Phoenix dactylifera L.	"	30 ans 30 سنة
Pêcher	الخوخ	Prunus persica (L.) Batsch	"	25 ans 25 سنة
Pêcher	الخوخ	Prunus davidiana	"	"
Pommier	التفاح	Malus domestica Borkh	"	"
Poirier	الإجاص	Pyrus communis L.	"	"
Prunier	البرقوق	Prunus americana	"	"
Prunier	البرقوق	Prunus cerasifera	"	"
Prunier	البرقوق	Prunus mariana	"	"
Prunier	البرقوق	domestica L.	"	"
Nectarine	نكتارين	Prunus persica (L.)Batsch Batsch varNucipersic Suckow hneid	"	"
Myrtille ; Myrtille en corymbe	العنب البري	- Vaccinium corymbosum L.; Vaccinium-Corymbosum-Hybridae	"	"
Vigne	الكروم	Vitis vinifera L.	"	"
Vigne porte greffe	الكروم حامل الطعم	Vitis rupestris	"	"
Vigne porte greffe	الكروم حامل الطعم	Vitis berlandierie	"	"
Vigne porte greffe	الكروم حامل الطعم	Vitis riparia	"	"
Vigne porte greffe hybrides	الكروم حامل الطعم هجين		"	"

SOUTH AFRICA

On February 7, 2012, the Office of the Union received a notification that the Regulations relating to breeders' rights of South Africa have been amended in order that protection be extended to the following genera and species, since November 18, 2011:

1		2	3	4
Kind of plant Soort Plant		Category Kategorie	Period of Plant Breeder's Right (Years) Termyn van Planttelersreg (Jare)	Period of sole Right (Years) Termyn van Alleenreg (Jare)
Botanical Name Botaniese Naam	Common Name Gewone Naam			
<i>Alyogyne huegelli</i> (Endl.)Fryxell	Blue hibiscus	B	25	8
<i>Cosmos atrosanguineus x hybrid</i>	Chocolate cosmos	A	20	5
<i>Cleome spinosa</i> Jacq.	Spiny spider flower		20	
<i>Daphne x transatlantica</i> C.D. Brickell & A.R.White	Daphne	B	25	8
<i>Dianthus x woodii</i> Hort.	Dianthus	A	20	5
<i>Heliopsis helianthoides</i> (L.) Sweet	False sunflower	A	20	5
<i>Libertia ixioides</i> (G. Forst.) Spreng.	New Zealand Iris	A	20	5
<i>Liriope muscari</i> (Decne.) L.H.Bailey	Border grass	A	20	5
<i>Lobelia erinus</i> L.	Edging lobelia	A	20	5
<i>Pandorea jasminoides</i> (Lindl.) K. Schum.	Pandora vine	B	25	8
<i>Physostegia virginiana</i> (L.) Benth.	Obedient plant	A	20	5
<i>Pittosporum tenuifolium</i> Gaertn.	Pittosporum	B	25	8
<i>Prunus laurocerasus</i> L.	Cherry laurel	B	25	8
<i>Ruscus aculeatus</i> L.	Butcher's broom	B	25	8
<i>Solanum rantonetii</i> (Carrière) Bitter	Blue potato-bush	B	25	8
<i>Thuja occidentalis</i> L.	Eastern white cedar	B	25	8
<i>Vigna subterranea</i> (L.) Verdc.	Bambara groundnut	A	20	5
<i>Yucca filamentosa</i> L.	Adam's needle	A	20	5

VIET NAM

On December 12, 2011, the Office of the Union received a notification that the legislation governing breeders' rights of Viet Nam applies to the following consolidated list of genera and species:

	Species/genus
1	Rice - <i>Oryza sativa</i> L.
2	Corn - <i>Zea mays</i> L.
3	Soybean - <i>Glycine max</i> (L.) Merrill.
4	Peanut - <i>Arachis hypogaea</i>
5	Tomato - <i>Lycopersicon Esculentum</i> .
6	Potato - <i>Solanum tuberosum</i> (L.)
7	Rose - <i>Rose</i> L.
8	Chrysanthemum - <i>Chrysanthemum spec.</i>)
9	Watermelon - <i>Citrullus lanatus</i> (thunb) Matsum et Nakai
10	Cucumber - <i>Cucumis sativus</i> L.
11	Tea - <i>Cammellia sinensis</i>
12	Cotton - <i>Gossypium hirsutum</i> L. và <i>Gossypium barbadense</i> L.)
13	Grapevine - <i>Vitis</i> L.
14	Kohlrabi - <i>Brrassica aleracea</i> L.

	Species/genus
15	Euphobia - <i>Euphorbia pulcherrima</i> Willd.ex Klotzsch and hybrids between them)
16	Grass - <i>Pennisetum americanun</i> [L] Leeke; <i>Pennisetum purpuretum</i> Schumach; and hybrids between them)
17	Strawberry - <i>Fragaria</i> L.
18	Chily - <i>Capsicum annum</i> L.
19	Pumpkin - <i>Curcubita maxima</i> Duch.
20	Ginger - <i>Zingiber officinale</i> Rosc.
21	<i>Ampelopsis cantoniensis</i> (Hook.et.Am) Planch
22	Gerbera - <i>Gerbera</i> Cass.
23	Gladiolus - <i>Gladiolus</i> L.
24	Lily - <i>Lilium</i> L.
25	Carnation - <i>Dianthus</i> L.
26	Carrot - <i>Daucus carota</i> L.
27	Sugarcane - <i>Saccharum</i> L.

	Species/genus
28	Pomelo – <i>Citrus grandis</i> L.
29	Rubber – <i>Hevea</i> Aubl.
30	Apple – <i>Malus domestica</i> Borkh.
31	Papaya – <i>Carica papaya</i> L.
32	Banana – <i>Musa acuminata</i> Colla; <i>Musa xparadisiaca</i> L.
33	Bitter gourd – <i>Mormodica Charantia</i> L.
34	Marigold – <i>Tagetes</i> L.
35	<i>Clerodendrum kaempferi</i> (jacq) Siebold, ex Hassk
36	Onion – <i>Allium Cepa</i> .
37	Shallot – <i>Allium Oschaminii</i> .
38	Coffee – <i>Coffea Arabica</i> L; <i>C. Canefora Pierre</i> ex.A.Froehner
39	Ficus – <i>Ficus</i> L. (<i>Ficus costata</i> Ait; <i>Ficus benjamitina</i> L.; <i>Ficus carica</i> L. và các loài lai giữa chúng)
40	Orange – <i>Citrus</i> L. (Rutacea)
41	Mango – <i>Mangifera Indica</i> L.
42	Sweet potato – <i>Ipomoea batatas</i> .L
43	Apricot – <i>Prunus armeniaca</i> L.
44	Lotus – <i>Lotus corniculatus</i> L.; <i>Lotus pendunculatus</i> Cav.; <i>Lotus uliginosus</i> Schkuhr.; <i>Lotus tenuis</i> Walds.et.kit.ex Willd; <i>Lotus subbiflorus</i> . Lag
45	Longan – <i>Dimocarpus Longan</i> L.
46	Litchie – <i>Litche chinensis</i> L
47	Cymbidium – <i>Cymbidium</i> Sw
48	Amaranth – <i>Amaranthus</i> L.
49	Lettus – <i>Lactus</i> sp

	Species/genus
50	Guava – <i>Psidium guava</i> L.
51	Cabbage – <i>Brassica oleracea</i> L.
52	Radish – <i>Raphanus sativus</i> L.
53	Peach – <i>Pyrus persica</i> (L) Batsch
54	Avocado – <i>Persea americana</i> Mill
55	Lettus – <i>Lactuca Sativa</i> L
56	Phalaenopsis – <i>Phalaenopsis</i> Blume.
57	Anthurium – <i>Anthurium</i> Schott
58	Broccoli – <i>Brassica oleracea</i> L. Convar <i>botrytiss</i> (L.) Alef. Var. <i>botrytiss</i>
59	<i>Moringa oleifera</i> L.
60	Begonia – <i>Begoniaceae</i>
61	Bougainvillea and hybrids between them – <i>Bougainvillea</i>
62	Dragon fruit – <i>Hylocereus</i> (Haw.); <i>Hylcoloreus Costaricensis</i> (F.A.C Weber); <i>Hylcoloreus Polyrhizus</i> (F.A.C Weber)
63	<i>Bauhinia</i> sp
64	<i>Calathea</i>
65	Kalanchoe – <i>Kalanchoe blossfeldiana</i> Poelln.)
66	Eggplant – <i>Solanum melongena</i> L.
67	Longbean – <i>Vigna unguiculata</i> (L) Walp. <i>supsp. secquibedalis</i> (L) Verdc. L.)
68	<i>Phaseolus vulgaris</i> L.
69	<i>Pisum sativum</i> L.

LEGISLATION

CROATIA

Act on Amendments to the Plant Variety Protection Act of May 30, 2008¹

(adoption date: May 30, 2008; entry into force: June 12, 2008)

THE CROATIAN PARLIAMENT

2229

Pursuant to Article 88 of the Constitution of the Republic of Croatia, I hereby pass the

DECISION

PROMULGATING THE ACT ON AMENDMENTS TO THE PLANT VARIETY PROTECTION ACT

I hereby promulgate the Act on Amendments to the Plant Variety Protection Act, adopted by the Croatian Parliament at its session on 30 May 2008.

Class: 011-01/08-01/63

Reg. No.: 71-05-03/1-08-2

Zagreb, 4 June 2008

The President
of the Republic of Croatia
Stjepan Mesić, m. p.

THE ACT ON AMENDMENTS TO THE PLANT VARIETY PROTECTION ACT

Article 1

In the Plant Variety Protection Act (Official Gazette 131/97 and 62/00), in Article 1, the words: „concerning the granting, the contents, the duration and the manner of transfer and assignment of the use” are inserted after the word: „procedures”.

Article 2

Article 2 is amended to read:

„For the purposes of this Act, the following terms have the following meanings:

1. Plant variety (hereinafter referred to as: variety) means a plant grouping within a single botanical taxon of the lowest known rank, which is defined by the expression of the characteristics that results from a given genotype or combination of genotypes, distinguished from any other plant grouping by the expression of at least one of the said characteristics, and considered as a unit remains unchanged after being propagated.
2. A plant grouping consists of entire plants or parts of plants as far as such parts are capable of producing entire plants, (hereinafter referred to as :variety constituents).
3. The plant variety breeder (hereinafter referred to as: breeder) means:
 - the person who bred, or discovered and developed the variety,

¹ Provisional translation provided by the Croatian Authorities.

– the person who is the employer of the person who bred or discovered and developed the variety or the person who is authorised in the case where the legislation prescribing the relations between contracted parties enables it so, or,

– the legal successor or the person referred to in the first and second sub-item of this item, depending on the case.

4. The plant breeders' right is the right of the breeder determined by this Act.

5. The authorised person means any natural or legal person who has the right to file an application for the grant of plant breeders' rights.

6. The applicant means any natural or legal person who filed an application.

7. The holder of the plant breeders' rights is the breeder to whom the plant breeders' rights were granted.

8. Protected variety is the variety for which a decision on the variety protection was issued on the basis of the official variety description, on the basis of the official sample and which, in compliance with this Act, was designated by a denomination.

9. Protected variety material (hereinafter referred to as :material) means:

– material for multiplication of any variety,

– harvested material including whole plants or parts thereof;

– any product obtained directly from the harvested material.

10. Essentially derived variety means a variety derived from another variety provided that:

– it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety,

– it is clearly distinguishable from the initial variety, and

– except for the differences which result from the act of derivation, it conforms essentially to the initial variety in the expression of the characteristics that results from the genotype or combination of genotypes of the initial variety."

Article 3

In Article 3, paragraph 1, the Croatian words translated as "granted to the breeder" are replaced by other Croatian words, with no relevance to the English translation.

In paragraph 2, the words: „can be granted to more breeders" are replaced by the words: „shall be granted to breeders".

In paragraph 3, the Croatian words translated as "granted to the breeder" and the word "grant" are replaced by other Croatian words, with no relevance to the English translation.

Article 4

In Article 4, paragraph 1, the words: „is granted to: a) natural person – national or resident" are replaced by the words: „shall be granted to natural person – the citizen", and the words: „legal person" are replaced by the words: „to legal person".

Article 5

In Article 5, paragraph 1, the word: "will be carried out" is replaced by the words: "shall be performed by the ministry competent for agriculture (hereinafter referred to as: Ministry) and".

In paragraph 2, the word: "plant" is added after the word: "protection", the Croatian word translated as "grant" is replaced by another Croatian word, with no relevance to the English translation, and the words: "within the Ministry for Agriculture and Forestry (hereinafter referred to as: Ministry) will be established" are replaced by the words: "within the Ministry shall be established".

In paragraph 3, the words: "Agriculture and Forestry" are replaced by the words: "competent for agriculture".

Article 6

In Article 6, paragraph 1 is amended to read:

"(1) In executing the plant variety protection activities, the Institute shall keep a Register of Applications for Granting the Breeders' Rights, and the Ministry shall keep:

1. The Plant Breeders' Rights Registry,
2. Transferred Plant Breeders' Rights Registry,
3. Assigned Breeders' Rights Registry,
4. Registry of Designated Representatives (Agents)."

Article 7

In the heading above Article 7, the word "plant" is inserted after the word: "protection".

In Article 7, a new paragraph 1 is added which reads:

"(1) The varieties of all plant genera and species, including also, among other, the hybrids between genera and species can be the subject matter of the breeders' rights."

In the former paragraph 1, which becomes paragraph 2, the word: "award" is replaced by the word: "granting".

In the former paragraph 2, which becomes paragraph 3, the words: "shall be granted if the variety:" are replaced by the words: "shall be granted for a variety which is:", and the Croatian word translated as "distinct" is replaced by another Croatian word, with no relevance to the English translation.

In the former paragraph 3, which becomes paragraph 4, the word: "award" is replaced by the word: "granting".

The former paragraph 4 is hereby deleted.

Article 8

In Article 8, paragraph 1 is amended to read:

„(1) A variety shall be deemed to be new if, at the date of application for plant breeders' rights, the variety constituents have not been sold or otherwise disposed of to others, with or without the consent of the breeder:

- (a) for one year within the territory of the Republic of Croatia, or;
- (b) for four years outside the territory of the Republic of Croatia, and for six years in the case of tree species or vines."

Paragraph 2 is hereby deleted.

In the former paragraph 3, which becomes paragraph 2, the Croatian word translated as „distinct" is replaced by another Croatian word, with no relevance to the English translation.

Former paragraphs 4 and 5 become paragraphs 3 and 4.

Article 9

In Article 9, paragraph 2, item 3, the words: „International Organisation for the Protection of Plant Varieties" are replaced by the words: „International Union for the Protection of New Varieties of Plants".

Article 10

In Article 10, the word: „offers“ is replaced by the word: „places“, the word: „propagating“ is hereby deleted, and the Croatian word translated as „granted“ is replaced by another Croatian word, with no relevance to the English translation.

Article 11

In Article 11, the words: „breeder of the variety is granted with“ are replaced by the words: „shall be granted to the plant variety breeder“.

Article 12

In Article 12, paragraph 1, the word: „breeder“ is replaced by the words: „holder of breeders' rights“, and the word: „propagating“ is hereby deleted.

In item 1, the word: „(multiplication)“ is inserted after the word: „reproduction“.

In item 2, the words: „planting or sowing propagating material“ are replaced by the words: „for multiplication purposes“.

In item 4, the Croatian word translated as „marketing“ is replaced by another Croatian word, with no relevance to the English translation.

In item 6, the words: „and processing“ are replaced by the words: „for any of the purposes specified under items 1 to 5 of this paragraph“.

In paragraph 2, the words „or picked“ are inserted after the word: „harvested“ and the word: „propagating“ is hereby deleted.

In paragraph 3, the words: „or picked“ are inserted after the word: „harvested“ and the word: „harvested“ is hereby deleted.

In paragraph 4, the Croatian word translated as: „granting“ is replaced by another Croatian word, with no relevance to the English translation.

Paragraph 5 is hereby deleted.

Article 13

After Article 12, a subheading and Article 12.a are added which read:

“3. Derogation from breeders' rights

Article 12.a

The breeders' right shall not extend to acts:

- a) done privately and for non-commercial purposes,
- b) done for experimental purposes,
- c) done for the purpose of breeding, or discovering and developing other varieties,
- d) referred to in Article 12, paragraphs 1, 2 and 3 of this Act in respect of „essentially derived variety“, except where the provisions of Article 13 of this Act apply, or where „essentially derived variety“ or the material of this variety comes under the protection of a property right which does not contain a comparable provision, and
- e) whose prohibition would violate the provisions laid down in Article 40.a of this Act.”

Article 14

Article 13 is amended to read:

“The authorisation referred to in Article 12, paragraphs 1, 2 and 3 of this Act shall also apply in relation to the following varieties:

1. varieties which are essentially derived from the protected variety, where this protected variety is not itself an “essentially derived variety”,

2. varieties which are not clearly distinguishable in accordance with the provisions of Article 8, paragraph 3 of this Act from the protected variety, and
3. varieties whose production requires the repeated use of the protected variety."

Article 15

After Article 13, a subheading and Article 13.a are added which read:

"4. Exhaustion of breeders' rights:

Article 13.a

The breeders' rights shall not extend to acts concerning any type of material of the protected variety, or of a variety covered by the provisions of Article 13 of this Act, which has been disposed of to other persons by the holder of breeders' rights or with his consent, or any material derived from the said material, unless such acts:

- a) involve further propagation of the variety in question, or
- b) involve an export of variety constituents, enabling the variety propagation, in a country which does not protect varieties of the plant genus or species to which this variety belongs, except where the exported materials is for final consumption purposes."

Article 16

In the subheading above Article 14, the figure: "3" is replaced by the figure: "5".

In Article 14, paragraph 2 is amended to read:

"(2) The duration of the breeders' rights shall run for twenty-five years from the day of granting the breeders' right, and in the case of varieties of tree species and vine, for thirty years."

Article 17

Article 15 is amended to read:

"(1) The Minister shall prescribe the expenditures for services and procedures performed by the Institute, the time period and the manner of payment, and the use of these funds.

(2) The expenditure value is expressed in points, and the Minister shall determine the point value.

(3) If the expenditures in the procedure for granting breeders' rights are not being paid, the application for granting the breeders' right shall be rejected."

Article 18

In the heading above Article 17, the Croatian word translated as: „GRANT” is replaced by another Croatian word, with no relevance to the English translation.

In Article 17, paragraph 1, the Croatian word translated as: "granting" is replaced by another Croatian word, with no relevance to the English translation, and the words: "led by the Institute" are replaced by the words: "carried out by the Ministry and the Institute".

Article 19

In Article 18, paragraph 1, the Croatian word translated as: "grant" is replaced by another Croatian word, with no relevance to the English translation, and the words: "for the grant of a breeder's right (hereinafter referred to as: application)" are inserted after the word: "application".

In paragraphs 2, 3 and 4, the Croatian word translated as: "granting" is replaced by another Croatian word, with no relevance to the English translation.

In paragraph 6, the Croatian word translated as: "grant" is replaced by another Croatian word, with no relevance to the English translation.

Article 20

In Article 18.a, paragraph 1, the words: "for the grant of breeders' rights" are hereby deleted.

In paragraph 2, the Croatian word translated as: "grant" is replaced by another Croatian word, with no relevance to the English translation.

In paragraph 4, the words: "for the grant of breeders' rights" are hereby deleted.

Article 21

In Article 19, paragraph 2, the Croatian word translated as: "complies" is replaced by another Croatian word, with no relevance to the English translation, and the Croatian word translated as: "grant" is replaced by another Croatian word, with no relevance to the English translation.

In paragraph 3, the words: "reproduction material" are replaced by the word: "material".

Article 22

In Article 20, the words: "for the grant of breeders' rights" are hereby deleted.

Article 23

In the subheading above Article 21, the words: "for the grant of breeders' rights" are hereby deleted.

In Article 21, paragraph 1, the words: "for the grant of breeders' rights" are hereby deleted, and the Croatian word translated as: "complies" is replaced by another Croatian word, with no relevance to the English translation.

In paragraph 2, the word: "application" is inserted after the word: "Registry".

Article 24

In Article 22, paragraph 1, the Croatian word translated as: "complies" is replaced by another Croatian word, with no relevance to the English translation, and the Croatian word translated as: "grant" is replaced by another Croatian word, with no relevance to the English translation.

In paragraph 2, the Croatian word translated as: "comply" is replaced by another Croatian word, with no relevance to the English translation.

Article 25

In Article 23, paragraph 1, the words: "for the grant of breeders' rights" are hereby deleted.

Article 26

In Article 24, paragraph 1, the Croatian word translated as: "grant" is replaced by another Croatian word, with no relevance to the English translation.

In paragraph 2, the Croatian word translated as: "complies" is replaced by another Croatian word, with no relevance to the English translation.

Article 27

In the subheading above Article 25, the Croatian word translated as: "grant" is replaced by another Croatian word, with no relevance to the English translation.

In Article 25, paragraph 1, the word: "Institute" is replaced by the word: "Ministry", the words: "with the previous consent" are replaced by the words: "upon proposal", and the Croatian word translated as: "grant" is replaced by another Croatian word, with no relevance to the English translation.

In paragraph 2, the Croatian word translated as: "grant" is replaced by another Croatian word, with no relevance to the English translation.

In paragraph 3, the Croatian word translated as: "comply" is replaced by another Croatian word, with no relevance to the English translation, the word: "Institute" is replaced by the word: "Ministry", and the Croatian word translated as: "grant" is replaced by another Croatian word, with no relevance to the English translation.

Article 28

In Article 26, paragraph 1, the Croatian word translated as: "grant" is replaced by another Croatian word, with no relevance to the English translation.

Article 29

In Article 28, paragraphs 1 and 2, the Croatian word translated as: "grant" is replaced by another Croatian word, with no relevance to the English translation.

Article 30

In Article 29, paragraph 1, the Croatian word translated as: "grant" is replaced by another Croatian word, with no relevance to the English translation, the word: "breeders" is inserted after the word: "rights", and the Croatian word translated as: "grant" is replaced by another Croatian word, with no relevance to the English translation.

In paragraph 2, the Croatian word translated as: "grant" is replaced by another Croatian word, with no relevance to the English translation.

Article 31

In the subheading above Article 30, the Croatian word translated as: "grant" is replaced by another Croatian word, with no relevance to the English translation.

In Article 30, the Croatian word translated as: "grant" is replaced by another Croatian word, with no relevance to the English translation, and the Croatian word translated as: "comply" is replaced by another Croatian word, with no relevance to the English translation.

Article 32

In Article 31, paragraph 1, the word: "Institute" is replaced by the word: "Ministry".

In paragraph 2, the Croatian word translated as: "grant" is replaced by another Croatian word, with no relevance to the English translation.

Article 33

In the subheading above Article 32, the Croatian word translated as: "grant" is replaced by another Croatian word, with no relevance to the English translation word.

In Article 32, paragraph 1, the word: "Institute" is replaced by the word: "Ministry", and the Croatian word translated as: "granted" is replaced by another Croatian word, with no relevance to the English translation.

In item 1, the Croatian word translated as: "distinct" is replaced by another Croatian word, with no relevance to the English translation.

Article 34

In Article 33.a, in the introductory sentence of paragraph 1, the word: "Institute" is replaced by the word: "Ministry", the Croatian word translated as: "grant" is replaced by another Croatian word, with no relevance to the English translation, and the words "where it is established:" are inserted after the word: "if".

In item 2, subparagraph 2, the Croatian word translated as: "granted" is replaced by another Croatian word, with no relevance to the English translation.

In paragraph 2, the words: "after paragraph 2" are replaced by the words: "under paragraph 1".

Article 35

In Article 38, paragraph 2, the word: "Institute" is replaced by the word: "Ministry".

In paragraph 3, the word: "propagating" is hereby deleted.

In paragraph 4, the Croatian word translated as: "grant" is replaced by another Croatian word, with no relevance to the English translation.

Article 36

In Article 39, the word: "Institute" is replaced by the word: "Ministry".

Article 37

In Article 40, paragraph 1, the Croatian word translated as: "grant" is replaced by another Croatian word, with no relevance to the English translation, and the word: "Institute" is replaced by the word: "Ministry".

In paragraph 2, the Croatian word translated as: "grant" is replaced by another Croatian word, with no relevance to the English translation.

Article 38

After Article 40, Article 40.a is added which reads:

„Article 40.a

(1) In cases where the breeder cannot exercise or make benefit of his/her plant breeders' rights without violating the previously granted patent right to a bio-technological innovation, then he/she is entitled to file a request for a compulsory mutual licence for non-exclusive use of bio-technological innovation protected by the patent; and the compulsory mutual licence shall be provided only to the extent necessary for making use of the plant variety in order to keep the same protected by the plant breeders' rights, and which shall be subjected to paying a corresponding compensation to the holder of the plant breeders' right.

(2) When, in compliance with paragraph 1 of this Article, a compulsory mutual licence was granted to the breeder for the purpose of the grant of the breeders' rights, the compulsory mutual licence for the protected variety shall be granted to the holder of the patent right for bio-technological innovation under reasonable conditions.

(3) When the holder of the patent right for bio-technological innovation cannot exercise or make benefit of his/her right to the patent for bio-technological innovation without violation the previously granted breeder's right for a certain variety, then he/she is entitled to file a request for a compulsory mutual licence for non-exclusive use of the variety protected by this breeders' right, and which shall be subjected to paying a corresponding compensation to the holder of the breeders' right.

(4) When, in compliance with paragraph 3 of this Article, a compulsory mutual licence was granted to the holder of the patent right for bio-technological innovation for the purpose of exercising his/her right, then a compulsory mutual licence for the protected patent for the bio-technological innovation shall be granted concerning the variety in question to the holder of the breeders' right under reasonable conditions.

(5) In accordance with paragraphs 1 and 3 of this Article, the breeder, i.e. the holder of the patent right for bio-technological innovation, shall, in order to establish his/her rights to a compulsory mutual licence, submit an application to the Ministry.

(6) The applicant referred to in paragraph 5 of this Article, for the purpose of exercising the right referred to in paragraphs 1 and 3 of this Article, shall provide evidence proving:

a) he/she failed in requesting from the holder of the breeders' rights the obtaining of contracted licence, and

b) innovation to be of significant technological progress of substantial economic value when compared with the breeders' rights."

Article 39

In Article 42, paragraph 1 and 2 are amended to read:

“(1) A complaint against the violation of the breeders’ rights can be lodged in the time period of three years from the day of the grant of the breeders’ right and when the holder of the breeders’ right has learned about the violation of the right and has learned the violator’s identity.

(2) In the case of absence of the knowledge referred to in paragraph 1 of this Article, the holder of the breeders’ right is entitled to lodge a complaint within the period of 30 years at the latest from the day of the violation of the right.”

Article 40

In Article 44, paragraph 1, the word: “Institute” is replaced by the word: “Ministry”.

Article 41

In the subheading above Article 46, the Croatian word translated as: “grant” is replaced by another Croatian word, with no relevance to the English translation.

In Article 46, paragraph 1, the Croatian word: “grant” is replaced by another Croatian word, with no relevance to the English translation.

In paragraph 3, the Croatian word: “grant” is replaced by another Croatian word, with no relevance to the English translation.

Article 42

In Article 47, paragraph 1, the Croatian word translated as: “grant” is replaced by another Croatian word, with no relevance to the English translation.

Article 43

After Article 51, Article 51.a is added which reads:

„Article 51.a

The Minister shall issue the list of plant species, in accordance with Article 3, paragraph 2, items (i) and (ii) of the Regulation on accessing the International Convention for the Protection of New Plant Varieties (Official Gazette – International Agreements, No. 1/01), which may be protected by granting of the breeders' rights.”

Article 44

This Act shall enter into force on the eighth day after its publication in the Official Gazette.

Class: 320-20/08-01/02

Zagreb, 30 May 2008

THE CROATIAN PARLIAMENT

The President of the Croatian Parliament
Luka Bebić, m. p.

Act on Amendments to the Plant Variety Protection Act of October 21, 2011²

(adoption date: October 21, 2011; entry into force: November 3, 2011)

THE CROATIAN PARLIAMENT

2481

Pursuant to Article 89 of the Constitution of the Republic of Croatia, I hereby issue the
DECISION

PROMULGATING THE ACT ON AMENDMENTS TO
THE PLANT VARIETY PROTECTION ACT

I hereby promulgate the Act on Amendments to the Plant Variety Protection Act, passed by the Croatian Parliament at its session on 21 October 2011.

Class: 011-01/11-01/204

Reg. No.: 71-05-03/1-11-2

Zagreb, 26 October 2011

The President
of the Republic of Croatia
Ivo Josipović, m. p.

THE ACT
ON AMENDMENTS TO THE PLANT VARIETY PROTECTION ACT

Article 1

In the Plant Variety Protection Act (Official Gazette 131/97, 62/00 and 67/08), in Article 1, a new paragraph 2 is added which reads:

"(2) This Act contains the provisions aligned with the following legislation of the European Union: Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (SL L 227, 1. 9. 1994)."

Article 2

After Article 12a, a new Article 12b is added which reads:

"Article 12b

(1) Plant breeder's right shall not be violated in cases where harvested material of the protected variety for certain plant species, which the farmer obtained by planting on his own holding, is used for propagating purposes on his own agricultural holding.

(2) A farmer who realises the possibility referred to in paragraph 1 of this Article shall pay an equitable remuneration to the holder of plant breeder's right, which is lower than the licence paid by the seed producer.

(3) A farmer who realises the possibility referred to in paragraph 1 of this Article shall, on request by the holder of the plant breeder's right, submit information on the sown/planted areas.

(4) Small farmers shall not be required to pay any remuneration in respect of the possibilities laid down in paragraph 1 of this Article.

(5) The Minister shall stipulate the criteria for determining small farmers of the plant species to which the provision of paragraph 1 of this Article applies.

² Translation provided by the Croatian Authorities.

(6) When using the harvested material referred to in paragraph 1 of this Article for propagating purposes on his own agricultural holding, the farmer shall act in accordance with the regulations covering the plant health whereby he shall, in particular, take account of protection of the crops from harmful organisms which were planted by using the mentioned material."

Article 3

(1) The varieties referred to in Article 7, paragraph 1 of the Plant Variety Protection Act (Official Gazette 131/97, 62/00 and 67/08) may be subject to plant breeders' rights from 1 September 2011.

(2) By way of derogation from Article 8, paragraph 1 of the Plant Variety Protection Act (Official Gazette 131/97, 62/00 and 67/08), for all plant varieties except: wheat, barley, oats, maize, common sunflower, soya bean, oilseed rape, sugar beat, potato, lucerne, peas, fodder kale, pear, poplar and willow, the plant variety breeder or his successor in title shall be entitled to submit an application for the grant of a plant breeder's right until 1 September 2012.

Article 4

This Act shall enter into force on the eighth day after the day of its publication in the Official Gazette.

Class: 320-20/11-01/03
Zagreb, 21 October 2011

THE CROATIAN PARLIAMENT

The President of the Croatian Parliament
Luka Bebić, m.p.

Ordinance on Entry in the Registers in Carrying Out the Plant Variety Protection Activities of May 13, 2011³

(adoption date: May 13, 2011; entry into force: June 4, 2011)

THE MINISTRY OF AGRICULTURE, FISHERIES AND RURAL DEVELOPMENT

1271

Pursuant to Article 6, paragraph 3, Article 21, paragraph 2, Article 28, paragraph 3 and Article 47, paragraph 2 of the Plant Variety Protection Act (Official Gazette 131/97, 62/00 and 67/08), the Minister of Agriculture, Fisheries and Rural Development hereby issues the

ORDINANCE

ON ENTRY IN THE REGISTERS IN CARRYING OUT
THE PLANT VARIETY PROTECTION ACTIVITIES

I. BASIC PROVISIONS

Article 1

This Ordinance lays down the contents, the form and the manner of keeping the Register of Applications for the Grant of a Plant Breeder's Right, the Plant Breeder's Rights Register, the Transferred Plant Breeder's Rights Register, the Assigned Plant Breeder's Rights Register, the Register of Authorised Procedural Representatives, the contents of a certificate on the grant of a plant breeder's right including the form and contents of the forms.

Article 2

The registers referred to in Article 1 of this Ordinance shall be kept on prescribed forms which are printed along with this Ordinance and form an integral part thereof, and can be kept in electronic form.

Article 3

In addition to the registers there shall be also formed:

- (1) a variety dossier to be kept by the Croatian Centre for Agriculture, Food and Rural Affairs (hereinafter: the Croatian Centre), which shall keep an archive of stored variety's documentation. The variety dossier shall be kept for additional ten years after the variety in question has been removed from the corresponding register;
- (2) a list of registered legal and natural persons, kept electronically and arranged according to the date of registration.

Article 4

- (1) Entry in the registers, the list and entry of other files shall be carried out by the ministry competent for agriculture (hereinafter: the Ministry) and by the Croatian Centre, which shall be responsible for keeping document collections correctly and in a duly manner.
- (2) Data entered in the registers kept electronically shall be stored on an appropriate medium as a safe copy.
- (3) Authorised persons shall keep the registers, the list and the dossier in a manner as to protect them against misuse, damage or destruction.

³ Translation provided by the Croatian Authorities.

Article 5

Legal and natural persons entered in the registers shall notify the Ministry and the Croatian Centre of any changes in the data kept in the registers, within 30 days at the latest from the day when the change has occurred and shall provide proof thereof.

II. REGISTER OF APPLICATIONS FOR THE GRANT OF A PLANT BREEDER'S RIGHT

Article 6

(1) The Register of Applications for the Grant of a Plant Breeder's Right shall contain the following particulars:

1. the unique registration number,
2. the applicant's code,
3. the date and hour on which the application was received,
4. the date and hour on which the complete application was received,
5. in the cases where the right of priority is claimed: in respect of the country in which the application was already submitted, the date and hour when complete application was received in that country,
6. the date of application's publication in the Croatian Centre's official gazette,
7. information identifying the applicant: name, surname or legal person's name, its address and the seat,
8. information identifying the breeder(s): name, surname and address,
9. information identifying the agent: name, surname and address,
10. the plant species (botanical taxon and Croatian name),
11. proposed denomination(s) for the variety,
12. breeder's designation of the variety,
13. changes of particulars contained in the Application for Variety Protection,
14. the date of the decision on suspension of the procedure,
15. the date of valid decision on the grant of a plant breeder's right,
16. the date of valid decision on refusal of the application,
17. denotation of court decisions pertaining to the right to apply.

(2) *Form 2*. Register of Applications for the Grant of a Plant Breeder's Right (ZDOP) is printed along with this Ordinance and forms and integral part thereof.

Article 7

(1) An entry in the Register of Applications for the Grant of a Plant Breeder's Right shall be carried out on the basis of a written application submitted to the Croatian Centre. *Form 1* Application for the Grant of a Plant Breeder's Right is printed along with this Ordinance and forms and integral part thereof.

(2) An application for entry in the Register of Applications for the Grant of a Plant Breeder's Right shall be accompanied by the following documents:

1. Technical Questionnaire (in accordance with UPOV or CPVO technical guidelines),
 2. Authorisation of Agent (for an agent who represents foreign legal and natural persons in the Republic of Croatia).
- (3) Accompanying documents shall be either originals or certified copies.

Article 8

The Centre shall carry out an entry in the Register of Applications for the Grant of a Plant Breeder's Rights provided that the following conditions have been met:

1. the Technical Questionnaire is enclosed,
2. an application fee has been paid.

III. PLANT BREEDER'S RIGHTS REGISTER

Article 9

(1) The Plant Breeder's Rights Register shall contain the following particulars:

1. the unique registration number,
2. the applicant's code,
3. the number and date of issuing the decision on the grant of a plant breeder's right,
4. the number and date of issuing the certificate on the grant of a plant breeder's right,
5. the date of publication of granted plant breeder's right in the Croatian Centre's official gazette,
6. the plant species (botanical taxon and Croatian name),
7. the registered denomination of protected variety and the meaning of that denomination,
8. the official description of the variety or the reference to documents containing its description,
9. the reference of components of the protected variety if its production requires a repeated use of certain components for the production of the variety's seed material,
10. information identifying the holder of plant breeder's right: name, surname or legal person's name, its address and the seat,
11. information identifying the breeder(s): name, surname and address,
12. information identifying the agent: name, surname and address,
13. information identifying the third person to whom the plant breeder's right has been partly or entirely transferred: name, surname or legal person's name, its address and the seat, the content of transferred right,
14. the document type on the basis of which the transfer has been made,
15. information identifying the person holding compulsory licence: name, surname or legal person's name, its address and the seat, the conditions for holding this licence, the date of expiry of that right,
16. the expiry date of the variety protection,
17. the number and date of the decision on revoking the granted plant breeder's right,
18. a denotation of court decisions pertaining to the plant breeder's right,
19. a reference to changes of the particulars entered in the Plant Breeder's Rights Register.

(2) *Form 3*. Plant Breeder's Rights Register (OP) is printed along with this Ordinance and forms and integral part thereof.

Article 10

(1) The Ministry shall issue a certificate on the grant of a plant breeder's right to the holder of plant breeder's right, which is considered valid from the day of validity of the decision.

(2) The certificate on the grant of a plant breeder's rights is printed along with this Ordinance and forms and integral part thereof.

IV. TRANSFERRED PLANT BREEDER'S RIGHTS REGISTER

Article 11

(1) The Transferred Plant Breeder's Rights Register shall contain the following particulars:

1. the unique registration number,
2. the applicant's code,
3. the number and date of issuing the decision on the grant of a plant breeder's right,
4. the number and date of issuing the certificate on the grant of a plant breeder's right,
5. the date of publication of the granted plant breeder's right in the Croatian Centre's official gazette,
6. the number and date of the contract on transferred plant breeder's right to the third person,
7. the particulars on the transfer of plant breeder's right partly or entirely to the third person,
8. the plant species (botanical taxon and Croatian name),
9. the registered denomination of protected variety and the meaning of that denomination,
10. the official description of the variety or reference to documents containing its description,
11. a reference of components of the protected variety if its production requires a repeated use of certain components for the production of the variety's seed material,
12. information identifying the holder of plant breeder's right who is transferring the plant breeder's right: name, surname or legal person's name, its address and the seat,
13. information identifying the breeder(s): name, surname and address,
14. information identifying the third person to whom the plant breeder's right has been partly or entirely transferred: name, surname or legal person's name, its address and the seat, the content of transferred right,
15. the number of the contract on the transferred plant breeder's right,
16. the expiry date of the variety protection,
17. the number and date of the decision revoking the granted plant breeder's right.

(2) *Form 4*. Transferred Plant Breeder's Rights Register (POP) is printed along with this Ordinance and forms and integral part thereof.

Article 12

(1) An entry in the Transferred Plant Breeder's Rights Register shall be carried out on the basis of a written application submitted to the Ministry.

(2) An application for entry in the Transferred Plant Breeder's Rights Register shall be accompanied by:

– the Contract on Transferred Plant Breeder's Right.

(3) Accompanying documents shall be either originals or certified copies.

V. ASSIGNED PLANT BREEDER'S RIGHTS REGISTER

Article 13

(1) The Assigned Plant Breeder's Register shall contain the following particulars:

1. the unique registration number,
2. the applicant's code,
3. the number and date of issuing the decision on the grant of a plant breeder's right,
4. the number and date of issuing the certificate on the grant of a plant breeder's right,

5. the date of publication of the granted plant breeder's right in the Croatian Centre's official gazette,
6. the number and date of the licence contract,
7. the duration of the licence,
8. the scope of the licence,
9. the amount of compensation for assigned plant breeder's right,
10. the plant species (botanical taxon and Croatian name),
11. the registered denomination of protected variety and the meaning of that denomination,
12. the official description of the variety or reference to documents containing its description,
13. a reference of components of the protected variety if its production requires a repeated use of certain components for the production of the variety's seed material,
14. information identifying the holder of plant breeder's right who is assigning the plant breeder's right: name, surname or legal person's name, its address and the seat,
15. information identifying the breeder(s): name, surname and address,
16. information identifying the third person to whom the plant breeder's right has been assigned: name, surname or legal person's name, its address and the seat, the content of assigned right,
17. information identifying the third person holding compulsory licence: name, surname or legal person's name, its address and seat, the conditions for assignment, the date of expiry of that right,
18. the expiry date of the variety protection,
19. the number and date of the decision revoking the granted plant breeder's right.

(2) *Form 5*. Assigned Plant Breeder's Rights Register (UOP) is printed along with this Ordinance and forms and integral part thereof.

Article 14

- (1) An entry to the Assigned Plant Breeder's Rights Register shall be carried out on the basis of a written application submitted to the Ministry.
- (2) An application for entry in the Assigned Plant Breeder's Rights Register shall be accompanied by:
 - the licence contract.
- (3) Accompanying documents shall be either originals or certified copies.

VI. REGISTER OF AUTHORISED AGENTS

Article 15

- (1) The Register of Authorised Agents shall contain the following particulars:
 1. the registration number,
 2. the number and date of the contract on representation,
 3. information identifying the agent: name, surname or legal persons' name, its address and seat,
 4. information identifying the breeder(s): name, surname and address,
 5. the subject and contents of representation,
 6. changes of particulars entered in the Register of Authorised Procedural Representatives of the Varieties.

(2) *Form 6*. The Register of Authorised Agents (ZOP) is printed along with this Ordinance and forms and integral part thereof.

Article 16

1) An entry to the Register of Authorised Agents shall be carried out on the basis of a written application submitted to the Ministry.

2) The application for an entry in the Register of Authorised Procedural Representatives shall be accompanied by:

– Authorisation (for the agent who represents foreign legal and natural persons in the Republic of Croatia).

(3) Accompanying documents shall be either originals or certified copies.

Article 17

The provisions of the Ordinance on entry in the registers in carrying out the plant variety protection activities (Official Gazette 63/01) shall cease to apply with the entry into force of this Ordinance.

Article 18

This Ordinance shall enter into force on the eighth day after the day of its publication in the Official Gazette.

Class: 011-02/11-01/93

Reg. No.: 525-02-1-0004/11-1

Zagreb, 13 May 2011

Deputy Prime Minister and
the Minister of Agriculture, Fisheries and Rural Development
Petar Čobanković, m. p

Form 1 – Form 6

FORM 1.

ZAHTEJEV ZA DODJELJIVANJE OPLEMENJIVAČKOG PRAVA U REPUBLICI HRVATSKOJ

*Application for the grant of plant breeders' right in the Republic of Croatia*1. Podnositelj zahtjeva
The Applicant

Ime (First name):	
Prezime (Last name):	
Tvrtka: (Organisation):	
Adresa: (Address):	
Poštanski broj (ZIP code):	Mjesto (Place):
Država (Country):	
Telefon (Phone Nr.):	
Telefaks (Fax Nr.):	
E-mail (e-mail):	

2. Zastupnik (Uz zahtjev priložite punomoć o zastupanju u postupku priznavanja sorti poljoprivrednog bilja)
Procedural representative (Please attach the completed form of the authorization of the procedural representative)

Ime (First name):	
Prezime (Last name):	
Tvrtka: (Organisation):	
Adresa: (Address):	
Poštanski broj (ZIP code):	Mjesto (Place):
Država (Country):	
Telefon (Phone Nr.):	
Telefaks (Fax Nr.):	
E-mail (e-mail):	

3. Oplemenjivači sorte
The breeder of the variety

- ☐ Oplemenjivač sorte je podnositelj zahtjeva (*breeder of variety is applicant*)
- ☐ Oplemenjivač sorte nije podnositelj zahtjeva (*breeder of variety is NOT applicant*)

Ime (First name):	
Prezime (Last name):	
Tvrtka: (Organisation):	
Adresa: (Address):	
Poštanski broj (ZIP code):	Mjesto (Place):
Država (Country):	
Telefon (Phone Nr.):	
Telefaks (Fax Nr.):	
E-mail (e-mail):	

Ukoliko oplemenjivač nije podnositelj zahtjeva, na koji način je oplemenjivačko pravo prenešeno na podnositelja

(If the breeder is not also the applicant, in which manner was the breeder's right of the variety transferred to the applicant:)

- ☐ ugovorom *(by contract)*
☐ nasljeđivanjem *(by sccession)*
☐ na drugi način – priložit detaljno pojašnjenje *(otherwise – provide a detailed explanation)*

Priložiti dokaz o prenošenju oplemenjivačkog prava za sortu na podnositelja zahtjeva
(Attach proof of the transfer of breeder's rights of the variety to the applicant)

4. Zemlja u kojoj je sorta stvorena ili otkrivena i razvijena:
(Country in which the variety was bred or discovered and developed)

5. Vrsta kojoj sorta pripada
Species to which the variety belongs

Latinsko ime vrste *(Latin name)*: _____

Hrvatsko ime vrste *(Croatian name)*: _____

6. Ime sorte / denominacija (upotrebljavajte velika i mala slova)
Variety denomination (using capital and small letters)

Oplemenjivačka oznaka *(Breeders reference)*: _____

Predloženo ime sorte *(Proposed name of the variety)*: _____

7. Predloženo ime sorte je *(Proposed designation is)*

- ☐ Zamišljeno ime *(Fancy name)* ☐ Kod *(Code)*

8. Podaci o dodjeli oplemenjivačkog prava za sortu u drugim zemljama
Information regarding plant breeder's rights of the variety in any other country

- ☐ Sorta je prijavljena ili je zaštićena u drugoj državi *(The variety has been applied or has been protected in any other country)*

Država <i>(Country)</i>	Upisni broj zahtjeva za zaštitu <i>(Registration number of application for protection)</i>	Datum zahtjeva <i>(Date of application)</i>	Datum zaštite <i>(Date of protection)</i>	Ime ili predloženo ime sorte <i>(Variety denomination)</i>

- ☐ Sorta NIJE prijavljena ili zaštićena u drugoj državi *(The variety has NOT been applied or has been protected in any other country)*

9. a) Tražite li pravo prvenstva vezano za ranije podnešene zahtjeve?
(Do you refer to priority right?)

- ☐ DA *(YES)* ☐ NE *(NO)*

- b) Ukoliko tražite pravo prvenstva, navesti zemlju u kojoj je podnesen prvi zahtjev:
(In the case of referring the priority right, the country in which the first application had been filed?)

i datum zaprimanja prvog zahtjeva u toj zemlji:
(and the date of reception of the first application in that country)

10. Postupak ispitivanja različitosti, ujednačenosti i postojanosti (DUS):

The procedure for testing the distinctness, uniformity and stability (DUS):☐ je završen, navedite državu/e (*has already been completed in the following country*):

☐ se trenutno provodi, navedite državu/e (*is underway in the following country*):

☐ nije proveden (*has not been done*)

11. Sorta je stvorena uz pomoć genetske tehnologije ili sadrži genetski modificirane organizme

The variety is or includes genetically modified organisms (GMO)☐ DA (YES) ☐ NE (NO)

Ako DA, priložite dozvolu za puštanje GMO u okolinu. (*In case of YES enclose permission to release GMO into the environment*)

12. Je li genetski materijal sorte prodavan ili na drugi način komercijalno korišten u Hrvatskoj ili izvan Hrvatske prije podnošenja zahtjeva? (*Was the genetic material of the variety on the market or in any other manner commercially exploited in Croatia or abroad before the filing date of the application?*)☐ DA (YES) ☐ NE (NO)

Ukoliko je odgovor DA navedite datum prve prodaje ili komercijalizacije:
(*If the answer YES, give the date of first sale or commercial use:*)

a) u Hrvatskoj (*in Croatia*): _____b) u drugoj zemlji (*in foreign country*): _____c) je li podnositelj odobrio prodaju ili komercijalizaciju?
(*has the applicant approved the sale or commercial use?*) ☐ DA (YES) ☐ NE (NO)13. Prilozi (*Enclosures*)

- ☐ tehnički upitnik (*Technical Questionnaire*)
- ☐ punomoć za zastupanje (*Authorization of the Representative*)
- ☐ dokaz o prenošenju oplemenjivačkog prava (*transfer of breeders's rights*)
- ☐ ostalo, navedite priloge (*other, specify*): _____

14. Izjava (*Statement*)

Podnosim zahtjev za zaštitu sorte u Republici Hrvatskoj (*I apply for protection of the variety in the Republic of Croatia.*)

Izjavljujem da su svi podaci u prijavi i prilogima potpuni i točni (*I declare that all data stated in the application and attachments are, to the best of my knowledge, complete and correct*).

Suglasan/a sam da se Centar može savjetovati i razmjenjivati podatke sa drugim uredima za zaštitu u drugim zemljama vezano za zaštitu ove sorte (*I agree that the Centre may consult and exchange data with other office for the protection of varieties in other countries in connection with the protection of this variety*).

Izjavljujem da ću platiti sve troškove i pristojbe u postupku zaštite sorte u predviđenim rokovima. (*I agree to pay all the costs and fees for protection of the variety within the deadlines set*).

Mjesto (Place): _____ Datum (Date): _____

Potpis podnositelja zahtjev (*Applicant's signature*): _____

REGISTER OF APPLICATIONS FOR THE GRANT OF A PLANT BREEDER'S RIGHT

Unique registration number:

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Page:

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Applicant's code:	
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	Date:	Hour:
Application was received on:		
Complete application was received on:		
(where the right of priority is claimed) in respect of the country in which the application was already submitted, receipt of complete application in that country		

Date of application's publication in the Centre's official gazette:	
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INFORMATION IDENTIFYING THE APPLICANT

Name and surname or legal person's name:	
Address / seat:	

INFORMATION IDENTIFYING THE BREEDER(S)

Name and surname:	
Address:	

INFORMATION IDENTIFYING THE PROCEDURAL REPRESENTATIVE

Name and surname:	
Address:	

INFORMATION IDENTIFYING THE PLANT SPECIES-VARIETY

Plant species (botanical taxon and Croatian name):	
Proposed denomination(s) for the variety:	
Temporary breeder's designation of the variety:	
Changes of particulars contained in the application for variety protection:	
Date of the decision on suspension of the procedure:	
Date of the valid decision on the grant of a plant breeder's right:	
Date of the valid decision on refusal of the application:	
Denotation of court decisions pertaining to the right to apply:	

 Authorised person

PLANT BREEDER'S RIGHTS REGISTER

Unique registration number:

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Page:

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Applicant's code:	
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INFORMATION IDENTIFYING THE HOLDER OF PLANT BREEDER'S RIGHT

Name and surname or legal person's name:	
Address / seat:	

INFORMATION IDENTIFYING THE BREEDER(S)

Name and surname:	
Address:	

INFORMATION IDENTIFYING THE REPRESENTATIVE

Name and surname:	
Address:	

INFORMATION IDENTIFYING THE THIRD PERSON to whom the plant breeder's right has been partly or entirely transferred

Name and surname or legal person's name:	
Address / seat:	
The contents of transferred right:	
Document type on the basis of which the transfer has been made:	

INFORMATION IDENTIFYING THE PERSON holding compulsory licence

Name and surname or legal person's name:	
Address / seat:	
Conditions for holding the licence:	
Date of expiry of that right:	

	Number:	Date:
Decision on the grant of a plant breeder's right		
Certificate on granted plant breeder's right		
Published in the Centre's official gazette		

INFORMATION ON THE PLANT SPECIES-VARIETY

Plant species (botanical taxon and Croatian name):	
Registered denomination of protected variety and the meaning of that denomination:	
Official description of the variety or reference to documents containing its description:	
Please, provide the protected variety's components if its production requires a repeated use of certain components for the production of the variety's seed material:	

Date of expiry of the variety protection:		
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	Number:	Date:
Decision revoking the decision on the grant of a plant breeder's right:		
Denotation of court decisions pertaining to the plant breeder's right:		
Note on the changes in the particulars entered in the Plant Breeder's Rights Register:		

Authorised person

TRANSFERRED PLANT BREEDER'S RIGHTS REGISTER

Unique registration number:

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Page:

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Applicant's code:

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INFORMATION IDENTIFYING THE HOLDER OF PLANT BREEDER'S RIGHT WHO IS TRANSFERRING THE PLANT BREEDER'S RIGHT

Name and surname or legal person's name:	
Address / seat:	

INFORMATION IDENTIFYING THE BREEDER(S)

Name and surname:	
Address:	

	Partly	Entirely
The plant breeder's right is transferred to the third person:		

INFORMATION IDENTIFYING THE THIRD PERSON to whom the plant breeder's right has been partly or entirely transferred

Name and surname or legal person's name:	
Address / seat:	
The contents of the transferred right:	
Number of the contract of the transferred right	

	Number:	Date:
Decision on the grant of a plant breeder's right		
Certificate on granted plant breeder's right		
Published in the Centre's official gazette		
Contract by the which the plant breeder's right is partly or entirely transferred to the third person		

INFORMATION ON THE PLANT SPECIES-VARIETY

Plant species (botanical taxon and Croatian name):	
Registered denomination of the protected variety and the meaning of that denomination:	
Official description of the variety or reference to documents containing its description:	
Please, provide the protected variety's components if its production requires a repeated use of certain components for the production of the variety's seed material:	

Date of expiry of the variety protection:	
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	Number:	Date:
Decision revoking the decision on the grant of a plant breeder's right:		

 Authorised person

ASSIGNED PLANT BREEDER'S RIGHTS REGISTER

Unique registration number:

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Page:

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Applicant's code:	
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INFORMATION IDENTIFYING THE HOLDER OF PLANT BREEDER'S RIGHT WHO ASSIGNS HIS PLANT BREEDER'S RIGHT

Name and surname or legal person's name:	
Address / seat:	

INFORMATION IDENTIFYING THE BREEDER(S)

Name and surname:	
Address:	

INFORMATION IDENTIFYING THE THIRD PERSON, to whom the plant breeder's right has been assigned

Name and surname or legal person's name:	
Address / seat:	

INFORMATION ON THE THIRD PERSON holding compulsory licence

Name and surname or legal person's name:		
Address / seat:		
Assignment conditions:		
Date of expiry of that right:		

	Number:	Date:
Decision on the grant of a plant breeder's right		
Certificate on granted plant breeder's right		
Published in the Centre's official gazette		
Licence contract		
Duration of the licence:		
Scope of the licence:		
Amount of the compensation for assigned plant breeder's right:		

INFORMATION ON THE PLANT SPECIES-VARIETY

Plant species (botanical taxon and Croatian name):	
Registered denomination of the protected variety and the meaning of that denomination:	
Official description of the variety or reference to documents containing its description:	
Please, provide the protected variety's components if its production requires a repeated use of certain components for the production of the variety's seed material:	
Date of expiry of the variety protection:	

	Number:	Date:
Decision revoking the decision on the grant of a plant breeder's right:		

 Authorised person

REGISTER OF AUTHORISED PROCEDURAL REPRESENTATIVES

Unique registration number:

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Page:

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	Number:	Date:
Contract or representation		

INFORMATION IDENTIFYING THE PROCEDURAL REPRESENTATIVE:

Name and surname, or legal person's name:	
Address / seat:	

INFORMATION IDENTIFYING THE BREEDER(S)

Name and surname:	
Address:	

SUBJECT AND CONTENT OF REPRESENTATION:

Subject of representation:	
Contents of representation:	

Please note the changes in the particulars, entered in the register of Authorised Agents of the Varieties:	
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 Authorised person

Ordinance on the Procedure of Examination of Distinctness, Uniformity and Stability of New Plant Varieties for the Purpose of Granting a Plant Breeder's Right and Registration of Varieties of May 10, 2011⁴

(adoption date: May 10, 2011; entry into force: June 11, 2011)

THE MINISTRY OF AGRICULTURE, FISHERIES AND RURAL DEVELOPMENT

1373

Pursuant to Article 18, paragraph 6 of the Plant Variety Protection Act (Official Gazette 131/97, 62/00 and 67/08), the Minister of Agriculture, Fisheries and Rural Development hereby issues the

ORDINANCE

ON THE PROCEDURE OF EXAMINATION OF DISTINCTNESS, UNIFORMITY
AND STABILITY OF NEW PLANT VARIETIES FOR THE PURPOSE
OF GRANTING A PLANT BREEDER'S RIGHT AND
REGISTRATION OF VARIETIES

I. GENERAL INFORMATION

Article 1

This Ordinance lays down the procedure and the way of examining distinctness, uniformity and stability (hereinafter: DUS) of new plant varieties for the purpose of granting a plant breeder's right and registration of varieties, as well as the time limits for the delivery of propagating material (seed or seedlings) necessary for carrying out the DUS testing.

II. EXAMINING PROCEDURE

Article 2

(1) The DUS testing procedure for a new plant variety includes examining of varieties in the field trial and laboratory, which is carried out according to procedures and methods that are in compliance with the general and technical guides in force of the International Convention for the Protection of New Varieties of Plants (hereinafter: UPOV Convention) and/or the Community Plant Variety Office (hereinafter: CPVO).

(2) The DUS testing of new plant varieties in the field trial and laboratory shall be carried out by the Croatian Centre for Agriculture, Food and Rural Affairs, the Institute for Seed and Seedlings (hereinafter: the Croatian Centre) or competent institution (hereinafter: examiner) determined by the Croatian Centre, in accordance with the UPOV or CPVO technical guides for each species.

(3) The Croatian Centre may also entrust the conduct of DUS testing of a new plant variety to an examiner outside the Republic of Croatia in the country which signed international agreements and conventions that the Republic of Croatia has also signed and became a party in, but only in the cases where the DUS examiner of a new plant variety has already been appointed by the competent office for the protection of new plant varieties in that country. In such cases, the Croatian Centre shall previously establish whether agro-ecological conditions in the country where testing is to be carried out are comparable with agro-ecological conditions in the Republic of Croatia.

(4) Mutual obligations, rights and the mode of cooperation between the Croatian Centre and the examiner shall be determined in a contract.

⁴ Translation provided by the Croatian Authorities.

(5) The Croatian Centre shall submit to the examiner a copy of technical questionnaire and a request for the conduct of DUS testing.

Article 3

(1) Where the Croatian Centre is not in possibility to designate in respect of a new plant variety the DUS examiner in the Republic of Croatia or in the UPOV Convention signatory state, then, on request by the Croatian Centre, the applicant himself or the person authorised by him shall organise the DUS testing of a new plant variety.

(2) In absence of both practical experience in DUS testing for a certain species and technical guide in some other country, the Croatian Centre shall prepare a technical guidelines for DUS testing of a new plant variety in accordance with the principles set out in the general guide. The Croatian Centre shall inform UPOV and CPVO respectively on prepared technical guides, publish the same and issue an approval of the examiner, before DUS testing of a new variety.

Article 4

(1) The Croatian Centre shall provide the applicant with information on the DUS examiner, the necessary quantity and quality of seed or seedling material for DUS testing, the address for delivery of the material and the deadline for delivery.

The applicant shall ensure all necessary documentation in cases where the testing is to be carried out outside the Republic of Croatia.

(2) In cases where the right of a priority has been claimed, and the first application for the grant of a plant breeder's right in the country of first application has been rejected or withdrawn, the seed or seedling material for DUS testing shall be delivered within six months for agricultural plants, or within one year for trees and grape vine, claimed from the day of rejection or withdrawing in the country of first application.

Article 5

Seed and seedling material for DUS testing shall be delivered untreated, unless the institution in charge of the testing so requests or authorises its treatment. In cases where the mentioned treatment has been carried out, information thereof must be provided.

Article 6

(1) The minimum duration of DUS testing new plant varieties in field trials shall be two years or two independent growing cycles. Where appropriate, this testing period can be extended for additional years for the purpose of determining uniformity and/or stability of the tested variety.

(2) DUS testing shall be normally conducted at one trial place. However, it can be conducted at more than one trial place in the following cases: minimisation of the total testing period, a reserve trial location, different agro-climatic conditions, additional tests and the DUS testing on the basis of information for the same characteristic which was tested at different trial places.

(3) The trial for DUS testing includes new plant varieties (hereinafter: candidate varieties) and variety reference collections. Candidate variety is compared with other candidate varieties and the varieties in reference collection for the purpose of determining distinctness.

(4) Reference collection comprises:

1. varieties grown in the Republic of Croatia,
2. other varieties of common knowledge grown in comparable geographical areas,
3. similar varieties stated by the applicant,
4. in the case of hybrids, all parental lines of common knowledge,
5. other varieties under testing,
6. example varieties from UPOV or CPVO technical guide.

Article 7

(1) A variety is defined by its characteristics and those characteristics present a basis for DUS testing. DUS testing determines the characteristics of a new plant variety (specified in technical guides) which are relevant for examination of distinctness, uniformity and stability, without taking into consideration the characteristics for economic importance.

(2) After the first year of testing, the examiner shall provide a preliminary report on the results of testing the distinctness, uniformity and stability and possible problems in performing the trial. The Preliminary Report form (PI-DUS) is printed along with this Ordinance and forms an integral part thereof.

(3) After the testing has been concluded (after the second year), the Croatian Centre shall produce a final report on the examination of the distinctness, uniformity and stability, based on the UPOV or CPVO model. If the report is positive, it shall contain a description of the variety in the form of an annex. The Final Report form (I-DUS) is printed along with this Ordinance and forms an integral part thereof.

(4) Having performed the DUS testing, the examiner shall submit without delay the reports and variety description to the Croatian Centre in the cases where the Croatian Centre itself has not been the examiner.

III. THE DUS TESTING METHOD

Article 8

(1) The DUS testing method of new plant varieties is based on visual assessment and measuring of certain characteristics of a variety.

(2) Due to environmental influences which, to a greater or lesser degree can modify the expression of genetically conditioned qualitative and quantitative characteristics, as a general rule, those characteristics which can be the least influenced by the environmental factors shall be determined.

(3) UPOV or CPVO technical guides for individual species or for plant variety groupings contain the tables with mandatory and additional characteristics, the states of expression of characteristics, the growth stages for assessing the characteristics, the manner of assessing the characteristics and the plant variety samples for each state of expression of individual characteristic.

(4) By way of a written proposal which includes an explanation, the applicant may also request a determination of additional characteristics. The Croatian Centre shall decide whether additional characteristics shall be determined and if so which of them shall be determined.

Article 9

Two varieties shall be deemed distinct if the difference between them:

- has been determined at least at one testing place,
- is clear, and
- consistent/stable.

Article 10

In the case of true qualitative characteristics, the distinctness between two varieties is deemed to be clear, if one or more characteristics show the expressions which fall within two different states of expression in accordance with the technical guide. In the case of other qualitatively observed characteristics in determining distinctness, a possible variation in the distinctness between the varieties must be observed taking into account the year or testing place.

Article 11

In the case of examination of distinctness for measured quantitative characteristics, the difference between two varieties is deemed to be clear if the determined level of probability is 1% as the result of corresponding statistical method.

Article 12

(1) „Side-by-side“ visual comparison shall be used for determining clear distinctness of a variety, which is based on direct visual comparison of the varieties which are insufficiently different in the test.

(2) In the case of self-pollinated varieties and vegetatively propagated varieties, there is a relatively small variation within the varieties and therefore a visual determination of distinctness is adequate. On the other hand, in the case of cross-pollinated varieties and certain types of hybrid varieties a determination of distinctness via a direct comparison requires a special attention because a variation within the variety can be great.

Article 13

(1) The difference is deemed stable if it has the same sign in two subsequent, or in two out of three growing cycles.

(2) For the purpose of confirmation of stability, this difference must re-appear in the next testing, and the best way to do it is by means of a direct comparison. The number of cases must ensure the same statistical probability of determined difference, which would have been obtained by measuring that characteristic.

Article 14

If in the case of individually assessed characteristics the difference between two varieties is clear, then a combination of information on such characteristics can be used for determination of distinctness. In this case, the level of reliability must be comparable with the levels laid down in Article 11, 12 and 13 of this Ordinance.

Article 15

The variety must be sufficiently uniform, having regard to the particular features which are the consequence of characteristics of its propagation. For a variety to be deemed uniform, the variation shown by the variety depending on breeding system and occurrence of atypical plants caused by incidental mixing, mutations or other causes must be restricted to the necessary level for an accurate description, determining of distinctness and ensuring stability. This requires a certain tolerance in respect of the presence of atypical plants which shall show difference depending on the propagation system.

Article 16

For vegetatively propagated varieties and self-pollinated varieties, the maximum permitted number of atypical plants shall depend on the sample size as well as the plant species, and shall be determined in UPOV or CPVO technical guides for DUS testing.

Article 17

Cross-pollinated, including synthetic, varieties demonstrate mostly a wider range of variation within the variety when compared with the self-pollinated varieties and sometimes it is difficult to distinguish atypical plants. Therefore it is not possible to define a fixed tolerance. Instead, a limit of relative tolerance should be used when comparing them with already known comparable varieties. The number of permitted atypical plants is determined for each variety in UPOV or CPVO technical guides for DUS testing.

Article 18

Single-cross hybrids are treated as mainly self-pollinated varieties referred to in Article 17 of this Ordinance. Other hybrid categories are treated in connection with the plant species and the method of breeding. The permitted variation for certain types of hybrids in connection with the plant species and the breeding method are published in the UPOV or CPVO technical guides for DUS testing.

Article 19

(1) Stability of a variety shall be determined by careful observation of maintaining the variety in the forthcoming years of testing by comparing it with the first test year and with the sample stored at the Croatian Centre. Stability of a variety shall be determined with a lower reliability than distinctness or uniformity. In most cases, once the tested sample has demonstrated uniformity, is material shall also be deemed stable.

2) Where necessary, stability can be determined by a parallel sowing of a new sample and the sample stored at the Croatian Centre with the purpose of confirmation whether both samples show the same characteristics.

Article 20

The Croatian Centre shall publish in its official gazette the numbers of transposed UPOV or CPVO technical guides for DUS testing for each individual species, within 30 days at the latest after the submission of the first application for the protection of the variety of the mentioned plant species.

Article 21

On the date of entry into force of this Ordinance, the Ordinance on the procedure of examination of distinctness, uniformity and stability (DUS) of plant varieties for the purpose of obtaining the plant breeder's right (Official Gazette 63/01) shall cease to have effect.

Article 22

This Ordinance shall enter into force on the eighth day after the day of its publication in the Official Gazette.

Class: 011-02/11-01/96

Reg. No.: 525-02-1-0004/11-2

Zagreb, 10 May 2011

Deputy Prime Minister and the Minister of Agriculture,
Fisheries and Rural Development
Petar Čobanković, m. p.

PI-DUS Form

Preliminary Report on DUS testing

1. Registration number of the reporting office
2. Test requester
3. Registration number of the requester
4. The plant breeder's designation
5. Date of submitting the request in the requester's country
6. Applicant (name and address)
7. Representative or proxy (name and address)
8. Variety denomination, to which plant variety it belongs/Latin name
9. Species denomination, to which variety it belongs/Croatian name
10. Variety denomination
11. Plant breeder (name and address)
12. Test performer/examiner
13. Test area and place
14. Test time period
15. Date and place of issue of the previous report
16. GENERAL INFORMATION
 - a) Seed material of the variety was not submitted ()
 - b) Seed material does not meet the requirements ()
 - c) The test failed ()
17. TEST RESULTS
 - a) No objections
 - b) Objections
18. Planned date of the final report on testing
19. Objection: This preliminary report has no prior influence to the final report.
20. Signature.

I-DUS Form

Report on DUS testing

1. Registration number of the reporting office
2. Test requester
3. Registration number of the requester
4. The plant breeder's designation
5. Date of submitting the request in the requester's country
6. Applicant (name and address)
7. Representative or proxy (name and address)
8. Variety denomination, to which plant variety it belongs/Latin name
9. Species denomination, to which variety it belongs/Croatian name

10. Variety denomination
11. Plant breeder (name and address)
12. Test performer/examiner
13. Test area and place
14. Test time period
15. Date and place of issue of the report
16. DUS TESTING RESULTS AND CONCLUSION

(a) Report on distinctness

The variety

- is clearly distinct from any other variety ()
- is not clearly distinct from all varieties which are generally known to us ().

(b) Report on uniformity

The variety

- is clearly uniform ()
- is not clearly uniform ()

by respecting the particularities of sexual reproduction or vegetative propagation.

(c) Report on stability

The variety

- is stable ()
- is not stable ()

in essential characteristics.

If the result is positive, the variety description is to be attached to the report

17. Objections

18. Signature

Ordinance Laying Down the Conditions for Use of Harvested Material of the Protected Variety on One's Own Agricultural Holding and the Criteria for Determining Small Farmers of September 21, 2011⁵

(adoption date: September 21, 2011; entry into force: December 23, 2011)

THE MINISTRY OF AGRICULTURE, FISHERIES AND RURAL DEVELOPMENT

2944

Pursuant to Article 12b, paragraph 5 of the Plant Variety Protection Act (Official Gazette 131/97, 62/00, 67/08, 124/11), the Minister of Agriculture, Fisheries and Rural Development hereby issues the

ORDINANCE

LAYING DOWN THE CONDITIONS FOR USE OF HARVESTED MATERIAL OF
THE PROTECTED VARIETY ON ONE'S OWN AGRICULTURAL HOLDING
AND THE CRITERIA FOR DETERMINING SMALL FARMERS

I. BASIC PROVISIONS

Article 1

(1) This Ordinance lays down the plant species in respect of which farmers are authorised to use the product of the harvest from their own holding for propagating purposes on their own holding, the level of equitable remuneration, the information to be submitted to the holder of plant breeder's right and the criteria which determine small farmers.

(2) This Ordinance contains the provisions aligned the following legislation of the European Union:

- Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (OJ L 227, 1. 9. 1994);
- Commission Regulation (EC) No 1768/95 of 24 July 1995 implementing rules on the agricultural exemption provided for in Article 14 (3) of Council Regulation (EC) No 2100/94 on Community plant variety rights (OJ L 173, 25.7. 1995).

II. THE LIST OF PLANT SPECIES AND REMUNERATION

Article 2

(1) Farmers are authorised to use the product of the harvest of certain species which they have obtained by planting on their own agricultural holding for propagating purposes on their own holding, but they are not authorised to market the same. This provision shall only apply to agricultural plant species of:

Fodder plants:

- *Cicer arietinum* L. – Chickpea milkvetch
- *Medicago sativa* L. – Lucerne
- *Lupinus luteus* L. – Yellow lupin
- *Pisum sativum* L. – Field pea
- *Trifolium alexandrinum* L. – Berseem/Egyptian clover
- *Trifolium resupinatum* L. – Persian clover
- *Vicia faba* L. – Field bean
- *Vicia sativa* L. – Common vetch

⁵ Translation provided by the Croatian Authorities.

Cereals:

- *Avena sativa* L. – Oats
- *Hordeum vulgare* L. – Barley
- *Oryza sativa* L. – Rice
- *Phalaris canariensis* L. – Canary grass
- *Secale cereale* L. – Rye
- *X Triticosecale* Wittm. – Triticale
- *Triticum aestivum* L. emend. Fiori et Paol. – Wheat
- *Triticum durum* Desf. – Durum wheat
- *Triticum spelta* L. – Spelt wheat

Potatoes:

- *Solanum tuberosum* L. – Potatoes

Oil and fibre plants:

- *Brassica napus* L. – Swede rape
- *Brassica rapa* L. – Turnip rape
- *Linum usitatissimum* L. – linseed with the exclusion of flax

(2) The provisions referred to in paragraph 1 shall only apply to varieties other than hybrid and synthetic varieties.

Article 3

(1) The holder of the plant breeder's right shall have the right to request an equitable remuneration to be paid by the farmer who uses the harvested material of the protected variety obtained on his own holding for propagating purposes on his own holding.

(2) The holder of the plant breeder's right and the farmer can conclude a contract on the use of the protected variety's harvested material for propagating purposes on his own holding, in which the level of the equitable remuneration to be paid for the use of the harvested material shall be determined.

(3) Where the contract referred to in paragraph 2 has not been concluded, the holder of the plant breeder's right shall not be in position to request a level of remuneration which exceeds the level which was concluded between the plant breeder's association and the seed production association.

(4) Where the contract referred to in paragraph 2 has not been concluded, the holder of the plant breeder's right shall not be in position to request a remuneration which in amount exceeds 50% of the amount of the licence for the lowest category of the licensed seed.

III. INFORMATION

Article 4

(1) Farmers who use the protected variety's harvested material for propagating purposes on their own holding, on request of the holder of the plant breeder's right, shall be required to provide relevant information to the holder concerning:

(a) the producer/farmer: full name or organisation's name, address;

(b) agricultural holding:

- total number in hectares of agricultural land;
- total number in hectares of cereal production;
- total number in hectares of production of fodder plants, oil and fibre plants;
- total number in hectares of potato production;

(c) protected varieties, the product of the harvest used for further planting on the farmer's holding:

- the name of protected variety;
- the amount of used initial certified seed of the protected variety and the date, the seed producer and supplier;
- total yield per protected varieties;
- the amount of harvested material per protected variety, used for further planting;
- if material for further planting was processed: full name, including the organisation's name and the address of the processor.

Article 5

(1) The holder of the plant breeder's right may request information referred to in Article 4 in respect of the current year and up to five previous years.

(2) The holder of the plant breeder's right may request information for the period when the variety in question was under the plant breeder's right granting procedure. The first year when the holder may request the information shall be the year when a completed application for the grant of a plant breeder's right was published in the official journal of the Centre.

(3) The farmer may request from the holder of the breeder's right to provide a justification and evidence according to which he has the right to seek information referred to in Article 4. A certificate on the entry in the Register of Applications for the Grant of a Plant Breeder's Right or a document on the grant of a breeder's right shall be deemed as evidence for his holdership.

(4) Obligation to collect information shall be a matter of exclusive responsibility of holders of plant breeder's right and in fulfilling this obligation they cannot expect assistance from official bodies. However, relevant information shall be provided, on request of the holder of the plant breeder's right, by farmers and by suppliers registered in the Register of Seed Suppliers, as well as by official bodies involved in collecting information on agricultural production.

IV. SMALL FARMERS

Article 6

(1) Small farmers shall not be required to pay a remuneration for the use of harvested material of the protected variety obtained on their own holding for propagating purposes on their own holding.

(2) Small farmers shall be considered to be farmers whose total production land does not exceed 3 hectares for agricultural plant species referred to in Article 2 of this Ordinance.

V. TRANSITIONAL AND FINAL PROVISIONS

Article 7

This Ordinance shall enter into force on the eighth day after the day of its publication in the Official Gazette.

Class: 011-02/11-01/130

Reg. number: 525-02-1-0005/11-1

Zagreb, 29 November 2011

Deputy Prime Minister and
the Minister of Agriculture, Fisheries and Rural Development
Petar Čobanković, m. p.

FRANCE⁶**Loi du 28 novembre 2011 sur les Certificats d'Obtention Végétale publiée au journal officiel du 8 décembre 2011 qui a modifié le code de la propriété intellectuelle**

OBJET : TEXTES PORTANT TRANSCRIPTION DE LA CONVENTION UPOV DE 1991 EN DROIT NATIONAL

Au niveau national, les textes portant transcription de la convention UPOV de 1991 sont regroupés dans le code de la propriété intellectuelle. Cette transcription est désormais complète depuis l'adoption de la Loi du 28 novembre 2011 sur les Certificats d'Obtention Végétale publiée au journal officiel du 8 décembre 2011 qui a modifié la partie législative de ce code, notamment afin d'assurer :

- l'intégration au droit français du principe de variété essentiellement dérivé, qui protège le détenteur des droits d'une variété contre la mise sur le marché d'une autre variété qui ne différerait que par quelques caractères non-essentiels au sens agricole et technique de la variété d'origine.
- l'intégration dans le droit français de l'exemption de l'agriculteur, également appelé « exception semences de ferme », qui autorise le réemploi sous conditions du produit de la récolte de variétés protégées comme semences sur l'exploitation où elles ont été produites. Cette pratique était jusque là interdite en droit français pour les variétés protégées par un certificat d'obtention végétal national.

Ces textes sont applicables à l'ensemble du règne végétal, comme le précise l'article R623-55 du Code de la Propriété Intellectuelle.

Figurent en pièce jointe de la présente note :

- 1) les articles législatifs pertinents du Code de la Propriété Intellectuelle
- 2) les articles réglementaires du Code de la Propriété Intellectuelle relatifs au champ d'application.

1) ARTICLES LÉGISLATIFS PERTINENTS DU CODE DE LA PROPRIÉTÉ INTELLECTUELLE**Article L623-1**

Modifié par [*LOI n°2011-1843 du 8 décembre 2011 - art. 3*](#)

Pour l'application du présent chapitre, constitue une " variété " un ensemble végétal d'un taxon botanique du rang le plus bas connu qui peut être :

- 1° Défini par l'expression des caractères résultant d'un certain génotype ou d'une certaine combinaison de génotypes ;
- 2° Distingué de tout autre ensemble végétal par l'expression d'au moins un desdits caractères ;
- 3° Considéré comme une entité eu égard à son aptitude à être reproduit conforme.

⁶ Legislation available in French only.

Article L623-2

Modifié par [LOI n°2011-1843 du 8 décembre 2011 - art. 4](#)

Pour l'application du présent chapitre, est appelée "obtention végétale" la variété nouvelle créée qui :

1° Se distingue nettement de toute autre variété dont l'existence, à la date du dépôt de la demande, est notoirement connue ;

2° Est homogène, c'est-à-dire suffisamment uniforme dans ses caractères pertinents, sous réserve de la variation prévisible compte tenu des particularités de sa reproduction sexuée ou de sa multiplication végétative ;

3° Demeure stable, c'est-à-dire identique à sa définition initiale à la suite de ses reproductions ou multiplications successives ou, en cas de cycle particulier de reproduction ou de multiplication, à la fin de chaque cycle.

Article L623-3

Modifié par [LOI n°2011-1843 du 8 décembre 2011 - art. 4](#)

Toute obtention végétale répondant aux conditions de l'article L. 623-2 est définie par une dénomination à laquelle correspondent une description et un exemplaire témoin conservé dans une collection.

Article L623-4

Modifié par [LOI n°2011-1843 du 8 décembre 2011 - art. 5](#)

I.-Toute obtention végétale peut faire l'objet d'un titre appelé " certificat d'obtention végétale " qui confère à son titulaire un droit exclusif de produire, reproduire, conditionner aux fins de la reproduction ou de la multiplication, offrir à la vente, vendre ou commercialiser sous toute autre forme, exporter, importer ou détenir à l'une de ces fins du matériel de reproduction ou de multiplication de la variété protégée.

II.-Lorsque les produits mentionnés aux 1° et 2° du présent II ont été obtenus par l'utilisation non autorisée de matériel de reproduction ou de multiplication de la variété protégée, le droit exclusif s'étend, à moins que l'obtenteur ait raisonnablement pu exercer son droit sur les produits en question :

1° Au produit de la récolte, y compris aux plantes entières et aux parties de plantes ;

2° Aux produits fabriqués directement à partir d'un produit de récolte de la variété protégée.

III.-Le droit exclusif du titulaire s'étend :

1° Aux variétés qui ne se distinguent pas nettement de la variété protégée au sens de l'article [L. 623-2](#) ;

2° Aux variétés dont la production nécessite l'emploi répété de la variété protégée ;

3° Aux variétés essentiellement dérivées de la variété protégée au sens du même article L. 623-2, lorsque cette variété n'est pas elle-même une variété essentiellement dérivée.

IV.-Constitue une variété essentiellement dérivée d'une autre variété, dite " variété initiale ", une variété qui :

1° Est principalement dérivée de la variété initiale ou d'une variété qui est elle-même principalement dérivée de la variété initiale ;

2° Se distingue nettement de la variété initiale au sens dudit article L. 623-2 ;

3° Sauf en ce qui concerne les différences résultant de la dérivation, est conforme à la variété initiale dans l'expression des caractères essentiels résultant du génotype ou de la combinaison de génotypes de la variété initiale.

NOTA:

Loi n° 2011-1843 du 8 décembre 2011 article 19 I, III : Les dispositions modifiées ou nouvelles du présent article à l'exception de celles relatives aux variétés essentiellement dérivées sont applicables aux certificats d'obtention délivrés avant le 11 décembre 2011. Ces dispositions s'appliquent également aux certificats d'obtention délivrés pour les demandes de certificat enregistrées avant cette date. Le présent IV ne s'applique pas aux variétés essentiellement dérivées dont l'obtenteur a, avant le 11 décembre 2011, fait des préparatifs effectifs et sérieux en vue de leur exploitation ou que l'obtenteur a exploitées avant cette date.

Article L623-4-1

Créé par [LOI n°2011-1843 du 8 décembre 2011 - art. 6](#)

I.-Le droit du titulaire ne s'étend pas :

1° Aux actes accomplis à titre privé à des fins non professionnelles ou non commerciales ;

2° Aux actes accomplis à titre expérimental ;

3° Aux actes accomplis aux fins de la création d'une nouvelle variété ni aux actes visés au I de l'article [L. 623-4](#) portant sur cette nouvelle variété, à moins que les III et IV de ce même article ne soient applicables.

II.-Le droit du titulaire ne s'étend pas aux actes concernant sa variété ou une variété essentiellement dérivée de sa variété, ou une variété qui ne s'en distingue pas nettement, lorsque du matériel de cette variété ou du matériel dérivé de celui-ci a été vendu ou commercialisé sous quelque forme que ce soit par le titulaire ou avec son consentement.

Toutefois, le droit du titulaire subsiste lorsque ces actes :

1° Impliquent une nouvelle reproduction ou multiplication de la variété en cause ;

2° Impliquent une exportation vers un pays n'appliquant aucune protection de la propriété intellectuelle aux variétés appartenant à la même espèce végétale de matériel de la variété permettant de la reproduire, sauf si le matériel exporté est destiné, en tant que tel, à la consommation humaine ou animale.

Article L623-5

Modifié par [LOI n°2011-1843 du 8 décembre 2011 - art. 7](#)

I. - Lorsque du matériel de reproduction ou de multiplication végétative ou un produit de récolte a été vendu ou remis à des tiers sous quelque forme que ce soit par l'obtenteur ou avec son consentement, aux fins de l'exploitation de la variété, depuis plus de douze mois sur le territoire français ou sur le territoire de l'Espace économique européen, la variété n'est pas réputée nouvelle.

Lorsque cette vente par l'obtenteur ou avec son consentement ou cette remise à des tiers a eu lieu sur un autre territoire, aux fins d'exploitation de la variété, depuis plus de quatre ans avant la date du dépôt de la demande de certificat d'obtention végétale, ou dans le cas des arbres et de la vigne depuis plus de six ans avant ladite date, la variété n'est pas réputée nouvelle.

II. - Ne sont pas considérées comme une remise à des tiers au sens du I la remise à des fins réglementaires de matériel de la variété à un organisme officiel ou officiellement habilité, la remise à des tiers aux fins d'expérimentation ou de présentation dans une exposition officiellement reconnue, sous réserve, dans ces deux derniers cas, que l'obtenteur ait expressément stipulé l'interdiction d'exploiter commercialement la variété dont le matériel a été remis.

Article L623-6

Modifié par [LOI n°2011-1843 du 8 décembre 2011 - art. 8](#)

Un certificat d'obtention végétale peut être demandé par toute personne ressortissant d'un Etat partie à la convention internationale pour la protection des obtentions végétales ainsi que par toute personne ressortissant d'un Etat membre de la Communauté européenne ou ayant son domicile, siège ou établissement dans l'un de ces Etats.

La personne demandant un certificat d'obtention peut, lors du dépôt en France de cette demande, revendiquer le bénéfice de la priorité de la première demande déposée antérieurement pour la même variété dans l'un desdits Etats par elle-même ou par son auteur, à condition que le dépôt effectué en France ne soit pas postérieur de plus de douze mois à celui de la première demande.

La nouveauté, au sens de l'article [L. 623-5](#), d'une variété dont la demande bénéficie de la priorité telle que définie au deuxième alinéa du présent article s'apprécie à la date du dépôt de la demande prioritaire.

En dehors des cas prévus au premier alinéa, tout étranger peut bénéficier de la protection instituée par le présent chapitre à condition que les Français bénéficient de la réciprocité de protection de la part de l'Etat dont il a la nationalité ou dans lequel il a son domicile, siège ou établissement.

Article L623-7

Modifié par [LOI n°2011-1843 du 8 décembre 2011 - art. 1](#)

Le certificat délivré par l'organisme mentionné à [l'article L. 412-1](#) prend effet à la date de la demande. Toute décision de rejet d'une demande doit être motivée.

Article L623-8

Modifié par [LOI n°2011-1843 du 8 décembre 2011 - art. 1](#)

Le ministre chargé de la défense est habilité à prendre connaissance auprès de l'organisme mentionné à [l'article L. 412-1](#), à titre confidentiel, des demandes de certificat.

Article L623-9

Créé par [Loi 92-597 1992-07-01 annexe JORF 3 juillet 1992](#)

La liste des espèces végétales dont les obtentions faisant l'objet de demandes de certificat ne peuvent être divulguées et exploitées librement sans autorisation spéciale est fixée par voie réglementaire.

Sous réserve de l'article L. 623-10, cette autorisation peut être accordée à tout moment. Elle est acquise de plein droit au terme d'un délai de cinq mois à compter du jour de dépôt de la demande de certificat.

Article L623-10

Créé par [Loi 92-597 1992-07-01 annexe JORF 3 juillet 1992](#)

Avant le terme du délai prévu au dernier alinéa de l'article L. 623-9, les interdictions prescrites à l'alinéa premier dudit article peuvent être prorogées, sur réquisition du ministre chargé de la défense, pour une durée d'un an, renouvelable. Les interdictions prorogées peuvent être levées à tout moment sous la même condition.

La prorogation des interdictions prononcées en vertu du présent article ouvre droit à une indemnité au profit du titulaire de la demande de certificat, dans la mesure du préjudice subi. A défaut d'accord amiable, cette indemnité est fixée par l'autorité judiciaire.

Article L623-11

Créé par [Loi 92-597 1992-07-01 annexe JORF 3 juillet 1992](#)

Le titulaire du certificat peut demander la révision de l'indemnité prévue à l'article L. 623-10, après l'expiration du délai d'un an qui suit la date du jugement définitif fixant le montant de l'indemnité.

Le titulaire du certificat doit apporter la preuve que le préjudice qu'il subit est supérieur à l'estimation du tribunal.

Article L623-12

Modifié par [LOI n°2011-1843 du 8 décembre 2011 - art. 4](#)

Modifié par [LOI n°2011-1843 du 8 décembre 2011 - art. 9](#)

Le certificat n'est délivré que s'il résulte d'un examen préalable que la variété faisant l'objet de la demande de protection constitue une obtention végétale conformément à l'article [L. 623-2](#).

Toutefois, l'organisme mentionné à l'article [L. 412-1](#) peut tenir pour suffisant l'examen préalable effectué dans un autre Etat partie à la convention internationale pour la protection des obtentions végétales. Ce même organisme peut prendre en compte l'examen réalisé par l'obteneur ou son ayant cause.

Ce comité peut faire appel à des experts étrangers.

Article L623-13

Modifié par [Loi n°2006-236 du 1 mars 2006 - art. 1 JORF 2 mars 2006](#)

La durée de la protection est de vingt-cinq ans à partir de sa délivrance.

Pour les arbres forestiers, fruitiers ou d'ornement, pour la vigne ainsi que pour les graminées et légumineuses fourragères pérennes, les pommes de terre et les lignées endogames utilisées pour la production de variétés hybrides, la durée de la protection est fixée à trente ans.

Article L623-14

Modifié par [LOI n°2011-1843 du 8 décembre 2011 - art. 10](#)

Les demandes de certificats d'obtention végétale, les actes portant délivrance du certificat ainsi que tous actes transmettant ou modifiant les droits attachés à une demande de certificat ou à un certificat ne sont opposables aux tiers que s'ils ont été régulièrement publiés dans des conditions prévues par décret en Conseil d'Etat.

Article L623-15

Modifié par [LOI n°2011-1843 du 8 décembre 2011 - art. 11](#)

Le certificat désigne l'obtention par une dénomination permettant, sans confusion ni équivoque, son identification dans tous les Etats parties à la convention internationale pour la protection des obtentions végétales.

L'obteneur est tenu de conserver en permanence une collection végétative de l'obtention protégée.

Une description de la variété nouvelle est annexée au certificat d'obtention.

Le certificat est opposable aux tiers dès sa publication.

La dénomination portée sur le certificat devient obligatoire dès la publication de celui-ci pour toute transaction commerciale même après l'expiration de la durée du certificat.

La dénomination conférée à ladite variété ne peut faire l'objet d'un dépôt au titre de marque de fabrique ou de commerce dans un Etat partie à la convention internationale pour la

protection des obtentions végétales. Un tel dépôt peut toutefois être effectué à titre conservatoire, sans faire obstacle à la délivrance du certificat d'obtention, à condition que la preuve de la renonciation aux effets de ce dépôt dans les Etats parties à la convention soit produite préalablement à la délivrance dudit certificat.

Les prescriptions de l'alinéa ci-dessus ne font pas obstacle à ce que, pour une même obtention, il soit ajouté à la dénomination de la variété en cause une marque de fabrique ou de commerce.

Article L623-16

Modifié par [LOI n°2011-1843 du 8 décembre 2011 - art. 1](#)

L'examen préalable, la délivrance du certificat et tous actes d'inscription ou de radiation donnent lieu au versement de redevances pour services rendus.

Une redevance est versée annuellement pendant toute la durée de validité du certificat.

Le barème de ces redevances est fixé par voie réglementaire.

Le produit de ces redevances est porté en recettes au groupement d'intérêt public mentionné à l'article [L. 412-1](#).

Article L623-17

Créé par [Loi 92-597 1992-07-01 annexe JORF 3 juillet 1992](#)

Une variété indispensable à la vie humaine ou animale peut être soumise au régime de la licence d'office par décret en Conseil d'Etat ou, lorsqu'elle intéresse la santé publique, par arrêté conjoint du ministre de l'agriculture et du ministre chargé de la santé publique.

Article L623-18

Créé par [Loi 92-597 1992-07-01 annexe JORF 3 juillet 1992](#)

Du jour de la publication de l'arrêté qui soumet les certificats d'obtention au régime de la licence d'office, toute personne présentant des garanties techniques et professionnelles peut demander au ministre de l'agriculture l'octroi d'une licence d'exploitation.

Cette licence ne peut être que non exclusive. Elle est accordée par arrêté du ministre de l'agriculture à des conditions déterminées notamment quant à sa durée et son champ d'application, mais à l'exclusion des redevances auxquelles elle donne lieu.

Elle prend effet à la date de la notification de l'arrêté aux parties.

A défaut d'accord amiable, le montant des redevances est fixé par l'autorité judiciaire, déterminée conformément à [l'article L. 623-31](#).

Article L623-19

Modifié par [LOI n°2011-1843 du 8 décembre 2011 - art. 1](#)

Si le titulaire d'une licence d'office ne satisfait pas aux conditions requises, le ministre de l'agriculture peut, après avis de l'organisme mentionné à l'article [L. 412-1](#), en prononcer la déchéance.

Article L623-20

Créé par [Loi 92-597 1992-07-01 annexe JORF 3 juillet 1992](#)

L'Etat peut obtenir d'office, à tout moment, pour les besoins de la défense nationale une licence d'exploitation d'une variété végétale objet d'une demande de certificat ou d'un certificat d'obtention, que cette exploitation soit faite par lui-même ou pour son compte.

La licence d'office est accordée, à la demande du ministre chargé de la défense, par arrêté du ministre de l'agriculture. Cet arrêté fixe les conditions de la licence à l'exclusion de celles qui sont relatives aux redevances auxquelles donne lieu son utilisation. La licence prend effet à la date de la demande de licence d'office.

A défaut d'accord amiable, le montant des redevances est fixé par l'autorité judiciaire, déterminée conformément à l'article L. 623-31.

Article L623-21

Créé par [Loi 92-597 1992-07-01 annexe JORF 3 juillet 1992](#)

Les droits attachés à une licence d'office ne peuvent être cédés ni transmis.

Article L623-22

Créé par [Loi 92-597 1992-07-01 annexe JORF 3 juillet 1992](#)

L'Etat peut, à tout moment, par décret, exproprier en tout ou en partie pour les besoins de la défense nationale les obtentions végétales, objet de demandes de certificat ou de certificats.

A défaut d'accord amiable, l'indemnité d'expropriation est fixée par le tribunal de grande instance.

Article L623-22-1

Créé par [Loi n°2004-1338 du 8 décembre 2004 - art. 8 JORF 9 décembre 2004](#)

Lorsque le titulaire d'un brevet portant sur une invention biotechnologique ne peut exploiter celle-ci sans porter atteinte à un droit d'obtention végétale antérieur, il peut demander la concession d'une licence pour l'exploitation de la variété protégée par le droit d'obtention, pour autant que cette invention constitue à l'égard de la variété végétale un progrès technique important et présente un intérêt économique considérable. Le demandeur doit justifier qu'il n'a pu obtenir du titulaire du droit d'obtention une licence d'exploitation et qu'il est en état d'exploiter la variété de manière effective et sérieuse.

Article L623-22-2

Créé par [Loi n°2004-1338 du 8 décembre 2004 - art. 8 JORF 9 décembre 2004](#)

La demande de licence prévue à l'article L. 623-22-1 est formée auprès du tribunal de grande instance.

La licence est non exclusive. Le tribunal détermine notamment sa durée, son champ d'application et le montant des redevances auxquelles elle donne lieu. Ces conditions peuvent être modifiées par décision du tribunal, à la demande du titulaire du droit ou de la licence.

Les droits attachés à cette licence ne peuvent être transmis qu'avec l'entreprise ou la partie de l'entreprise ou le fonds de commerce auquel ils sont attachés.

Lorsqu'une telle licence est accordée, le titulaire du droit d'obtention obtient à des conditions équitables, sur demande présentée au tribunal, la concession d'une licence réciproque pour utiliser l'invention protégée.

Si le titulaire d'une licence ne satisfait pas aux conditions auxquelles cette licence a été accordée, le titulaire du certificat d'obtention végétale et, le cas échéant, les autres licenciés peuvent obtenir du tribunal le retrait de cette licence.

Article L623-22-3

Créé par [LOI n°2011-1843 du 8 décembre 2011 - art. 12](#)

Toute personne de droit public ou de droit privé peut obtenir une licence obligatoire dans les conditions prévues au présent article et à l'article L. 623-22-4.

La demande de licence obligatoire est formée auprès du tribunal de grande instance du lieu de situation du titulaire du droit. Elle doit être accompagnée de la justification que :

1° Le demandeur n'a pu obtenir une licence dans un délai d'un an à dater de sa demande auprès du titulaire du certificat ;

2° Qu'il est en état d'exploiter la variété de manière sérieuse et effective ;

3° Que la licence est d'intérêt public eu égard, notamment, à l'insuffisance notoire d'approvisionnement du marché agricole concerné par cette variété.

La demande de licence obligatoire peut être présentée, dans les conditions fixées aux deuxième à cinquième alinéas du présent article, par le titulaire du certificat délivré pour une variété essentiellement dérivée d'une variété protégée qui n'a pas pu obtenir du titulaire du certificat de la variété initiale les autorisations nécessaires à l'exploitation de sa propre variété.

Le titulaire du certificat protégeant la variété initiale peut obtenir, dans les mêmes conditions, une licence du certificat protégeant la variété essentiellement dérivée. La licence obligatoire est non exclusive. Le tribunal détermine notamment sa durée, son champ d'application et le montant des redevances auxquelles elle donne lieu.

Ces conditions peuvent être modifiées par le tribunal à la requête du titulaire ou du licencié.

Si le titulaire d'une licence obligatoire ne satisfait pas aux conditions auxquelles cette licence a été accordée, le titulaire du certificat d'obtention et, le cas échéant, les autres licenciés peuvent obtenir du tribunal le retrait de cette licence.

NOTA:

Loi n° 2011-1843 du 8 décembre 2011 article 19 I : Les dispositions nouvelles du présent article sont applicables aux certificats d'obtention délivrés avant le 11 décembre 2011. Ces dispositions s'appliquent également aux certificats d'obtention délivrés pour les demandes de certificat enregistrées avant cette date.

Article L623-22-4

Créé par [LOI n°2011-1843 du 8 décembre 2011 - art. 12](#)

Les droits attachés à une licence obligatoire ne peuvent être ni cédés, ni transmis, si ce n'est avec l'entreprise ou la partie de l'entreprise à laquelle ils sont rattachés.

Cette cession ou transmission est, à peine de nullité, soumise à l'autorisation du tribunal.

NOTA:

Loi n° 2011-1843 du 8 décembre 2011 article 19 I : Les dispositions nouvelles du présent article sont applicables aux certificats d'obtention délivrés avant le 11 décembre 2011. Ces dispositions s'appliquent également aux certificats d'obtention délivrés pour les demandes de certificat enregistrées avant cette date.

Article L623-23

Modifié par [LOI n°2011-1843 du 8 décembre 2011 - art. 1](#)

Modifié par [LOI n°2011-1843 du 8 décembre 2011 - art. 13](#)

Est déchu de son droit tout titulaire d'un certificat d'obtention végétale :

1° Qui n'est pas en mesure de présenter à tout moment à l'administration les éléments de reproduction ou de multiplication végétative permettant de reproduire la variété protégée avec

les caractères morphologiques et physiologiques tels qu'ils ont été définis dans le certificat d'obtention ;

2° Qui refuse de se soumettre aux inspections faites en vue de vérifier les mesures qu'il a prises pour la conservation de la variété ;

3° Qui n'a pas acquitté dans le délai prescrit la redevance annuelle visée au deuxième alinéa de l'article [L. 623-16](#).

La déchéance est constatée par l'organisme mentionné à l'article [L. 412-1](#). Lorsqu'elle est constatée au titre du 3° ci-dessus, le titulaire du certificat peut, dans les six mois qui suivent le terme du délai prévu, présenter un recours en vue d'être restauré dans ses droits s'il justifie d'une excuse légitime pour le défaut de paiement des redevances. Ce recours ne peut cependant porter atteinte aux droits acquis, le cas échéant, par les tiers. La décision définitive constatant la déchéance est publiée.

Article L623-23-1

Créé par [LOI n°2011-1843 du 8 décembre 2011 - art. 14](#)

Le certificat d'obtention végétale est déclaré nul, par décision de justice, s'il est avéré :

1° Soit qu'il a été attribué à une personne qui n'y avait pas droit, à moins qu'il ne soit transféré à la personne qui y a droit ;

2° Soit qu'à la date à laquelle il a été délivré la variété ne satisfaisait pas aux conditions mentionnées à l'article [L. 623-2](#).

Article L623-24

Modifié par [LOI n°2011-1843 du 8 décembre 2011 - art. 1](#)

Modifié par [LOI n°2011-1843 du 8 décembre 2011 - art. 15](#)

Les dispositions des articles L. 613-8 et [L. 613-29 à L. 613-32](#) sont applicables aux demandes de certificats d'obtention végétale et aux certificats d'obtention.

Il en est de même des articles L. 613-9, L. 613-21 et 613-24, l'organisme mentionné à l'article [L. 412-1](#) étant substitué à l'Institut national de la propriété industrielle.

L'article [L. 611-7](#) est également applicable aux certificats d'obtention végétale, les inventions y étant entendues comme les obtentions, les brevets comme les certificats d'obtention végétale et la commission de conciliation comme celle instituée par un décret spécifique au domaine particulier des obtentions végétales.

Article L623-24-1

Créé par [LOI n°2011-1843 du 8 décembre 2011 - art. 16](#)

Par dérogation à l'article [L. 623-4](#), pour les espèces énumérées par le règlement (CE) n° 2100/94 du Conseil du 27 juillet 1994 instituant un régime de protection communautaire des obtentions végétales ainsi que pour d'autres espèces qui peuvent être énumérées par décret en Conseil d'Etat, les agriculteurs ont le droit d'utiliser sur leur propre exploitation, sans l'autorisation de l'obtenteur, à des fins de reproduction ou de multiplication, le produit de la récolte qu'ils ont obtenu par la mise en culture d'une variété protégée.

NOTA:

Loi n° 2011-1843 du 8 décembre 2011 article 19 II : Les présentes dispositions sont applicables aux certificats d'obtention végétale délivrés avant le 11 décembre 2011.

Article L623-24-2

Créé par [LOI n°2011-1843 du 8 décembre 2011 - art. 16](#)

Sauf en ce qui concerne les petits agriculteurs au sens du règlement (CE) n° 2100/94 du Conseil du 27 juillet 1994 précité, l'agriculteur doit une indemnité aux titulaires des certificats d'obtention végétale dont il utilise les variétés.

NOTA:

Loi n° 2011-1843 du 8 décembre 2011 article 19 II : Les présentes dispositions sont applicables aux certificats d'obtention végétale délivrés avant le 11 décembre 2011.

Article L623-24-3

Créé par [LOI n°2011-1843 du 8 décembre 2011 - art. 16](#)

Lorsqu'il n'existe pas de contrat entre le titulaire du certificat d'obtention végétale et l'agriculteur concerné ou entre un ou plusieurs titulaires de certificats d'obtention végétale et un groupe d'agriculteurs concernés, ou d'accord interprofessionnel conclu dans les conditions prévues au chapitre II du titre III du livre VI du code rural et de la pêche maritime, les conditions d'application de la dérogation définie à l'article L. 623-24-1 du présent code, y compris les modalités de fixation du montant de l'indemnité visée à l'article L. 623-24-2, dont le montant est sensiblement inférieur au montant perçu pour la production sous licence de matériel de multiplication de la même variété, sont établies par le décret en Conseil d'Etat prévu à l'article L. 623-24-1.

NOTA:

Loi n° 2011-1843 du 8 décembre 2011 article 19 II : Les présentes dispositions sont applicables aux certificats d'obtention végétale délivrés avant le 11 décembre 2011.

Article L623-24-4

Créé par [LOI n°2011-1843 du 8 décembre 2011 - art. 16](#)

Lorsque les agriculteurs ont recours à des prestataires de services pour trier leurs semences, ces opérations de triage doivent être faites dans des conditions permettant de garantir la traçabilité des produits issus de variétés faisant l'objet de certificat d'obtention végétale.

En cas de non-respect de ces conditions, les semences sont réputées commercialisées et regardées comme une contrefaçon au sens de l'article [L. 623-25](#).

NOTA:

Loi n° 2011-1843 du 8 décembre 2011 article 19 II : Les présentes dispositions sont applicables aux certificats d'obtention végétale délivrés avant le 11 décembre 2011.

Article L623-24-5

Créé par [LOI n°2011-1843 du 8 décembre 2011 - art. 16](#)

Le non-respect par les agriculteurs des conditions d'application de la dérogation définie à l'article [L. 623-24-1](#) leur fait perdre le bénéfice des dispositions de la présente section.

NOTA:

Loi n° 2011-1843 du 8 décembre 2011 article 19 II : Les présentes dispositions sont applicables aux certificats d'obtention végétale délivrés avant le 11 décembre 2011.

Article L623-25

Modifié par [LOI n°2011-1843 du 8 décembre 2011 - art. 17](#)

Sous réserve des dispositions de l'article L. 623-24-1, toute atteinte volontaire portée aux droits du titulaire d'un certificat d'obtention végétale tels qu'ils sont définis à l'article L. 623-4 constitue une contrefaçon qui engage la responsabilité civile de son auteur. Au sens du présent article, sont également considérées comme une atteinte au droit du titulaire d'un certificat d'obtention végétale les utilisations incorrectes ou abusives de la dénomination de la variété qui fait l'objet d'un certificat d'obtention.

Le titulaire d'une licence d'office visée aux articles L. 623-17 et L. 623-20, le titulaire d'une licence obligatoire visée à l'article L. 623-22-3 et, sauf stipulation contraire, le bénéficiaire d'un droit exclusif d'exploitation peuvent exercer l'action prévue au premier alinéa du présent article si, après mise en demeure, le titulaire du certificat n'exerce pas cette action.

Le titulaire du certificat est recevable à intervenir à l'instance engagée par le licencié conformément à l'alinéa précédent.

Tout titulaire d'une licence est recevable à intervenir à l'instance engagée par le titulaire du certificat afin d'obtenir la réparation du préjudice qui lui est propre.

NOTA:

Loi n° 2011-1843 du 8 décembre 2011 article 19 I : Les dispositions modifiées ou nouvelles du présent article sont applicables aux certificats d'obtention délivrés avant le 11 décembre 2011. Ces dispositions s'appliquent également aux certificats d'obtention délivrés pour les demandes de certificat enregistrées avant cette date.

Article L623-26

Créé par [Loi 92-597 1992-07-01 annexe JORF 3 juillet 1992](#)

Les faits antérieurs à la publication de la délivrance du certificat ne sont pas considérés comme ayant porté atteinte aux droits attachés au certificat. Pourront cependant être constatés et poursuivis les faits postérieurs à la notification au responsable présumé d'une copie conforme de la demande de certificat.

Article L623-27

Modifié par [Loi n°2007-1544 du 29 octobre 2007 - art. 20 JORF 30 octobre 2007](#)

Toute personne ayant qualité pour agir en contrefaçon peut saisir en référé la juridiction civile compétente afin de voir ordonner, au besoin sous astreinte, à l'encontre du prétendu contrefacteur ou des intermédiaires dont il utilise les services, toute mesure destinée à prévenir une atteinte imminente aux droits conférés par le titre ou à empêcher la poursuite d'actes argués de contrefaçon. La juridiction civile compétente peut également ordonner toutes mesures urgentes sur requête lorsque les circonstances exigent que ces mesures ne soient pas prises contradictoirement, notamment lorsque tout retard serait de nature à causer un préjudice irréparable au demandeur. Saisie en référé ou sur requête, la juridiction ne peut ordonner les mesures demandées que si les éléments de preuve, raisonnablement accessibles au demandeur, rendent vraisemblable qu'il est porté atteinte à ses droits ou qu'une telle atteinte est imminente.

La juridiction peut interdire la poursuite des actes argués de contrefaçon, la subordonner à la constitution de garanties destinées à assurer l'indemnisation éventuelle du demandeur ou ordonner la saisie ou la remise entre les mains d'un tiers des produits soupçonnés de porter atteinte aux droits conférés par le titre, pour empêcher leur introduction ou leur circulation dans les circuits commerciaux. Si le demandeur justifie de circonstances de nature à compromettre le recouvrement des dommages et intérêts, la juridiction peut ordonner la saisie conservatoire des biens mobiliers et immobiliers du prétendu contrefacteur, y compris le blocage de ses comptes bancaires et autres avoirs, conformément au droit commun. Pour déterminer les biens susceptibles de faire l'objet de la saisie, elle peut ordonner la

communication des documents bancaires, financiers, comptables ou commerciaux ou l'accès aux informations pertinentes.

Elle peut également accorder au demandeur une provision lorsque l'existence de son préjudice n'est pas sérieusement contestable.

Saisie en référé ou sur requête, la juridiction peut subordonner l'exécution des mesures qu'elle ordonne à la constitution par le demandeur de garanties destinées à assurer l'indemnisation éventuelle du défendeur si l'action en contrefaçon est ultérieurement jugée non fondée ou les mesures annulées.

Lorsque les mesures prises pour faire cesser une atteinte aux droits sont ordonnées avant l'engagement d'une action au fond, le demandeur doit se pourvoir, par la voie civile ou pénale, dans un délai fixé par voie réglementaire. A défaut, sur demande du défendeur et sans que celui-ci ait à motiver sa demande, les mesures ordonnées sont annulées, sans préjudice des dommages et intérêts qui peuvent être réclamés.

Article L623-27-1

Créé par [Loi n°2007-1544 du 29 octobre 2007 - art. 20 JORF 30 octobre 2007](#)

La contrefaçon peut être prouvée par tous moyens.

A cet effet, toute personne ayant qualité pour agir en contrefaçon est en droit de faire procéder en tout lieu et par tous huissiers, assistés d'experts désignés par le demandeur, en vertu d'une ordonnance rendue sur requête par la juridiction civile compétente, soit à la description détaillée, avec ou sans prélèvement d'échantillons, soit à la saisie réelle des objets prétendus contrefaisants ainsi que de tout document s'y rapportant.

La juridiction peut ordonner, aux mêmes fins probatoires, la saisie réelle des matériels et instruments utilisés pour produire ou distribuer les objets prétendus contrefaisants.

Elle peut subordonner l'exécution des mesures qu'elle ordonne à la constitution par le demandeur de garanties destinées à assurer l'indemnisation éventuelle du défendeur si l'action en contrefaçon est ultérieurement jugée non fondée ou la saisie annulée.

A défaut pour le demandeur de s'être pourvu au fond, par la voie civile ou pénale, dans un délai fixé par voie réglementaire, l'intégralité de la saisie, y compris la description, est annulée à la demande du saisi, sans que celui-ci ait à motiver sa demande et sans préjudice des dommages et intérêts qui peuvent être réclamés.

Article L623-27-2

Créé par [Loi n°2007-1544 du 29 octobre 2007 - art. 20 JORF 30 octobre 2007](#)

Si la demande lui en est faite, la juridiction saisie d'une procédure civile prévue au présent titre peut ordonner, au besoin sous astreinte, afin de déterminer l'origine et les réseaux de distribution des produits contrefaisants qui portent atteinte aux droits du demandeur, la production de tous documents ou informations détenus par le défendeur ou par toute personne qui a été trouvée en possession de produits contrefaisants ou qui fournit des services utilisés dans des activités de contrefaçon ou encore qui a été signalée comme intervenant dans la production, la fabrication ou la distribution de ces produits ou la fourniture de ces services.

La production de documents ou d'informations peut être ordonnée s'il n'existe pas d'empêchement légitime.

Les documents ou informations recherchés portent sur :

a) Les nom et adresse des producteurs, fabricants, distributeurs, fournisseurs et autres détenteurs antérieurs des produits ou services, ainsi que des grossistes destinataires et des détaillants ;

b) Les quantités produites, commercialisées, livrées, reçues ou commandées, ainsi que sur le prix obtenu pour les produits ou services en cause.

Article L623-28

Modifié par [Loi n°2007-1544 du 29 octobre 2007 - art. 21 JORF 30 octobre 2007](#)

Pour fixer les dommages et intérêts, la juridiction prend en considération les conséquences économiques négatives, dont le manque à gagner, subies par la partie lésée, les bénéfices réalisés par le contrefacteur et le préjudice moral causé au titulaire des droits du fait de l'atteinte.

Toutefois, la juridiction peut, à titre d'alternative et sur demande de la partie lésée, allouer à titre de dommages et intérêts une somme forfaitaire qui ne peut être inférieure au montant des redevances ou droits qui auraient été dus si le contrefacteur avait demandé l'autorisation d'utiliser le droit auquel il a porté atteinte.

Article L623-28-1

Créé par [Loi n°2007-1544 du 29 octobre 2007 - art. 21 JORF 30 octobre 2007](#)

En cas de condamnation civile pour contrefaçon, la juridiction peut ordonner, à la demande de la partie lésée, que les produits reconnus comme produits contrefaisants et les matériaux et instruments ayant principalement servi à leur création ou fabrication soient rappelés des circuits commerciaux, écartés définitivement de ces circuits, détruits ou confisqués au profit de la partie lésée.

La juridiction peut aussi ordonner toute mesure appropriée de publicité du jugement, notamment son affichage ou sa publication intégrale ou par extraits dans les journaux ou sur les services de communication au public en ligne qu'elle désigne, selon les modalités qu'elle précise.

Les mesures mentionnées aux deux premiers alinéas sont ordonnées aux frais du contrefacteur.

Article L623-29

Créé par [Loi 92-597 1992-07-01 annexe JORF 3 juillet 1992](#)

Les actions civiles et pénales prévues par le présent chapitre se prescrivent par trois ans à compter des faits qui en sont la cause.

L'action civile introduite suspend la prescription de l'action pénale.

Article L623-30

Modifié par [Loi n°2007-1544 du 29 octobre 2007 - art. 21 JORF 30 octobre 2007](#)

Lorsqu'une variété objet d'une demande de certificat ou d'un certificat d'obtention est exploitée pour les besoins de la défense nationale par l'Etat ou ses fournisseurs, sous-traitants et titulaires de sous-commandes, sans qu'une licence d'exploitation leur ait été octroyée, la juridiction saisie ne peut ordonner ni la cessation ou l'interruption de l'exploitation, ni la confiscation prévue à l'article L. 623-28-1.

Si une expertise ou une description, avec ou sans saisie réelle, est ordonnée par le président de la juridiction saisie, l'officier public commis doit surseoir à la saisie, à la description et à toute recherche dans l'entreprise si le contrat d'études ou de reproduction ou de multiplication comporte une classification de sécurité de défense.

Il en est de même si les études, la reproduction, la multiplication sont effectuées dans un établissement des armées.

Le président de la juridiction saisie peut, s'il en est requis par l'ayant droit, ordonner une expertise qui ne peut être effectuée que par des personnes agréées par le ministre chargé de la défense et devant ses représentants.

Les dispositions de l'article L. 623-26 ne sont pas applicables aux demandes de certificat d'obtention végétale exploitées dans les conditions définies au présent article aussi longtemps

que ces demandes sont soumises aux interdictions prévues par les articles L. 623-9 et L. 623-10.

Une telle exploitation fait encourir de plein droit à ses auteurs la responsabilité définie au présent article.

Article L623-31

Modifié par [LOI n°2011-1843 du 8 décembre 2011 - art. 1](#)

Les actions civiles et les demandes relatives aux obtentions végétales, y compris lorsqu'elles portent également sur une question connexe de concurrence déloyale, sont exclusivement portées devant des tribunaux de grande instance, dont le nombre ne peut être inférieur à dix, à l'exception des recours formés contre les actes administratifs ministériels, qui relèvent de la juridiction administrative.

La cour d'appel de Paris connaît directement des recours formés contre les décisions de l'organisme mentionné à l'article [L. 412-1](#) prises en application du présent chapitre.

Les dispositions qui précèdent ne font pas obstacle au recours à l'arbitrage, dans les conditions prévues aux [articles 2059 et 2060](#) du code civil.

Article L623-32

Modifié par [LOI n°2011-267 du 14 mars 2011 - art. 3](#)

Toute atteinte portée sciemment aux droits du titulaire d'un certificat d'obtention végétale, tels qu'ils sont définis à [l'article L. 623-4](#), constitue un délit puni d'une amende de 10 000 euros. Lorsqu'il a été rendu contre le prévenu dans les cinq années antérieures une condamnation pour le même délit ou en cas de commission du délit en bande organisée ou sur un réseau de communication au public en ligne, un emprisonnement de six mois peut, en outre, être prononcé.

Article L623-32-1

Créé par [Loi n°2007-1544 du 29 octobre 2007 - art. 22 JORF 30 octobre 2007](#)

Les personnes physiques coupables du délit prévu à l'article L. 623-32 peuvent en outre être condamnées, à leurs frais, à retirer des circuits commerciaux les objets jugés contrefaisants et toute chose qui a servi ou était destinée à commettre l'infraction.

La juridiction peut ordonner la destruction aux frais du condamné ou la remise à la partie lésée des objets et choses retirés des circuits commerciaux ou confisqués, sans préjudice de tous dommages et intérêts.

Elle peut également ordonner, aux frais du condamné, l'affichage du jugement ou la diffusion du jugement prononçant la condamnation, dans les conditions prévues à l'article 131-35 du code pénal.

Article L623-32-2

Modifié par [LOI n°2009-526 du 12 mai 2009 - art. 125](#)

Les personnes morales déclarées responsables pénalement, dans les conditions prévues par [l'article 121-2 du code pénal](#), de l'infraction définie à [l'article L. 623-32](#) encourent, outre l'amende suivant les modalités prévues par [l'article 131-38 du code pénal](#), les peines prévues par [l'article 131-39](#) du même code.

L'interdiction mentionnée au 2° de l'article 131-39 du même code porte sur l'activité dans l'exercice ou à l'occasion de l'exercice de laquelle l'infraction a été commise.

Les personnes morales déclarées pénalement responsables peuvent en outre être condamnées, à leurs frais, à retirer des circuits commerciaux les objets jugés contrefaisants et toute chose qui a servi ou était destinée à commettre l'infraction.

La juridiction peut ordonner la destruction aux frais du condamné ou la remise à la partie lésée des objets et choses retirés des circuits commerciaux ou confisqués, sans préjudice de tous dommages et intérêts.

Article L623-33

Créé par *Loi 92-597 1992-07-01 annexe JORF 3 juillet 1992*

L'action publique pour l'application des peines prévues au précédent article ne peut être exercée par le ministère public que sur plainte de la partie lésée.

Le tribunal correctionnel saisi ne peut statuer qu'après que la juridiction civile a constaté la réalité du délit par une décision passée en force de chose jugée. Les exceptions tirées par le défenseur de nullité du certificat d'obtention ou des questions relatives à la propriété dudit certificat ne peuvent être soulevées que devant la juridiction civile.

Article L623-35

Modifié par *Ordonnance n°2000-916 du 19 septembre 2000 - art. 3 (V) JORF 22 septembre 2000 en vigueur le 1er janvier 2002*

Sans préjudice, s'il échet, des peines plus graves prévues en matière d'atteinte à la sûreté de l'Etat, quiconque a sciemment enfreint une des interdictions portées aux articles L. 623-9 et L. 623-10 est puni d'une amende de 4500 euros. Si la violation a porté préjudice à la défense nationale, une peine d'emprisonnement de cinq ans pourra, en outre, être prononcée.

2) ARTICLES PERTINENTS DE LA PARTIE RÉGLEMENTAIRE DU CODE DE LA PROPRIÉTÉ INTELLECTUELLE RELATIFS AU CHAMP DE LA PROTECTION

Article R623-55

Modifié par *Décret n°95-1407 du 28 décembre 1995 - art. 1 JORF 4 janvier 1996*

1. Des certificats d'obtention végétale peuvent être délivrés, dans les conditions prévues par les articles L. 623-1 à L. 623-35 et les articles R. 623-1 à R. 623-54, pour toute variété appartenant à une espèce du règne végétal.

Tout étranger ayant la nationalité d'un Etat partie à la convention internationale pour la protection des obtentions végétales du 2 décembre 1961, modifiée par l'acte additionnel du 10 novembre 1972, ou ayant son domicile, siège ou établissement dans l'un de ces Etats peut obtenir un certificat d'obtention végétale pour les variétés appartenant aux genres ou espèces faisant l'objet de la part de cet Etat de la même protection et figurant sur la liste annexée à cette convention ou sur une liste complémentaire établie en application des dispositions de celle-ci.

Tout étranger ayant la nationalité d'un Etat partie à la convention internationale pour la protection des obtentions végétales dans le texte révisé du 23 octobre 1978 ou ayant son domicile, siège ou établissement dans l'un de ces Etats peut obtenir un certificat d'obtention végétale dans les mêmes conditions que les Français.

2. Les étrangers n'ayant ni la nationalité d'un des Etats mentionnés au 1 ni leur domicile, siège ou établissement dans l'un de ceux-ci ne peuvent obtenir de certificats d'obtention végétale qu'à la condition que les Français bénéficient de la réciprocité de protection de la part de l'Etat dont l'étranger a la nationalité ou dans lequel il a son domicile, siège ou établissement.

Des arrêtés du ministre des affaires étrangères et du ministre chargé de l'agriculture pris sur proposition du comité de la protection des obtentions végétales établissent la liste des Etats dont la législation satisfait à la condition de réciprocité. Ces arrêtés peuvent comporter une liste limitative d'espèces végétales pour lesquelles la condition de réciprocité est satisfaite.

Article R623-56

Modifié par [*Décret n°95-1407 du 28 décembre 1995 - art. 1 JORF 4 janvier 1996*](#)

La durée de la protection est de vingt ans.

Pour les arbres forestiers, fruitiers ou d'ornement, pour la vigne ainsi que pour les graminées et légumineuses fourragères pérennes, les pommes de terre et les lignées endogames utilisées pour la production de variétés hybrides, la durée de la protection est fixée à vingt-cinq ans.

Article R623-57

Modifié par [*Décret n°95-1407 du 28 décembre 1995 - art. 1 JORF 4 janvier 1996*](#)

Le droit de l'obtenteur porte sur tous les éléments de reproduction ou de multiplication végétative de la variété considérée ainsi que sur tout ou partie de la plante de cette variété.

Article R623-58

Modifié par [*Décret n°95-1407 du 28 décembre 1995 - art. 1 JORF 4 janvier 1996*](#)

Toute personne qui, à l'occasion de tous actes de cession, de concession ou de commercialisation des variétés visées aux articles précédents, désire user de la faculté qui lui est offerte par l'article L. 623-15 d'adjoindre à la dénomination variétale une marque de commerce ou de fabrique, que cette marque lui soit propre ou qu'elle lui soit concédée, doit prendre les précautions nécessaires notamment dans la correspondance, dans la publicité, dans l'établissement des catalogues commerciaux, sur les emballages ou étiquettes, afin que cette dénomination soit suffisamment apparente dans son contexte pour qu'aucune confusion ne soit susceptible de s'établir dans l'esprit de l'acheteur sur l'identité de la variété.

IRELAND**Plant Varieties (Proprietary Rights) Act of July 14, 1980***Number 24 of 1980*

PLANT VARIETIES (PROPRIETARY RIGHTS) ACT, 1980

ARRANGEMENT OF SECTIONS

Section

- [1. Interpretation.](#)
- [2. Conventions, arrangements etc.](#)
- [3. Controller of Plant Breeders' Rights.](#)
- [4. Plant breeders' rights.](#)
- [5. Conditions regarding grant of plant breeders' rights.](#)
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- [12. Naming of protected plant varieties.](#)
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[FIRST SCHEDULE](#)

Conditions referred to in Section 5 (1) (b)

[SECOND SCHEDULE](#)

Applications and appeals



Number 24 of 1980

PLANT VARIETIES (PROPRIETARY RIGHTS) ACT, 1980

AN ACT TO CREATE PROPRIETARY RIGHTS AS REGARDS VARIETIES OF BOTANICAL GENERA OR SPECIES, TO PROVIDE FOR GRANTS OF SUCH RIGHTS TO PERSONS WHO BREED OR DISCOVER SUCH VARIETIES AND FOR THE ENFORCEMENT OF SUCH RIGHTS WHEN GRANTED, TO ESTABLISH AN OFFICE TO BE KNOWN AS THE CONTROLLER OF PLANT BREEDERS' RIGHTS, TO DEFINE THE FUNCTIONS OF THE HOLDER OF THAT OFFICE AND TO MAKE OTHER PROVISIONS CONNECTED WITH THE FOREGOING. [14th July, 1980]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Interpretation. **1.**—(1) In this Act—

“*The Appeal Committee*” has the meaning assigned to it by [section 14](#) (3) of this Act;

“*authorisation*” means an authorisation given in pursuance of [section 4](#) (5) of this Act;

“*the Convention*” means the International Convention for the Protection of New Varieties of Plants done at Paris on the 2nd day of December, 1961, as revised at Geneva on the 10th day of November, 1972, and the 23rd day of October, 1978, respectively;

“*the Controller*” means the Controller of Plant Breeders' Rights;

“*Convention country*” means a country or territory which is either a party to the Convention or one to which a declaration contained in an order made by the Minister under [section 2](#) of this Act relates and which is for the time being in force;

“*holder*” means a holder of plant breeders' rights;

“*the Journal*” has the meaning assigned to it by [section 19](#) of this Act;

“*the Minister*” means the Minister for Agriculture;

“*prescribed*” means prescribed by regulations made by the Minister under this Act;

“*the register*” has the meaning assigned to it by [section 20](#) of this Act;

“*sell*” includes offer or expose for sale and invite to buy and kindred words shall be construed accordingly;

“*variety*” in relation to plants includes any clone, line, hybrid or genetic variant of any plant.

(2) References in this Act to reproductive material shall be construed as including references to—

(a) seeds for sowing,

(b) seed potatoes and other vegetative propagating material,

(c) ornamental plants and parts of such plants where used commercially as propagating material in the production of ornamental plants and cut flowers,

(d) whole plants which are not ornamental plants, as well as parts of such plants, where such whole plants or parts may be used as reproductive material.

(3) References in this Act to an applicant for plant breeders' rights, or to a holder, include, where the context allows, references to his predecessors in title or his successors in title, and in case two or more persons are co-proprietors of plant breeders' rights, such references shall in relation to those rights, be construed as including a reference to each of those persons.

(4) Where an ornamental plant or a part of such a plant is sold in the course of a business for use by the buyer for purposes other than propagation and such plant or part is used commercially by the buyer as propagating material, no provision of this Act shall be construed as not applying in relation to such buyer by reason only of the fact that the plant or part was so sold.

Conventions,
arrangements
etc.

2.—(1) For the purposes of enabling any international convention or agreement for the protection of plant varieties and plant breeders' rights 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 convention country 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 convention country 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 convention country.

(3) (a) Where by any agreement to which the Minister is a party an arrangement (in this section referred to as a “*reciprocal arrangement*”) is made with a country or territory, other than the State, to enable persons who have a place of business (being a business described in section 5 (1) (c) of this Act) in the State to apply under the law of that country or territory, being a law whose provisions correspond to or are analogous to those of this Act, on an equal footing with persons who are resident, or have a place of such business, in the country or territory, the Minister may by regulations declare such country or territory to be a country or territory to which this section applies.

(b) In case an agreement by virtue of the existence of which the Minister was enabled to make the regulations under this subsection is terminated or otherwise ceases to be in force, the Minister shall, as soon as may be, revoke the regulations.

(4) The Controller may with the consent of the Minister enter into and carry out any agreement or arrangement with an appropriate authority in a foreign country and relating to the granting and protection of plant breeders' rights or the rights under the law of that country which correspond or are analogous to plant breeders' rights.

(5) An order under this section (including an order under this subsection) may be revoked or amended by a subsequent order made by the Government.

(6) In this section "*the appropriate authority in a foreign country*" means the person who under the law of a country other than the State has assigned to him functions which either correspond to or are analogous to those assigned to the Controller under this Act.

Controller of
Plant Breeders'
Rights.

3.—(1) There is hereby established an office to be known as the Controller of Plant Breeders' Rights which office shall be a body corporate with perpetual succession and power to sue and be sued in its corporate name.

(2) (a) The Minister shall as occasion requires appoint a person (which person may be an officer of the Minister) to fill the office of Controller and every person appointed under this subsection shall hold office for such term and, subject to paragraph (b) of this subsection, on such conditions as shall be specified by the Minister when making the appointment.

(b) In case the person appointed to fill the office of Controller is a person to whom subsection (9) of this section applies, he shall be paid such remuneration as the Minister, with the consent of the Minister for the Public Service, determines.

(3) The Controller shall be under the general superintendence and direction of the Minister.

(4) A person appointed under this section to be Controller whose term of office expires otherwise than by reason of his being removed from office shall be eligible for reappointment.

(5) The Minister may remove from office the person who for the time being is Controller who has become incapable through ill-health of effectively performing his duties, or who has committed stated misbehaviour or whose removal appears to the Minister to be necessary for the effective performance by the Controller of his functions.

(6) The Controller shall, as soon as may be after the passing of this Act, provide himself with a seal.

(7) The seal of the Controller shall be authenticated by the signature of the Controller or some other person authorised by the Minister to act in that behalf.

(8) Judicial notice shall be taken of the seal of the Controller and every document purporting to be an instrument made by the Controller and to be sealed with the seal (purporting to be authenticated in accordance with subsection (7) of this section) of the Controller shall be received in evidence and be deemed to be such instrument without proof, unless the contrary is shown.

(9) (a) The Minister may, with the consent of the Minister for the Public Service, as soon as may be make and carry out according to its terms a scheme for the granting of a pension, gratuity or other allowance to or in respect of persons to whom this subsection applies, who are required by their conditions of appointment to devote the whole of their working time to the duties of the office of Controller, on their ceasing to hold the office of Controller.

(b) A scheme under this subsection may provide that the termination of the appointment of a person to whom this subsection applies to the office of Controller during his term of office shall not preclude the award to him of a pension, gratuity or other allowance.

(c) The Minister may, with the consent of the Minister for the Public Service, amend a scheme made by him under this subsection.

(d) This subsection applies to any person who is appointed to fill the office of Controller and who, immediately before such appointment, was not an officer of the Minister.

(e) No pension, gratuity or other allowance shall be granted to the Controller nor shall any other arrangement be entered into for the provision of a pension, gratuity or other allowance on his ceasing to hold office, other than in accordance with a scheme submitted and approved of under this section.

(10) Where a decision is made by the Controller under this Act, the decision or order shall come into force—

(a) in case no appeal may be taken under this Act in respect thereof, on the day next following that on which the decision is taken,

(b) in case such an appeal may be but is not so taken, upon the expiration of the period during which such an appeal may be taken,

(c) in case such an appeal is taken and the appeal is withdrawn, on the expiration of the period mentioned in paragraph (b) of this subsection or on the day next following the day on which the appeal is withdrawn, whichever is the later.

(11) The Minister may, with the consent of the Minister for the Public Service, assign to the Controller such of the Minister's officers and servants as he may consider necessary to enable the Controller to perform the functions assigned to him by this Act.

(12) For the purposes of enabling the Controller to perform the functions assigned to him by this Act, the Minister may—

(a) make available to the Controller, subject to such conditions (if any) as the Minister shall specify, the services of persons and the use of land or other facilities which are under his control,

(b) authorise the Controller to avail of the services of persons who are neither officers nor servants of the Minister,

(c) authorise the Controller to make arrangements for the acquisition of or access to the findings of tests, trials or examinations carried out by persons in any country other than the State in relation to plant breeders' rights,

and the fees payable to persons whose services have been availed of as aforesaid or to whom such an authorisation relates shall be such amount as shall be agreed to by the Minister with the approval of the Minister for the Public Service.

(13) For the purpose of performing any function assigned to him by this Act, the Controller may carry out or cause to be carried out in relation to any plant such tests, trials, examinations or inquiries as he shall consider appropriate.

Plant breeders' rights.

4.—(1) Proprietary rights to be known, and which in this Act are referred to, as "*plant breeders' rights*" may, on an application being made to him in that behalf and subject to the provisions of this Act, be granted by the Controller in respect of any variety of a botanical genus or species, or any variety within such genus or species, being a variety which has a particular manner of reproduction or multiplication or a certain end use, and being a genus or species standing for the time being specified in regulations made for the purposes of this section by the Minister.

(2) An application under this section shall be accompanied by the prescribed fee.

(3) In case the Controller allows an application under this section, he shall as soon as may be—

(a) issue under his seal a certificate in the prescribed form in which shall be specified the name of the plant variety to which the application relates, together with its genus and species,

(b) cause to be published in the Journal notice of the granting of the certificate,

(c) enter in the register the name of the plant variety as regards which the application was allowed, together with its genus and species.

(4) Every document purporting to be a certificate issued by the Controller under this section and to be sealed with the seal of the Controller shall in any legal proceedings be deemed to be such certificate and be admissible as evidence of the matters stated therein, until the contrary is shown.

(5) Where plant breeders' rights are granted under this Act, the grant shall, subject to subsection (7) of this section, operate to confer on the holder concerned the exclusive right—

(a) to produce, for the purposes of its being commercially marketed, reproductive material of the plant variety to which the grant relates,

(b) to sell or offer such material for sale or to export or import it,

(c) in case the plant variety is an ornamental plant variety, to propagate the variety in the course of commercially producing ornamental plants or cut flowers,

(d) to authorise any other person to do all or any of the aforesaid things,

and, subject to the provisions of this Act, infringements of plant breeders' rights shall be actionable at the suit of the holder of the rights 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 other proprietary rights shall be available.

(6) Subject to subsection (7) of this section, a holder may, in granting an authorisation, impose any conditions (including limitations or restrictions) which may be imposed by the holder of any other kind of proprietary right, and plant breeders' rights shall be assignable in like manner as are other kinds of proprietary rights.

(7) The permission of a holder shall not be required for the use of the relevant plant variety either as an initial source of variation for the creation of new plant varieties or for the sole purpose of producing a crop for human or animal consumption.

(8) (a) Where on an application being made in that behalf, being either an application to the Controller under this section or an application by or on behalf of a holder, the applicant satisfies the Controller that the holder will not receive equitable financial rewards as a result of the grant being applied for, or has not received such rewards because the grant of such rights does not or will not enable him to control the production or propagation in the State of the relevant plant variety for its fruit or for any other purpose, the Controller may, if he decides to allow the application, direct that the relevant grant shall, in addition to operating in the manner described in subsection (5) of this section, operate to confer on the relevant holder the exclusive right to produce, sell or import such part or parts as may be specified in the direction of any plant of such variety.

(b) Where the Controller gives a direction under this subsection—

(i) there shall be entered in the relevant entry in the register a statement that such a direction has been given as regards the plant variety to which the direction relates and specifying the part or parts of plants specified in the direction,

(ii) subsection (5) (a) of this section shall, in so far as it relates to the relevant holder's rights, be construed and have effect as if after "to which the grant relates" there were inserted "or any part or parts of a plant of such variety as is or are specified in the relevant direction given by the Controller under subsection (8) of this section".

(9) Where the Controller is satisfied that the reproductive material of a plant variety is or will be used to produce for sale a different plant variety and that the nature of such different variety is such that repeated production of its reproductive material is not possible without the use in such production of reproductive material of the plant variety to which an application under this section has been or is to be allowed, the Controller shall, on an application being made to him in that behalf, direct that the relevant grant shall, in addition to operating in the manner described in subsection (5) of this section, operate to confer on the relevant holder the exclusive right to use such reproductive material in such production.

(10) The maximum period for which plant breeders' rights are to be exercisable pursuant to a grant under this section shall be twenty-five years:

Provided that, as respects fruit trees, forest trees, ornamental trees and grape vines (including in each case their rootstocks), the said period shall be not less than eighteen years and, as respects other genera and species, the said period shall be not less than fifteen years.

(11) A statement in regulations made for the purposes of this section that a species of plant or that each of the plants of a specified group of plants is a fruit tree, a forest tree, ornamental tree or grape vine shall be conclusive.

(12) (a) The period specified in a grant under this section as being that in which the plant breeders' rights thereby granted are to be exercisable shall be not less than—

(i) in case the grant is as respects fruit trees, forest trees, ornamental trees or grape vines (including in each case their rootstocks), eighteen years,

(ii) in case the grant is as respects other plants of other genera and species, fifteen years.

(b) Subject to [section 11](#) of this Act, the period for which plant breeders' rights are exercisable shall be the period specified in the relevant grant under this section (which period shall not exceed the relevant maximum period prescribed by regulations made under this section), beginning on the date on which the grant of the plant breeders' rights by the Controller takes effect.

(13) Where plants of the variety to which an application for plant breeders' rights relates or material forming part of or derived from such plants, being plants or material of a variety to which the proviso to Article 2 of the [First Schedule](#) to this Act relates, have been sold in the State or elsewhere prior to the date of the application the following provisions shall have effect:

(a) the Controller shall, if he decides to allow the application, take the fact of such sale into account when fixing the period during which such rights are to be exercisable, and

(b) subsection (12) (a) of this section shall have effect in relation to the application as if the appropriate minimum period specified therein were reduced by—

(i) in case rights under the law of a convention country corresponding or analogous to plant breeders' rights have, prior to the date of the application, been granted as regards the variety, a period equal to that beginning on the date of such grant and ending on the date of the application, or

(ii) in case the variety is one described in paragraph (d) of the said Article 2, the period by reference to which subparagraph (ii) of the said paragraph (d) has been complied with.

(14) The revocation or amendment of regulations made for the purposes of this section shall not affect the operation of any grant of plant breeders' rights which was in force immediately before the commencement of the revocation or amendment.

Conditions regarding grant of plant breeders' rights. **5.—**(1) Subject to subsection (3) of this section and to [sections 6](#) and [7](#) of this Act, where an application is made to the Controller for the grant of plant breeders' rights, the Controller shall allow the application if he is satisfied that each of the following conditions is complied with, namely:

(a) that the applicant is the person who bred or discovered the plant variety to which the application relates, or the successor in title of such person, or a person to whom the right to make an application under this section as regards such plant variety has been duly assigned,

(b) that the plant variety to which the application relates satisfies each of the conditions contained in the [First Schedule](#) to this Act,

(c) that the applicant is an Irish citizen or a citizen or national of any country or territory which is a party to the Convention or is resident or has a place of business (being a business whose activities consist of or include the sale or propagation of plants) in either the State or such a country or territory or that the applicant has a place of such business in a country or territory which is for the time being declared by regulations under [section 2](#) (3) of this Act to be a country or territory to which [section 2](#) of this Act applies.

(2) Where an application is made to the Controller for the grant of plant breeders' rights and the Controller—

(a) is satisfied that the conditions contained in paragraphs (a) and (b) of subsection (1) of this section have been complied with in relation to the application, and

(b) is not satisfied that the condition contained in paragraph (c) of the said subsection (1) has been so complied with,

the Controller may in his absolute discretion allow the application and, subject to subsection (3) of this section, the certificate and the entry in the register granted and made by reason of the application's being allowed shall have effect subject to such conditions (if any) as are specified for the purposes of this subsection by the Minister and are for the time being in force.

(3) (a) When an application is made to the Controller for the grant of plant breeders' rights and the applicant is neither resident nor has a place of business in the State, the Controller may in his absolute discretion require the applicant to appoint, within a period specified by the Controller, an agent in the State on or with whom the Controller may serve documents or otherwise deal in relation to the application, and, should the application be allowed, any other matter arising under this Act as regards the plant breeders' rights which would be thereby granted, and in case the Controller makes a requirement under this subsection and the relevant application is allowed and the requirement is for the time being in force but is not complied with, then for so long as such requirement is not complied with no person shall be entitled either to bring proceedings for the infringement of such rights or to make any application under this Act in relation to such rights.

(b) The Controller may cancel a requirement made under this subsection.

Priorities

between

applicants under
section 4.

6.—(1) Where a plant variety is independently bred or discovered by two or more persons, subject to subsection (2) of this section, the first of those persons by or in relation to whom an application is duly made under [section 4](#) of this Act shall be the person entitled to a grant of plant breeders' rights as regards the variety.

(2) As between two persons duly making applications under [section 4](#) of this Act on the same date as regards the same plant variety, the one who was first in a position to make a valid such application (or would have been first in that position if the said section 4 and the relevant regulations under [section 4](#) of this Act had always been in force) shall be the person entitled to a grant of plant breeders' rights as regards the variety.

(3) Where—

(a) an application (in this subsection referred to as "*the first application*") is duly made in a convention country other than the State for the grant, under the law in force in that country, of the rights which correspond to plant breeders' rights, and

(b) within a period of one year commencing on the day immediately following the day on which the first application is received by the appropriate authority in such country, there is duly made as regards the plant variety to which the first application relates an application under [section 4](#) of this Act (in this section referred to as "*the second application*"), and

(c) at the time when the first application was so received the plant variety to which that application relates was within a genus or species for the time being specified in regulations under [section 4](#) of this Act, and

(d) the second application contains a reference to the first application, specifies the date on which it was so received and requests that the provisions of this subsection be applied as regards the second application, and

(e) before the expiration of the period of three months beginning on the day of the receipt by the Controller of the second application there is received by him a copy of the documents constituting the first application,

the second application shall be regarded as having been received by the Controller on the same day as that on which the first application was received as aforesaid, and, accordingly, the fact that another application under the said section 4 and relating to the same botanical genus or species as that to which both the first and second applications relate has been duly made under the said section 4 within the period, beginning on the day on which the first application was received as aforesaid and ending on the day on which the second application was in fact received by the Controller, shall not be a ground of objection to the second application.

(4) (a) Where the provisions of subsection (3) of this section are applied in relation to an application to the Controller, the applicant shall comply with the requirements of regulations made under paragraph (a) or (b) of [section 15](#) (1) of this Act within the period of four years beginning on the expiration of the period of one year mentioned in subsection (3) (b) of this section or such shorter period as the Controller shall specify in a notice in writing given to the applicant (being a period of not less than one year commencing on the date of the notice).

(b) In case the requirements of paragraph (a) of this subsection are not complied with as regards an application within the appropriate period, on the expiration of that period the provisions of subsection (3) of this section shall cease to apply to the application.

(5) In case the provisions of subsection (1) of this section are applied to an application under [section 4](#) of this Act, the application shall not, at any time during the period of five years beginning on the day immediately following the day on which the application is deemed to have been received by the Controller, be refused by reason only of the fact that any information, document or other thing which either is prescribed or is required by the Controller has not been furnished to him.

Protection of applicants while application pending.

7.—The Minister may make regulations providing for the protection of the proprietary rights of applicants pending the final determination of applications for the grant of plant breeders' rights.

Compulsory licences.

8.—(1) Subject to the provisions of this section, if any person applies to the Controller and satisfies him that a holder has unreasonably refused to grant to the applicant an authorisation referred to in [section 4](#) (5) (d) of this Act, or, in granting or offering to grant such an 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 (the name of which variety stands for the time being entered in the register) has been distributed by a holder 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 so to do, 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.

(3) A licence granted under this section (which licence is in this section subsequently referred to as a "*compulsory licence*") may have attached thereto such conditions as the Controller may specify and shall have effect during such period, beginning on or after the date of the licence, as is specified therein.

(4) In disposing of applications and settling the terms of compulsory licences the Controller shall endeavour to secure that the relevant plant variety is maintained in quality, and that the holder concerned will be equitably remunerated by the licensee as regards any sales of reproductive material which are made pursuant to the licence.

(5) A compulsory licence may include terms obliging the holder concerned to make reproductive material available to the licensee concerned.

(6) In case the Controller grants a compulsory licence, then for the purpose of enabling the person to whom the licence is granted to use as regards the licence any remedy available to him by the institution of legal proceedings, the licence shall be regarded as having been granted by the relevant holder.

(7) The Controller may, on an application being made in that behalf by the holder or licensee concerned, extend, limit or otherwise amend, or revoke, a compulsory licence.

(8) (a) A compulsory licence may be granted to an applicant whether or not the holder concerned has granted licences to the applicant or any other person.

(b) A compulsory licence shall not be an exclusive licence.

(9) Where the Controller receives an application under this section he shall give to the holder concerned and to any other person who appears to him to be concerned, notice of the application and shall afford to each person to whom such notice is given an opportunity of being heard before he determines the application.

(10) If and in so far as any agreement purports to bind any person not to apply for a compulsory licence, it shall be void.

Extension of
term of grant.

9.—(1) Subject to subsection (2) of this section, if on an application made in that behalf by or on behalf of a holder the Controller is satisfied that (for reasons beyond the control of the holder) the holder has not been adequately remunerated by the relevant grant of plant breeders' rights, the Controller may, subject to such restrictions or other conditions (if any) as the Controller may specify,

(a) extend the period during which the rights conferred by the grant shall be exercisable, or

(b) further extend the period during which such rights shall be exercisable.

(2) The Controller shall not exercise the powers conferred on him by subsection (1) of this section so as to purport to enable the plant breeders' rights to which an application under this section relates to be exercised during a period which exceeds in length the relevant maximum period prescribed under [section 4](#) (10) of this Act.

(3) Where the Controller allows an application under this section the following provisions shall, if applicable, have effect:

(a) in case the relevant grant of plant breeders' rights has expired before the date of the Controller's decision, the grant shall be regarded as having expired immediately before the decision, and

(b) in case such application is so allowed subject to a restriction or other condition, the relevant such grant shall thenceforth have effect subject to the restriction or condition.

Surrender of grant.

10.—(1) A holder may at any time apply to the Controller to surrender his grant of plant breeders' rights.

(2) Where an application under this section is received by the Controller, he shall give notice of the application to any person who appears to him to be concerned.

(3) If the Controller is satisfied, after hearing the holder concerned and any opponent, if desirous of being heard, that the relevant grant may properly be surrendered, he may accept the offer and revoke the grant.

Revocation of grants by Controller.

11.—(1) Where—

(a) the Controller is satisfied that—

(i) any information supplied by or on behalf of an applicant under [section 4](#) of this Act was incorrect and that had he known before determining the application that such information was incorrect he would have refused the application,

(ii) having regard to any other matter which, had he had regard to it before determining an application under the said section 4, he would have so refused, or

(b) the Controller is satisfied that any holder has failed to supply the Controller with reproductive material mentioned in [section 1](#) (2) of this Act, or

(c) the Controller is satisfied that a holder has failed to pay periodical fees due and payable by him under regulations under [section 25](#) of this Act,

(d) a holder is convicted of an offence under [section 23](#) of this Act as regards a representation made by him in relation to an application under [section 4](#) of this Act,

the Controller shall revoke the relevant grant of plant breeders' rights.

(2) (a) The following provisions shall apply in relation to the revocation under subsection (1) of this section of a grant of breeders' rights:

(i) the Controller shall not revoke the grant unless and until—

(I) he has given by post, or in such other manner as the Minister shall direct, to the holder concerned notice in writing stating that the Controller has under consideration the revocation of the relevant plant breeders' rights,

(II) he has caused to be given in the prescribed manner a general notice stating that he has under consideration such revocation,

(ii) the Controller shall consider any representation or objection made to him as regards the proposed revocation, and

(iii) in case the ground for the proposed revocation is the non-payment of a fee, the Controller shall afford a reasonable period to the person concerned within which to pay the fee,

and if the fee is paid within that period the Controller shall not proceed further in the matter.

(b) Both of the notices referred to in paragraph (a) of this subsection shall specify the grounds on which such revocation is so under consideration and state that representations and objections as regards the proposed revocation may be made to the Controller during such period (being a period of not less than twenty-eight days beginning on the date of the notice) as shall be specified in the notice (which representations and objections are hereby authorised to be made).

(3) In case the Controller revokes a grant of plant breeders' rights under this section otherwise than by reason of the conviction of the relevant holder of an offence under [section 23](#) of this Act, the holder of the rights may within the prescribed period appeal to the High Court against the revocation.

Naming of
protected plant
varieties.

12.—(1) The Minister may by regulations provide for the selection of names for plant varieties which are the subject of applications for plant breeders' rights and for entry in the register of the names so selected.

(2) Without prejudice to the generality of subsection (1) of this section, regulations under this section may in particular prescribe the circumstances in which representations may be made regarding any decision as to the name to be registered in respect of any plant variety.

(3) (a) Where a name of a plant variety is entered in the register every person who sells the reproductive material of that plant variety shall use that, and no other, name as the name of the variety, and failure to comply with the requirements of this paragraph shall (in addition to being an offence under [section 23](#) of this Act in the circumstances mentioned in that section) be a wrong actionable in proceedings at the suit of the relevant holder (if any).

(b) If, where a name of a plant variety is entered in the register, any person uses that name, or a name so nearly resembling it as to be likely to deceive or cause confusion, in selling or offering or exposing for sale—

(i) reproductive material of a different plant variety within the same class as that in relation to which the entry is made, or

(ii) where under [section 4](#) (9) of this Act plant breeders' rights as regards the first-mentioned plant variety have been extended to material other than reproductive material, that other material from a different plant variety within the same such class,

the use of the name shall be a wrong actionable in proceedings at the suit of the relevant holder (if any).

(c) In any proceedings for damages under this section it shall be a defence for the defendant to prove that he took reasonable precautions to avoid committing a wrong of the kind alleged and had not when using the name to which proceedings relate any reason to suspect that its use was wrongful.

(4) Where, in relation to the sale, offering or exposure for sale of reproductive material, a trade mark or trade name is used in association with a name entered in the register, the requirements of subsection (3) (a) of this section shall be regarded as having been complied with if, but only if, the name so entered is used so that it is both—

(a) easily recognisable, and

(b) easily distinguishable from the trade mark or trade name, as the case may be.

(5) (a) In this section "*name*", except in "*trade name*", includes any designation.

(b) For the purposes of this section plant varieties shall be regarded as being within the same class if they are each within a class which is either—

(i) a class consisting of all plant varieties of a botanical genus or species prescribed by regulations under [section 4](#) of this Act, or

(ii) a class consisting of all the plant varieties of any two or more botanical genera or species prescribed for the purposes of this section.

Change of name 13.—A holder may apply to the Controller to substitute for the name entered of plant variety. in the register as regards the relevant plant variety another name specified in the application, and the Controller in determining the application may—

(a) allow the application,

(b) substitute for the name so entered another name, not being the name so specified, or

(c) refuse the application.

Appeals.

14.—(1) Any person who is aggrieved by a decision by the Controller under [section 4](#) (8), [4](#) (9), [5](#) (1), [5](#) (2), [8](#) (1), [8](#) (2), [8](#) (7), [10](#) (3), [16](#) (3), [16](#) (4) or [22](#) (1) of this Act may within the period specified in Article 5 of the [Second Schedule](#) to this Act serve on the Controller a notice of appeal to the Appeal Committee against the decision, and the Appeal Committee may allow or refuse to allow the appeal, and on determining such appeal the Appeal Committee may exercise any of the powers exercisable by the Controller in relation to the matters to which the appeal relates.

(2) (a) In case the Controller receives a notice of appeal under this section, he shall forthwith inform the Minister of such receipt and, on being so informed, the Minister shall as soon as may be appoint not less than three persons to hear the appeal, of whom one shall be a barrister of not less than five years' standing (which persons are hereby authorised to hear the appeal).

(b) The Appeal Committee may, in confirming a decision of the Controller to grant a licence under [section 8](#) (2) of this Act, modify any of the terms or conditions of the licence.

(3) The persons appointed under this section to hear an appeal are in this Act referred to as "*the Appeal Committee*".

(4) Where an appeal is determined by the Appeal Committee, the Controller shall, as soon as may be, comply with such directions (if any) as are given to him by the Appeal Committee for the purpose of giving effect to the determination.

Applications and appeals generally. 15.—(1) The Minister may make regulations regarding applications under [section 4](#) , [9](#) , [10](#) , [17](#) , [21](#) or [22](#) of this Act and without prejudice to the generality of the foregoing such regulations may—

(a) provide that persons making applications under [section 4](#) of this Act shall furnish to the Controller specified information or documents relating to the plant variety to which the application relates,

(b) specify the reproductive or other plant material of such plant variety which shall be so furnished by such persons,

(c) require any applicants under the said section 4, for the purpose of enabling such applications to be disposed of, to make or cause to be made available to the Controller such amenities or facilities as shall be prescribed,

(d) require any such applicants to supply to the Controller for filing copies of such deeds, licences or other documents as may be prescribed,

- (e) prescribe the tests, trials, examinations or other steps to be taken by the Controller before any application under [section 4](#) of this Act is granted and the time within which any such steps are to be taken,
 - (f) specify the manner in, and the period within, which any application under the said section 4, 9, 10, 17, 21 or 22 may be withdrawn,
 - (g) require any such applicants to publish specified notices in relation to their applications,
 - (h) require any such applicants to furnish to the Controller such further information regarding their applications as he may reasonably require,
 - (i) authorise the Controller, in case there is a failure to pay any fee payable in connection with an application under this Act, to refuse the application,
 - (j) enable notice of any objections to or representations as regards such applications to be given to the Controller and require any such notice to be given within a prescribed period,
 - (k) provide that where an application under [section 4](#) of this Act is made by virtue of an assignment of the right to make such an application, there shall be furnished with the application, or within such period after receipt of the application by the Controller as shall be prescribed, such declaration or declarations, being both in the prescribed form and signed in the prescribed manner, as shall be prescribed.
- (2) The provisions of the [Second Schedule](#) to this Act shall apply to the extent specified therein as regards applications or appeals under this Act.

Maintenance of reproductive material.

- 16.**—(1) The provisions of this section shall apply in relation to all plant varieties except such as fall within any genus or species which is excluded from this section by regulations made under this section by the Minister.
- (2) Every holder shall ensure that, throughout the period for which the plant breeders' rights held by him are exercisable, he is in a position to supply to the Controller reproductive material which is capable of reproducing the variety to which the rights relate with the characteristics which were taken into account when the rights were granted in respect of the variety.
- (3) It shall also be the duty of every holder to afford to the Controller all such information and facilities as he may request for the purpose of satisfying himself that the holder is fulfilling his duty under subsection (2) of this section, including facilities for the inspection by or on behalf of the Controller of the measures taken for the maintenance of the relevant plant variety and if the Controller is satisfied that a holder has failed to comply with a request under this subsection he may, if he thinks fit, terminate, with effect on and from such day as the Controller shall specify the period during which the plant breeders' rights under the relevant grant under [section 4](#) of this Act are exercisable, and in case the Controller terminates such period, the grant aforesaid shall on the said day cease to have effect.
- (4) If at any time it appears to the Controller that any holder of plant breeders' rights is no longer in a position to provide the Controller with the material mentioned in subsection (2) of this section, he shall terminate, with effect on and from such day as he shall specify, the period for which the rights are exercisable, and in case the Controller terminates such period, the relevant grant of plant breeders' rights shall on the said day cease to have effect.

(5) Where the Controller proposes to exercise a power conferred on him by subsection (3) or (4) of this section, he shall give notice of the proposal to the relevant holder and to any other person who appears to him to be concerned, and he shall afford to each person to whom such notice is given an opportunity of being heard before he exercises the power.

Assignments,
etc.

17.—(1) Subject to registration under this section, the whole of or a share in, plant breeders' rights may be assigned or otherwise dealt with in like manner as other personal property.

(2) Where a person becomes entitled by assignment or transmission, operation of law or any other mode of transfer to plant breeders' rights or to a share in such rights, or becomes entitled as mortgagee, licensee or otherwise to any other interest in such rights, he shall apply to the Controller in the prescribed manner for the registration of his title as proprietor or co-proprietor, as may be appropriate, or of notice of his interest, in the register.

(3) Without prejudice to the provisions of subsection (2) of this section, an application for the registration of the title of any person becoming entitled by assignment to plant breeders' rights or a share in such rights, or becoming entitled by virtue of a mortgage, licence or other instrument to any other interest in plant breeders' rights may be made in the prescribed manner by the assignor, mortgagor, licensor or other party to that instrument, as the case may be.

(4) Where an application is made under this section for the registration of the title of any person, the Controller shall, upon proof of title to his satisfaction—

(a) where that person is entitled to plant breeders' rights or a share in such rights, register him in the register as proprietor or co-proprietor of the rights and enter in the register particulars of the instrument or event by or because of which he derives title, or

(b) where that person is entitled to any other interest in such rights, enter in the register notice of his interest, with particulars of the instrument (if any) creating it.

(5) Where the Controller receives an application under this section, he shall give notice thereof to any person who appears to him to be concerned, and he shall afford to each person to whom such notice is given an opportunity of being heard before determining the application.

(6) Except for the purposes of an application to rectify the register under [section 21](#) or [22](#) of this Act, a document in respect of which no entry has been made in the register under subsection (4) of this section shall not be admitted in any court as evidence of the title of any person to plant breeders' rights or to a share or interest in any such rights, unless the court otherwise directs.

(7) Any person who is aggrieved by a decision of the Controller under this section may, if, and only if, not later than sixty days after the decision is given he serves on the Controller a notice of appeal, appeal to the High Court against the decision.

Provisions relating to infringement proceedings.

18.—(1) (a) In proceedings for the infringement of a plant breeders' rights damages in respect of such an infringement shall not be awarded if the defendant proves that the person infringing the rights was not aware, and had no reasonable grounds for supposing, that the plant variety to which the proceedings relate was the subject of plant breeders' rights, but the person who would, apart from this subsection, be entitled to such damages shall be entitled to an account of profits in respect of the infringement (and to payment of any amount found due on the account) whether or not any other relief is granted by the court.

(b) In proceedings for the infringement of plant breeders' rights it shall be a defence for the defendant to prove that the plaintiff has failed to meet any obligations imposed on him by a licence issued under [section 8](#) of this Act.

(2) In proceedings for an infringement of plant breeders' rights the plaintiff shall be entitled, at his option, to an account of profits in lieu of damages.

(3) Nothing in this section shall be construed as affecting the power of a court to grant an injunction in proceedings for the infringement of plant breeders' rights.

Journal, etc.

19.—(1) The Controller shall issue periodically a journal (which is in this Act referred to as "*the Journal*") in which he shall publish notice of—

(a) any application under [section 4](#), [8](#) (2), [9](#), [10](#), [13](#), [16](#) (3), [16](#) (4), [17](#) (2), [21](#) or [22](#) of this Act received by him (giving the name of the applicant, and the botanical genus and species of the plant variety to which the application relates),

(b) the name of a plant variety proposed by an applicant under [section 4](#) or [13](#) of this Act (being a name which the Controller proposes to accept),

(c) the grant by him of any grant of plant breeders' rights (giving the name of the person to whom the grant is made and the name of the plant variety specified in the grant),

(d) any alteration, correction or erasure made in or from the register,

(e) any objection, representation or appeal duly received by the Controller in relation to an application under this Act, and

(f) such other matter as may be prescribed,

and also such other information or matters as appear to the Controller to be useful or important in relation to plant breeders' rights or any other matter for which he is responsible under this Act or otherwise by law.

(2) The Controller may prepare and publish indexes, lists, catalogues, booklets and other works relating to plant breeders' rights and plant varieties.

(3) The Controller shall make provision for the distribution, by sale or otherwise, of copies of the Journal or other documents which he is by this section, or otherwise by law, directed or authorised to issue or publish.

Register.

20.—(1) The Controller shall keep a register (in this Act referred to as "*the register*") for the purposes of this Act and shall enter therein particulars of grants of plant breeders' rights which are in force, such particulars of assignments and transmissions (whether by operation of law or by any other mode of transfer) of such rights as may be prescribed, particulars of all matters which are required by or under this Act to be entered in the register and of such other matters affecting the validity or proprietorship of grants of plant breeders' rights as the Controller thinks fit.

(2) The register shall be kept at such place as the Minister shall direct and, subject to such conditions (if any) as may be prescribed, shall be available for inspection during office hours.

(3) (a) A document purporting to be a copy of an entry in the register and to be certified under the seal of the Controller as a correct copy shall be *prima facie* evidence of the entry and it shall not be necessary to prove any signature on the document or that a person whose signature appears on the document was the Controller, or a person authorised under [section 3](#) (7) of this Act.

(b) Where application is made to the Controller for a copy of an entry in the register and certified under this section, such copy shall be issued to the applicant on payment by him to the Controller in respect of each entry of the prescribed fee.

Power of court
to amend
register.

21.—(1) Subject to the provisions of this Act, the High Court may on the application in the prescribed manner of any person aggrieved by the non-insertion in or omission from the register of any entry or by any entry made in the register without sufficient cause, or by any entry wrongly remaining in the register, or by an error or defect in any entry in the register, direct the Controller to make in the register such entry, or expunge from or vary any such entry then in the register, as the court may think fit.

(2) The High Court may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connection with the rectification of the register.

(3) Such notice of an application under this section as the High Court shall direct shall be given to the Controller and to such other person or persons (if any) as the Court may direct who shall have the right to appear and be heard thereon, and the Controller shall appear if so directed by the court. Unless otherwise directed by the court, the Controller, in lieu of appearing and being heard, may submit to the court a statement in writing signed by him, giving particulars of the proceedings before him in relation to the matter in issue or of the grounds of any decision given by him affecting the same or of his practice in like cases, or of such other matters relevant to the issues, and within his knowledge as Controller, as he shall think fit, and such statement shall be regarded as forming part of the evidence in the proceedings.

(4) In the case of fraud in the registration or transmission of plant breeders' rights, the Controller may himself apply to the High Court under the provisions of this section.

(5) Any order of the High Court rectifying the register shall direct that notice of the rectification be served on the Controller, in such manner as the court shall direct, who shall upon the receipt of such notice rectify the register accordingly.

(6) Any application under this section (other than an application by the Controller) may, at the option of the applicant, be made in the first instance to the Controller, and in such case the Controller shall have all the powers of the High Court under this section, but his decision shall be subject to appeal to that court within the prescribed period.

Power to correct
clerical errors,
etc.

22.—(1) The Controller may, in accordance with the provisions of this section, correct any clerical error in any grant of plant breeders' rights, any application for such a grant, or any document filed in pursuance of such an application, or any clerical error in the register.

(2) A correction may be made in pursuance of this section either upon a request in writing made by the relevant holder or applicant for a grant of plant breeders' rights and accompanied by the prescribed fee, or without such a request.

(3) Where the Controller proposes to make a correction under this section otherwise than in pursuance of a request made under this section, he shall give notice of the proposal to the relevant holder or the applicant for the grant of plant breeders' rights, as the case may be, and to any other person who appears to him to be concerned, and shall afford to each such person an opportunity of being heard before making the correction.

(4) Nothing in this section shall be construed as affecting the power conferred on the Controller by [section 17](#) (4) of this Act.

Offences.

23.—(1) If a person falsely represents that he is entitled to exercise any plant breeders' rights, or rights derived from plant breeders' rights, whether or not the plant variety as respects which the representation is made is the subject of plant breeders' rights, and he knows that the representation is false or makes the representation recklessly, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £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.

(2) Any person who at a hearing by the Controller or the Appeal Committee—

(a) makes any statement or gives information which he knows to be false in a material particular or recklessly gives information which is so false, or

(b) produces or otherwise makes use of any book, record or other document which to his knowledge contains any statement or information which he knows to be false in a material particular,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £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.

(3) Where—

(a) a person fails to comply with the requirements of [section 12](#) (3) of this Act, and

(b) there is not for the time being in force as regards the plant variety to which the failure relates a grant under [section 4](#) of this Act,

the person shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £500.

Trial of offences, onus of proof, etc.

24.—(1) Proceedings against a person for an offence under this Act may be taken in any District Court District in which the person is for the time being and in case such proceedings are taken and apart from this section the Justice before whom the proceedings are brought would not have jurisdiction to hear and determine the proceedings, then for the purpose of conferring such jurisdiction the offence may be treated as having been committed within the District Court District to which such Justice is assigned.

(2) Where in proceedings for an offence under [section 23](#) (3) of this Act it is proved that in relation to a particular plant variety the defendant failed to comply with the requirements of [section 12](#) (3) of this Act, then, unless there is sufficient other evidence to raise an issue as to whether there was in existence at the time of such failure a grant under [section 4](#) of this Act and relating to that plant variety, for the purposes of the proceedings such a grant shall not be regarded as having been in existence at such time.

(3) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Fees. **25.**—(1) There shall be charged by and paid to the Controller—

(a) such fees in respect of applications to the Controller,

(b) such fees in respect of any test or examination conducted by or on behalf of the Controller in relation to any such application, or any information obtained by the Controller in relation to any such application,

(c) such fee in respect of the issue by the Controller of a certificate under [section 4](#) (3) of this Act,

(d) such periodical fees payable by persons holding plant breeders' rights,

(e) such other fees,

as may from time to time be prescribed.

(2) Where, pursuant to an agreement or arrangement under [section 2](#) (4) of this Act, the Controller enables a person in any country other than the State to acquire or have access to the findings of tests, trials or examinations carried out by the Controller, he may charge such fee (if any) as may be agreed.

(3) All fees received by the Controller under this section shall be collected, accounted for and disposed of in such manner as the Minister shall from time to time direct.

(4) The Public Offices Fees Act, 1879, shall not apply in respect of fees payable under this section.

Regulations and orders. **26.**—(1) The Minister may make regulations for prescribing any matter referred to in this Act as prescribed, provided that, in so far as any such regulations provide for the fixing of fees, they shall be only so made with the consent of the Minister for Finance.

(2) Before making regulations for the purposes of this Act, the Minister shall consult the Controller and representatives of such interests as appear to the Minister to be concerned, and regulations under this section may—

(a) make different provisions for different genera or species of plant varieties, or plant varieties which are both within any such genus or species and of a prescribed class or description,

(b) contain such supplemental, incidental and transitional provisions as appear to the Minister to be appropriate.

(3) Every regulation and every order made under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation or order is passed by either such House within the next twenty-one days on which that House has sat after the regulation or order is laid before it, the regulation or order shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

Expenses. **27.**—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Short title and commencement. **28.**—(1) This Act may be cited as the Plant Varieties (Proprietary Rights) Act, 1980.

(2) This Act shall come into force on such day as the Minister shall fix therefor by order.

FIRST SCHEDULE

Conditions referred to in Section 5 (1) (b)

Section 5 (1).

Distinctness.

1. (1) (a) Whatever the origin, be it natural or artificial, of the initial variation from which a plant variety to which an application under this Act relates has resulted, for the purposes of this Act the variety shall be regarded as being distinct if, and only if, by reference to one or more important characteristics, it is clearly distinguishable from any other plant variety whose existence is a matter of common knowledge at the time when the application is made.

(b) The distinguishing characteristics must in all cases be capable both of precise description and of recognition.

(2) For the purposes of this paragraph common knowledge may be established by reference to plant varieties already being cultivated or exploited commercially, or those included in a recognised commercial or botanical reference collection, or those of which there are precise descriptions in any publication.

Previous commercialisation.

2. Neither plants of the variety to which the application relates, nor any material forming part of or derived from plants of such variety, shall, in the course of commercial marketing, have, with the consent of the applicant or his predecessor in title, been—

(a) sold in the State,

(b) sold in any country or territory other than the State—

(i) in case such plants (including their rootstocks) are vines, forest trees, fruit trees or ornamental trees, prior to the period of six years ending on the day on which the application was received by the Controller,

(ii) in case such plants are plants of any other genus or species, prior to the period of four years ending on such day,

provided that this paragraph shall not commence to have effect as regards a particular plant variety—

(c) in relation to which rights which correspond or are analogous to plant breeders' rights have been granted under the law of a convention country and are in force on the date when the application is received by the Controller, or

(d) which—

(i) is in the National Catalogue of Agricultural Plant Varieties or such other catalogue or list as may be prescribed for the purposes of this paragraph, and

(ii) has not been sold in the State at any time prior to such period of time ending on the day on which the application is so received by the Controller as is prescribed in relation to such variety,

until the expiration of the period of one year beginning on the commencement of the regulations under [section 4](#) of this Act in which the relevant genus or species is specified.

Uniformity.

3. Having regard to the particular features of its sexual reproduction or vegetative propagation, the plant variety to which the application relates must be sufficiently uniform or homogeneous as to satisfy standards and criteria for the time being specified by the Controller.

Stability.

4. The plant variety to which the application relates must be stable in its essential characteristics, that is to say, it must remain true to its description as given in the relevant application for plant breeders' rights after repeated reproduction or propagation, or, where the application for such rights stipulates a particular cycle of reproduction or multiplication, at the end of each such cycle.

Name.

5. The plant variety to which the application relates shall be given a name specified by the applicant and such name shall have been selected in accordance with regulations under [section 12](#) of this Act which are for the time being in force.

6. References in this Schedule to an application are references to an application for plant breeders' rights under [section 4](#) of this Act.

SECOND SCHEDULE

Applications and Appeals

[Section 15](#) (2).

Provisions referred to in section 15 (2).

1. Where an application under [section 4](#), [10](#), [11](#), [17](#), [21](#) or [22](#) of this Act is made to the Controller, the Controller may, if he thinks fit, require the applicant to publish in such manner as the Controller shall direct notice of the making of the application stating that during a period specified in the notice (which period shall be the period so directed) representations and objections as regards the application may be made to the Controller and also stating that notice of such representations and objections may be given to the Controller (which notices are hereby authorised to be so given).

2. The following shall be entitled to be heard (either in person or through counsel or a solicitor) on the hearing, whether by the Controller or on appeal, of an application to which Article 1 of this Schedule applies, namely:

- (a) the applicant,
- (b) the holder of the relevant grant of plant breeders' rights (if he is not the applicant),
- (c) any person by whom a notice has been duly given in relation to the application pursuant to regulations under [section 15](#) of this Act.

3. Where an application is made under [section 17](#) of this Act the following provisions shall apply:

(a) the Controller or the Appeal Committee may, for the purpose of enabling the ownership of the relevant plant breeders' rights to be ascertained, direct the applicant to publish a notice in such form and in such manner as the Controller directs,

(b) if the Controller or the Appeal Committee, as the case may be, is satisfied that after diligent inquiry the relevant holder cannot be found or ascertained, the application or an appeal under [section 14](#) of this Act may be heard and determined notwithstanding the fact that such holder has not been found or ascertained.

4. Where a decision is made by the Controller and is confirmed or varied on an appeal under this Act, or where a refusal by the Controller is so affirmed or any other decision is made on such an appeal, then unless the High Court or the Appeal Committee, as the case may be, otherwise direct, the decision on the appeal shall come into force on the day immediately following the day on which it is made, and, in case such a direction is given the decision to which the direction relates shall come into force on the day specified in the direction.

5. Whenever the Controller makes a decision referred to in subsection (1) of [section 14](#) of this Act or a decision under [section 21](#) (6) of this Act, he shall, as soon as may be after the decision is made, cause notice of the decision to be published in the Journal, which notice shall state the period within which an appeal may be taken under the said section 14 or 21 (6) in relation to the decision. The period aforesaid shall be the period of sixty days commencing on the date of the publication of the notice aforesaid.

Act Referred to

Public Offices Fees Act, 1879

1879, c. 58

Plant Varieties (Proprietary Rights) (Amendment) Act of November 16, 1998 with date of entry into force of December 14, 2000*Number 41 of 1998*

PLANT VARIETIES (PROPRIETARY RIGHTS) (AMENDMENT) ACT, 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 plant 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](#)

Act Referred to[Plant Varieties \(Proprietary Rights\) Act, 1980](#) 1980, No. 24



Number 41 of 1998

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

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.—(1) 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 (EC) No. 2100/94 of 27 July 1994⁽¹⁾ 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 PRINCIPAL 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 PRINCIPAL 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 PRINCIPAL 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 PRINCIPAL 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 PRINCIPAL 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 PRINCIPAL ACT.

7.—(1) [Section 6](#) of the Principal Act is hereby amended by—

(a) the substitution of the following subsection for subsection (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 PRINCIPAL 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 PRINCIPAL 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 an 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 PRINCIPAL 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 paragraph 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 properly 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 (3) of “cancels” for “revokes” and of “cancellation” for “revocation”.

AMENDMENT OF [SECTION 12](#) OF PRINCIPAL 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 PRINCIPAL 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 PRINCIPAL 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 PRINCIPAL 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 (11)* 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 such other person to carry out any or all of the acts specified in [section 18](#) on a protected 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 Principal 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 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 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.

SCHEDULE

[Section 23](#) .

Ref. No.	Section of Principal Act	Amendment of Principal Act
(1)	(2)	(3)
1	Section 6	In subsections (3) (b) and (5), "section 15 of the <i>Plant Varieties (Proprietary Rights) (Amendment) Act, 1998</i> ," is substituted for " section 4 of this Act".
2	Section 9	In subsection (2) "specified in section 15 of the <i>Plant Varieties (Proprietary Rights) (Amendment) Act, 1998</i> " 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 <i>Plant Varieties (Proprietary Rights) (Amendment) Act, 1998</i> ,".
5	Section 15	In subsection (1) (a) "section 15 of the <i>Plant Varieties (Proprietary Rights) (Amendment) Act, 1998</i> ," is substituted for " section 4 of this Act".
6	Section 15	In subsection (1) (c) "section 15 of the <i>Plant Varieties (Proprietary Rights) (Amendment) Act, 1998</i> ," is substituted for "the said section 4,".
7	Section 15	In subsections (1) (e) and (1) (k), " section 15 of the <i>Plant Varieties (Proprietary Rights) (Amendment) Act, 1998</i> ," is substituted for " section 4 of this Act".
8	Section 15	In subsection (1) (f) the deletion of "4" and the insertion after "21 or 22" of "and section 15 of the <i>Plant Varieties (Proprietary Rights) (Amendment) Act, 1998</i> ,".
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 <i>Plant Varieties (Proprietary Rights) (Amendment) Act, 1998</i> ," 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 "and [section 15](#) of the *Plant Varieties (Proprietary Rights) (Amendment) Act, 1998*,".
- 12 Section 19 In subsection (1) (b) "[section 15](#) of the *Plant Varieties (Proprietary Rights) (Amendment) 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) (Amendment) Act, 1998*".
- 14 Section 24 In subsection (2) "[section 15](#) of the *Plant Varieties (Proprietary Rights) (Amendment) 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) (Amendment) Act, 1998*," is substituted for " [section 4](#) (3) of this Act".
- 16 First Schedule In paragraph 6 "[section 15](#) of the *Plant Varieties (Proprietary Rights) (Amendment) 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 "and [section 15](#) of the *Plant Varieties (Proprietary Rights) (Amendment) Act, 1998*,".
- 18 Second Schedule In paragraph 2 "paragraph" is substituted for "Article".

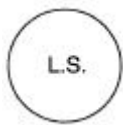
⁽¹⁾OJ No. L227/1, 1.9.94.

S.I. No. 489/2000 — Plant Varieties (Proprietary Rights) (Amendment) Act, 1998 (Commencement) Order, 2000.

I, JOE WALSH, Minister for Agriculture, Food and Rural Development, in exercise of the powers conferred on me by [section 24](#) (3) of the [Plant Varieties \(Proprietary Rights\) \(Amendment\) Act, 1998](#) (No. 41 of 1998) (as adapted by the Agriculture and Food (Alteration of Name of Department and Title of Minister) Order, 1999 ([S.I. No. 307 of 1999](#))), hereby order as follows:

1. This Order may be cited as the Plant Varieties (Proprietary Rights) (Amendment) Act, 1998 (Commencement) Order, 2000.

2. The 14th day of December 2000 is hereby appointed as the day on which the [Plant Varieties \(Proprietary Rights\) \(Amendment\) Act, 1998](#) (No. 41 of 1998), shall come into operation.



GIVEN under my Official Seal, this 13th day of December, 2000.

JOE WALSH,

Minister for Agriculture, Food and Rural Development.

EXPLANATORY NOTE.

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

This Order prescribes the 14th day of December 2000 as the date on which the [Plant Varieties \(Proprietary Rights\) \(Amendment\) Act, 1998](#) (No. 41 of 1998), shall come into force.

S.I. No. 490 of 2000 – Plant Varieties (Proprietary Rights) (Amendment) Regulations, 2000

STATUTORY INSTRUMENTS.

S.I. No. 490 of 2000.

PLANT VARIETIES (PROPRIETARY RIGHTS) (AMENDMENT) REGULATIONS, 2000.

S.I. NO. 490 OF 2000.

PLANT VARIETIES (PROPRIETARY RIGHTS) (AMENDMENT) REGULATIONS, 2000.

I, JOE WALSH, Minister for Agriculture, Food and Rural Development, in exercise of the powers conferred on me by sections 12 (as amended by [section 11 of the Plant Varieties \(Proprietary Rights\) \(Amendment\) Act, 1998 \(No. 41 of 1998\)](#) ("the Act of 1998")), 25 (as amended by section 13 of the Act of 1998) and 26 of the [Plant Varieties \(Proprietary Rights\) Act, 1980 \(No. 24 of 1980\)](#) ("the Act of 1980") and section 15 of the Act of 1998 (as adapted by the Agriculture and Food (Alteration of Name of Department and Title of Minister) Order, 1999 ([S.I. No. 307 of 1999](#))), with the consent of the Minister for Finance and, after consultation with the Controller of Plant Breeders' Rights and representatives of such interest as appear to me to be concerned, hereby make the following regulations:

1. These Regulations may be cited as the Plant Varieties (Proprietary Rights) (Amendment) Regulations, 2000.

2. The maximum period to be specified in a grant of plant breeders' rights as being that in which the plant breeders' rights are to be exercisable, within the meaning of section 15(5) of the [Plant Varieties \(Proprietary Rights\) \(Amendment\) Act, 1998 \(No. 41 of 1998\)](#) , in respect of a plant variety which is of a species specified in column (1) of the Schedule to these Regulations shall be the period of years specified in column (2) of that Schedule opposite the mention of that species.

SCHEDULE

Species (1)	Period of years for which rights are exercisable (2)
Trees, Vines and Potatoes	30
All other species	25

3. The Plant Varieties (Proprietary Rights) Regulations 1981 ([S.I. No. 23 of 1981](#)), are amended by the substitution:

(a) for the Fourth Schedule of the Following Schedule:

"FOURTH SCHEDULE

UPOV Class Number	Genera or Species
(1)	(2)
1	Avena, Hordeum, Secale, Triticale, Triticum.
2	Panicum, Setaria.
3	Sorghum, Zea.
4	Agrostis, Alopecurus, Arrhenatherum, Bromus, Cynosurus, Dactylis, Festuca, Lolium, Phalaris, Phleum, Poa, Trisetum.
5	Brassica oleracea, Brassica chinensis, Brassica pekinensis.

- 6 Brassica napus, B. compestris, B. rapa, B. juncea, B. nigra, Sinapis.
- 7 Lotus, Medicago, Ornithopus, Onobrychis, Trifolium.
- 8 Lupinus albus L., L. angustifolius L., L. luteus L.
- 9 Vicia faba L.
- 10 Beta vulgaris L. var. alba D.C., Beta vulgaris L. var. altissima
- 11 Beta vulgaris ssp. vulgaris var. conditiva Alef. (syn.: Beta vulgaris L. var. rubra L.), Beta vulgaris L. var. cicla L., Beta vulgaris L. ssp. vulgaris var. vulgaris.
- 12 Lactuca, Valerianella, Cichorium.
- 13 Cucumis sativus.
- 14 Citrullus, Cucumis melo, Cucurbita.
- 15 Anthriscus, Petroselinum.
- 16 Daucus, Pastinaca.
- 17 Anethum, Carum, Foeniculum.
- 18 Bromeliaceae.
- 19 Picea, Abies, Pseudotsuga, Pinus, Larix.
- 20 Calluna, Erica.
- 21 Solanum tuberosum L.
- 22 Nicotiana rustica L., N. tabacum L.
- 23 Helianthus tuberosus.
- 24 Helianthus annuus.
- 25 Orchidaceae.
- 26 Epiphyllum, Rhipsalidopsis, Schlumbergera, Zygocactus.
- 27 Proteaceae.

”.

and

(b) For the Fifth Schedule of the Following Schedule:

“FIFTH SCHEDULE

Part I

Fee payable on an application for a grant of plant breeder rights.	£200
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Part II

Fees payable in respect of tests and examinations carried out by the Minister of a plant variety which is the subject of an application for a grant of plant breeders' rights.

Tests and examinations for which payable	Amount
	£
(a) Test and examinations in first year of a testing cycle	400
(b) Tests and examinations in any one subsequent year of a testing cycle.	400
(c) Tests and examinations concerning genetically modified varieties.	600
(d) 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 on other premises in agreement with the Minister.	200

Part III

Periodical fees payable as regards rights granted under the Act

A fee of £250 will apply from year one and all subsequent years of the period during which the rights are exercisable.

Part IV

Fees payable in respect of matters other than the foregoing

Matter	Amount £
• The grant of Plant Breeders' rights in respect of any plant variety.	100
• Application for an extension of the period for which plant breeders' rights are exercisable.	50
• The grant of an extension of the period for which plant breeders' rights are exercisable.	50
• Application for the approval of a substituted name for a plant variety.	40
• Application for a compulsory licence.	100
• Application under section 21 of the Plant Varieties (Proprietary Rights) Act 1980 for the amendment of the register of plant varieties, except in a case where the plant breeders' centers are transferred to another person.	30
• Application under section 22 of the Plant Varieties (Proprietary Rights) Act, 1980 , to correct register of plant varieties.	30
• Application for registration of title under section 17 of the Plant Varieties (Proprietary Rights) Act, 1980 .	40
• Supplying a copy of a grant plant breeders' rights or of an extension of the period for which plant breeders' rights are exercisable.	20
• Supplying a copy of an entry in the register.	20
• Application under Council Regulation (EC) No. 2100/94 of 27 July 1994 ¹ on Community plant variety rights.	30
• Application annually under Council Regulation (EC) No. 2100/94 of 27 July, 1994 for maintenance of dormant plant breeders' rights.	50

”.

4. The following Regulations are hereby revoked:

- (a) the Plant Varieties (Proprietary Rights) (Amendment) Regulations 1984 ([S.I. No. 137 of 1984](#)),
- (b) the Plant Varieties (Proprietary Rights) (Amendment) Regulations 1986 ([S.I. No. 46 of 1986](#)),
- (c) the Plant Varieties (Proprietary Rights) (Amendment) Regulations 1988 ([S.I. No. 46 of 1988](#)),
- (d) the Plant Varieties (Proprietary Rights) (Amendment) Regulations 1990 ([S.I. No. 199 of 1990](#)),
- (e) the Plant Varieties (Proprietary Rights) (Amendment) Regulations 1991 ([S.I. No. 31 of 1991](#)),
- (f) the Plant Varieties (Proprietary Rights) (Amendment) Regulations 1992 ([S.I. No. 35 of 1992](#)),

- (g) the Plant Varieties (Proprietary Rights) (Amendment) (No. 2) Regulations 1992 ([S.I. No. 369 of 1992](#)),
- (h) the Plant Varieties (Proprietary Rights) (Amendment) Regulations 1993 ([S.I. No. 78 of 1993](#)),
- (i) the Plant Varieties (Proprietary Rights) (Amendment) (No. 2) Regulations 1993 ([S.I. No. 332 of 1993](#)),
- (j) and the Plant Varieties (Proprietary Rights) (Amendment) Regulations 1994 ([S.I. No. 393 of 1994](#)).

The Minister for Finance consents to the making of the foregoing Regulations.

GIVEN under my Official Seal, this 21st day of December, 2000.

CHARLIE MCCREEVY,
Minister for Finance

GIVEN under my Official Seal, this 26th day of December, 2000.

JOE WALSH,
Minister for Agriculture, Food and Rural Development.

EXPLANATORY NOTE.

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations which implement certain amendments and extensions to the [Plant Varieties \(Proprietary Rights\) Act, 1980](#) prescribe:

- (1) The crop species to which the grant of rights applies.
- (2) Duration of rights.
- (3) Fees to be charged.
- (4) Allow the holder of an Irish grant of plant breeders' rights to keep in place his national plant breeders' rights (but without exercising such rights) and thereby retain the option of reverting to the exercise of national plant breeders' rights if the Community plant breeders' rights are surrendered, by payment of a special reduced renewal fee.
- (5) Repeal of previous regulations.

¹ OJ No. L227/1 of 1.9.94

S.I. No. 493/2000 — Plant Varieties (Farm Saved Seed) Regulations, 2000

STATUTORY INSTRUMENTS.

S.I. No. 493 of 2000.

PLANT VARIETIES (FARM SAVED SEED) REGULATIONS, 2000.

S.I. No. 493 of 2000.

PLANT VARIETIES (FARM SAVED SEED) REGULATIONS, 2000.

I, JOE WALSH, Minister for Agriculture, Food and Rural Development, in exercise of the powers conferred on me by section 19(6) of [the Plant Varieties \(Proprietary Rights\) \(Amendment\) Act 1998](#) ([No. 41 of 1998](#)) (as adapted by the Agriculture and Food (Alteration of Name of Department and Title of Minister) Order, 1999 ([S.I. No. 307 of 1999](#))), hereby make the following regulations:

1. These Regulations may be cited as the Plant Varieties (Farm Saved Seed) Regulations, 2000.

2. In these Regulations—

“Act of 1998” means Plant Varieties (Proprietary Rights) (Amendment) Act, ([No. 41 of 1998](#));

“farmer” means a person who uses a protected variety.

3. If the holder and the farmer do not reach agreement as regards remuneration for the purposes of section 19(4) of the Act of 1998, then the level of remuneration is, by virtue of these Regulations, fixed at 50 per cent of the sum charged for the licensed production of propagating material of the lowest category qualified for official certification of the same variety in the State.

4. A farmer or the service that he or she engages, may process the farm saved seed for planting and may move the farm saved seed from the farm for the purposes of such processing provided that:

(a) the identity of the farm saved seed is not lost, and

(b) if the farmer engages a service which is approved by the Minister.

5. If an order has been made pursuant to section 19(2) of the Act of 1998 in relation to a plant variety, the Controller of Plant Breeders' rights, the farmer, the holder and the processor shall provide information in respect of that plant variety in accordance with the Schedule to these Regulations.

6. A farmer who contravenes these regulations shall be deemed to have infringed Plant Breeders' rights pursuant to section 21 of the Act of 1998.

Schedule

Information by the farmer

1. The farmer shall, on request of the holder, be required to provide a statement of relevant information to the holder. The following items shall be considered to be relevant:

(a) the name of the farmer, the place of his domicile and the address of his holding,

(b) the fact whether the farmer has made use of the product of the harvest belonging to one or more varieties of the holder for planting in the field or fields of his holding,

(c) if the farmer has made such use, the amount of the product of the harvest belonging to the variety or varieties concerned,

(d) under the same condition, the name and address of the person or persons who have supplied a service of processing the relevant product of the harvest for him for planting,

(e) whether he has already used the variety concerned without payment of a remuneration, and if so, since when.

2. The information under paragraph 1 (b), (c), (d), and (e) shall refer to the current marketing year and to one or more of the three preceding marketing years for which the farmer had not previously provided relevant information on request made by the holder in accordance with the provisions of paragraphs 3 or 4.

However, the first marketing year to which the information refers, shall not be earlier than the one in which the first of such requests for information was made in respect of the variety or varieties and the farmer concerned.

3. In his request, the holder shall specify his name and address, the variety or varieties in respect of which he is interested in information, as well as the reference or references to the relevant Plant Breeders' right or rights. If required by the farmer, the request shall be made in writing, and evidence for holdership shall be provided. Without prejudice to the provisions of paragraph 4, the request shall be made directly to the farmer concerned.

4. A request which has not been made directly to the farmer concerned, shall be acceptable to the Minister, if it is sent to farmers through the following bodies or persons, with their prior agreement respectively:

- organisations of farmers or co-operatives, concerning all farmers who are members of such organisation or cooperative, or,

- processors, concerning all farmers to whom they have supplied a service of processing the relevant product of the harvest for planting, in the current marketing year and in the three preceding marketing years, starting in the marketing year as specified in paragraph 2,

- suppliers of licensed propagating material of varieties of the holder, concerning all farmers to whom they have supplied such propagating material in the current marketing year and in the three preceding marketing years, starting in the marketing year as specified in paragraph 2.

5. The organizations, co-operatives, processors or suppliers shall be authorised by the farmers concerned to forward the required information to the holder.

Information by the processor

1. The details of the relevant information to be provided by the processor to the holder are—

(a) the name of the processor, the place of his domicile and the name and address registered for his business;

(b) the fact whether the processor has supplied a service of processing the product of the harvest belonging to one or more varieties of the holder for planting, where the variety or varieties were declared or otherwise known to the processor;

(c) if the processor has supplied such service, the amount of the product of the harvest belonging to the variety or varieties concerned, which has been processed for planting, by the processor, and the total amount resulting from the processing;

(d) the dates and places of the processing referred to in (c); and

(e) the name and address of the person or persons to whom he has supplied the service of processing referred to in (c), and the respective amounts.

2. The information under paragraph 1(b), (c), (d) and (e) shall refer to the current marketing year and to one or more of the three preceding marketing years for which the farmer had not previously provided relevant information on request made by the holder in accordance with the provisions of paragraphs 3 or 4.

However, the first marketing year to which the information refers, shall not be earlier than the one in which the first of such requests for information was made in respect of the variety or varieties and the farmer concerned.

3. In his request, the holder shall specify his name and address, the variety or varieties in respect of which he is interested in information as well as the reference or references to the relevant Plant Breeders' right or rights. If required by the processor, the request shall be made in writing, and evidence for holdership shall be provided. Without prejudice to the provisions of paragraph 4, the request shall be made directly to the processor concerned.

4. A request which has not been made directly to the processor concerned, shall be acceptable to the Minister if it is sent to processors through the following bodies or persons, with their prior agreement respectively:

- organisations of processors which are established at national, regional or local level, concerning all processors who are members of, or represented in, such organisation,
- farmers, concerning all processors who have supplied a service of processing the relevant product of the harvest to them for planting, in the current marketing year and in the three preceding marketing years, starting in the marketing year as specified in paragraph 2.

5. The organisations or farmers shall be authorised by the processors concerned to forward the required information to the holder.

Information by the holder

1. The details of the information to be provided by the holder to the farmer, on request of the farmer from whom the holder has claimed the payment of remuneration are:

- the amount charged for the licensed production of propagating material of the lowest category qualified for official certification, of the same variety in the area in which the holding of the farmer is located, or,
- if no licensed production of propagating material of the variety concerned has taken place in the area in which the holding of the farmer is located, and if there is no uniform level of the aforesaid amount throughout the Community, the amount which is normally included, for the above purpose, in the price at which propagating material of the lowest category qualified for official certification, of that variety is sold in that area, as well as the aforesaid amount charged in the area in which that propagating material has been produced.

Information by an Official body

1. In this Schedule "Official body" means any or all of the following—

- (a) the Minister for Agriculture, Food and Rural Development,
- (b) the Controller of Plant Breeders' Rights,
- (c) the Central Statistics Office,
- (d) Teagasc, and
- (e) the Plant Variety Development Office Limited.

2. A request for information on the actual use of material, by planting, of specific species or varieties, or on the results of such use, which a holder addresses to an Official body, must be made in writing. In this request, the holder shall specify his name and address, the variety or varieties in respect of which he is interested in information and the type of information he seeks. He also shall provide evidence for his holdership.

3. The Official body, may withhold the requested information if—

- (a) that Official body is not involved in monitoring agricultural production,

- (b) that Official body is prevented, either by the Laws of the European Communities or any enactment or rule of law, from providing such information,
- (c) the requested information is not available or is no longer available,
- (d) such information cannot be obtained through the ordinary performance of the tasks of the Official body,
- (e) such information can only be obtained with additional burden or costs, or,
- (f) such information relates specifically to material which does not belong to varieties of the holder.

4. In providing the information, the official body shall not differentiate between holders. The official body may provide the requested information in making copies available to the holder, which have been produced from documents containing information additional to that relating to material belonging to varieties of the holder, provided that it is ensured that any possibility to identify individuals has been removed.

5. If the official body takes the decision to withhold the requested information, it shall inform the requesting holder thereof in writing and indicate the reason for this decision.

GIVEN under my Official Seal, this 15th day of December, 2000.

JOE WALSH,

Minister for Agriculture, Food and Rural Development.

EXPLANATORY NOTE.

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

The purpose of this Regulation is to enable breeders of plant varieties to collect royalties on the varieties they have bred and developed and which are used for farm saved seed. Until now, there has been no provision for the collection of royalty payments on farm saved seed.

Under this Regulation, farmers retaining a portion of their harvest for re-sowing may be required to pay the holder of a Plant Breeders' Right a royalty fee.

Small farmers (as described in council Regulation (EC) 2100/94 concerning Community Plant Variety Rights) are exempt from the payment of royalties.

The plant species covered by these Regulations are Cereals, Fodder plants, Oil and Fibre plants (excluding Flax) and Potatoes.