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*Uimhir 24 de 1980*  
*Number 24 of 1980*

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AN tACHT UM CHINEÁLACHA  
PLANDAÍ (CEARTA DÍLSEÁNAIGH),  
1980  
PLANT VARIETIES (PROPRIETARY  
RIGHTS) ACT, 1980

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BAILE ÁTHA CLIATH:  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR.

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Le ceannach díreach ón  
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,  
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN,  
BAILE ÁTHA CLIATH 2,  
nó trí aon díoltóir leabhar.

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ACT REFERRED TO

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1879, c. 58



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**PLANT VARIETIES (PROPRIETARY RIGHTS) ACT, 1980\***

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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:

1.—(1) In this Act—

Interpretation.

“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;

\* The official translation of this Act is printed opposite.

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“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. S.1

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. Conventions, arrangements etc.

(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

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subsection is terminated or otherwise ceases to be in force, S.2  
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.

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.

Controller of Plant  
Breeders' Rights.

(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.

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(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. S.3

(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.





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(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. S.3

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. Plant breeders’ rights.

(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, S.4
- (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.

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(b) Where the Controller gives a direction under this sub- S.4  
section—

- (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—

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- (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, S.4
  - (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.

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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:

Conditions  
regarding grant of  
plant breeders'  
rights.

- (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.

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- (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. S.5

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

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. Priorities between applicants under section 4.

(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,

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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 S.6

- (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.



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(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. S.6

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. Protection of applicants while application pending.

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. Compulsory licences.

(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

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will be equitably remunerated by the licensee as regards any sales of S.8  
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.

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, Extension of term  
of grant.

(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.

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(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. S.9

(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.

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

(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.

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

Revocation of  
grants by  
Controller.

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- (b) the Controller is satisfied that any holder has failed to supply S.11 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 revo-

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cation 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).

S.11

(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.

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.

Naming of  
protected plant  
varieties.

(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

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- (ii) where under section 4 (9) of this Act plant breeders' S.12  
rights as regards the first-mentioned plant variety  
have been extended to material other than reproduc-  
tive 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 pro-  
ceedings 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 associ-  
ation with a name entered in the register, the requirements of sub-  
section (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 sec-  
tion 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.

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

Change of name  
of plant variety.

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- (a) allow the application, S.13
- (b) substitute for the name so entered another name, not being the name so specified, or
- (c) refuse the application.

**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. Appeals.

(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.

**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— Applications and appeals generally.

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- (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, S.15
- (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,



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- (k) provide that where an application under section 4 of this Act S.15  
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.

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. Maintenance of  
reproductive  
material.

(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 inspec-  
tion 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 Con-  
troller 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.

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(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. S.16

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. Assignments, etc.

(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.

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(5) Where the Controller receives an application under this section, S.17 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.

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.

Provisions relating  
to infringement  
proceedings.

(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.

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**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— Journal, etc.

- (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.

**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 Register.

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operation of law or by any other mode of transfer) of such rights as S.20  
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.

21.—(1) Subject to the provisions of this Act, the High Court may Power of court to  
on the application in the prescribed manner of any person aggrieved amend register.  
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. S.21

(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.

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. Power to correct clerical errors, etc.

(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.

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(4) Nothing in this section shall be construed as affecting the power S.22  
conferred on the Controller by section 17 (4) of this Act.

**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. Offences.

(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.

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**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. Trial of offences,  
onus of proof, etc.

(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.

**25.—**(1) There shall be charged by and paid to the Controller— Fees.

- (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.



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(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. S.25

(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.

**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. Regulations and orders.

(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.

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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. Expenses.

28.—(1) This Act may be cited as the Plant Varieties (Proprietary Rights) Act, 1980. Short title and commencement.

(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).

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. Distinctness.

(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.

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— Previous commercialisation.

(a) sold in the State,

(b) sold in any country or territory other than the State—

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- (i) in case such plants (including their rootstocks) are Sch. 1 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.

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. Uniformity.

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. Stability.

5. The plant variety to which the application relates shall be given a name. 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

Section 15 (2).

### APPLICATIONS AND APPEALS

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). Provisions referred to in section 15 (2).

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,

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- (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. SCH. 2

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.