

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.