

REPUBLIC OF SOUTH AFRICA

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# PLANT IMPROVEMENT BILL

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*(As introduced in the National Assembly (proposed section 76); explanatory summary of  
the Bill published in Government Gazette No. 38398 of 23 January 2015)  
(The English text is the official text of the Bill)*

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(MINISTER OF AGRICULTURE, FORESTRY AND FISHERIES)

**[B 8—2015]**

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# BILL

To provide for—

- the registration of certain types of business relating to plants and propagating material intended for cultivation and sale and the registration of premises on or from which that business is conducted;
- quality standards for plants and propagating material intended for cultivation and sale and conditions of sale of plants and propagating material;
- a system for national listing of plant varieties;
- the evaluation of plant varieties in order to ensure value if there is doubt in respect of the value for cultivation and use of plant varieties intended for cultivation and sale;
- import and export control of plants and propagating material; and
- a system for different types of schemes for plants and propagating material; and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

## ARRANGEMENT OF SECTIONS

*Sections*

- |    |             |   |
|----|-------------|---|
| 1. | Definitions | 5 |
|----|-------------|---|

### CHAPTER 1

#### APPLICATION OF ACT

- |    |                    |  |
|----|--------------------|--|
| 2. | Application of Act |  |
|----|--------------------|--|

### CHAPTER 2

#### REGISTRAR AND ADMINISTRATION 10

- |    |  |    |
|----|--|----|
| 3. | Designation of Registrar and delegation  |    |
| 4. | Exercise of discretionary powers by Registrar  |    |
| 5. | Register of businesses and premises  |    |
| 6. | Register of varieties  |    |
| 7. | Register to be evidence  | 15 |
| 8. | Inspection of documents submitted in connection with applications for national listing |    |

### CHAPTER 3

#### REGISTRATION OF BUSINESS AND PREMISES

- |    |   |    |
|----|---|----|
| 9. | Types of business that may be conducted | 20 |
|----|---|----|

10.	Premises on or from which business may be conducted	
11.	Application for registration of business and premises	
12.	Registration of business and premises	
13.	Refusal of registration of business and premises	
14.	Period of registration	5
15.	Notification of change of circumstances	
16.	Application for renewal of registration of premises	
17.	Approval for renewal of registration of premises	
18.	Refusal for renewal of registration of premises	
19.	Exemption from registration	10
20.	Termination of registration	
21.	Display and return of certificate of registration	

#### **CHAPTER 4**

#### **CONDITIONS FOR SALE OF PLANTS AND PROPAGATING MATERIAL**

22.	Requirements relating to sale of plants and propagating material	15
23.	Exemptions regarding certain plants and propagating material	

#### **CHAPTER 5**

#### **NATIONAL VARIETAL LIST**

24.	National varietal list	
25.	Maintenance of propagating material	20
26.	Removal of variety denomination from national varietal list	

#### **CHAPTER 6**

#### **APPLICATION FOR NATIONAL LISTING**

27.	Varieties eligible for national listing	
28.	Application for national listing	25
29.	Rejection of application for national listing	
30.	Acceptance and registration of application for national listing	
31.	Amendment of application for national listing	
32.	Objection to application for national listing	

#### **CHAPTER 7** 30

#### **VARIETY DENOMINATIONS**

33.	Denomination of variety	
34.	Amendment of denomination	

#### **CHAPTER 8**

#### **EVALUATION FOR DISTINCTNESS, UNIFORMITY AND STABILITY** 35

35.	Tests and trials	
36.	Refusal for national listing	
37.	Approval for national listing	

#### **CHAPTER 9**

#### **VALUE FOR CULTIVATION AND USE** 40

38.	Evaluation of variety for value, cultivation and use	
-----	--	--

**CHAPTER 10****HEARING OF OBJECTIONS**

39. Hearing of objection

**CHAPTER 11****NATIONAL VARIETAL LIST JOURNAL**

5

40. Matters to be published in Journal

**CHAPTER 12****INSPECTIONS**

41. Inspection for quality control  
42. Power to enter premises, inspection and sampling 10

**CHAPTER 13****IMPORT AND EXPORT OF PLANTS AND PROPAGATING MATERIAL**

43. Import of plants and propagating material  
44. Export of plants and propagating material

**CHAPTER 14**

15

**SCHEMES**

45. Establishment of schemes  
46. Provisions of schemes

**CHAPTER 15****APPEALS**

20

47. Appeal against decision or action of registrar or designated authority

**CHAPTER 16****ADVISORY COMMITTEE**

48. Establishment of Advisory Committee  
49. Appointment of members of Advisory Committee and termination of membership 25  
50. Recusal and disclosure of interests  
51. Meetings

**CHAPTER 17****GENERAL PROVISIONS**

30

52. Request for test results by authority of another country  
53. Disclosure of information  
54. Publication or distribution of false or misleading advertisements  
55. Regulations  
56. Offences 35  
57. Penalties  
58. Presumptions and evidence  
59. Limitation of liability  
60. Delegation  
61. Transitional provisions and savings 40

62. Repeal of laws  
63. Short title and commencement

## SCHEDULE

### Definitions

1. In this Act, unless the context indicates otherwise— 5
- “**agent**” means a person, domiciled and resident in the Republic, who has been duly authorised by the breeder of a variety to act on his or her behalf for filing an application for national listing;
- “**applicant for national listing**” means the breeder of a variety who makes an application for national listing in terms of section 28; 10
- “**authorised person**” means a person, other than an employee, authorised in terms of section 3(5)(a);
- “**breeder**”, in relation to a variety contemplated in section 28, means—
- (a) the person who bred, or discovered and developed, the variety;
- (b) the employer of the person contemplated in paragraph (a), if that person is an employee whose duties are such that the variety was bred, or discovered and developed, in the performance of those duties; or 15
- (c) the successor in title of the person contemplated in paragraph (a) or the successor of the employer contemplated in paragraph (b);
- “**business**” means the business contemplated in section 9; 20
- “**cleaning**” in relation to seed means the removal of other material and other seed from propagating material, either manually or mechanically, in order to improve the general quality thereof;
- “**conditioning**”, in relation to propagating material of a plant variety, means—
- (a) cleaning, drying, coating, sorting, grading or packaging of the material; 25
- (b) testing for germination and vigour; or
- (c) any other similar treatment, undertaken for the purposes of preparing the material for cultivation and sale;
- “**denomination**” in relation to a variety entered in the national varietal list or the regional varietal list, means the denomination contemplated in section 33 that has to be used at all times in connection with the plants and propagating material of the variety in question; 30
- “**Department**” means the Department responsible for agriculture;
- “**designated authority**” means the authority contemplated in section 45(6)(a);
- “**employee**” has the meaning ascribed to it in section 1 of the Public Service Act, 1994 (Proclamation No. 103 of 1994), but does not include an employee contemplated in the definition of breeder; 35
- “**kind of plant**” means a group of plants of the same taxon;
- “**label**” means the piece of paper, plastic or fabric attached to a plant or container containing the prescribed information regarding the identity and source of the plant or propagating material in the container; and “**labelling**” and “**labelled**” have a corresponding meaning; 40
- “**laboratory**” means a facility where plants and propagating material are tested, examined or analysed in respect of the physical or biological property thereof or the occurrence of insects or pathogens thereon or therein or the elimination of pathogens for reward or for marking and labelling for purposes of selling; 45
- “**mark**” means the written or printed identification of the plant on a marker or of the contents of a container on a label affixed to such container; and “**marked**” and “**marking**” have a corresponding meaning;
- “**Minister**” means the Minister responsible for agriculture; 50
- “**national listing**” means the inclusion of a variety denomination in the national varietal list;
- “**national varietal list**” means the list kept in terms of section 24;
- “**nursery**” means a business where plants or propagating material is propagated and grown for sale; 55
- “**pack**” means to pack propagating material or cause it to be packed into containers which are sealed and branded, marked or labelled in the prescribed manner with the prescribed information;
- “**plant**” includes any part of a plant;
- “**premises**” means premises contemplated in section 10; 60

- “**pre-pack**” means to pack propagating material into containers of limited size mostly for sale at retail outlets, which complies with the prescribed requirements, in the mass or quantity prescribed in respect thereof, the containers being in compliance with the prescribed requirements, sealed and branded, marked or labelled in the prescribed manner with the prescribed information; 5
- “**prescribed**” means prescribed by regulation;
- “**propagating material**” means any reproductive or vegetative material of a plant from which, whether alone or in combination with other parts or products of that plant, another plant with the same characteristics can be produced;
- “**regional varietal list**” means the regional varietal list maintained by the designated institution of the Southern African Development Community; 10
- “**Registrar**” means the person contemplated in section 3(1);
- “**regulation**” means a regulation made in terms of section 55;
- “**scheme**” means a certification or other scheme established in terms of section 45;
- “**sell**” includes— 15
- (a) agree to sell or to offer, keep, expose, send, convey or deliver for sale; and
- (b) to exchange or to otherwise dispose of to any person in any manner;
- “**this Act**” includes the regulations;
- “**trademark**” means a registered trademark in terms of the Trade Marks Act, 1993 (Act No. 194 of 1993); 20
- “**variety**” means any plant grouping within a single botanical taxon of the lowest known rank, which grouping can 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 the said characteristics; and 25
- (c) considered as a unit with regard to its suitability for being propagated unchanged.

## CHAPTER 1

### APPLICATION OF ACT 30

#### Application of Act

2. (1) This Act applies to such kinds of plants for agricultural, industrial and forestry production as the Minister may declare by notice in the *Gazette* for the purposes of this Act.
- (2) Any person who desires to have a kind of plant declared in terms of subsection (1) 35 must submit an application with the Registrar in the prescribed manner.

## CHAPTER 2

### REGISTRAR AND ADMINISTRATION

#### Designation of Registrar and delegation

3. (1) Subject to the Public Service Act, 1994 (Proclamation No. 103 of 1994), and 40 following the recruitment processes prescribed by and in terms of that Act, the Minister must appoint and designate a person as the Registrar of Plant Improvement.
- (2) The Registrar is the authority to whom the registration of a type of business and premises, national listing, import and export control, certification schemes and enforcement of quality control is entrusted and must perform the functions entrusted to 45 the Registrar under this Act.
- (3) The Registrar must appoint such number of technical and administrative persons as are necessary to support him or her in the performance of his or her functions in terms of this Act, following the recruitment procedures of the Public Service Act, 1994 (Proclamation No. 103 of 1994). 50
- (4) The Office of the Registrar serves as the National Authority and contact point with the National Authorities of other countries and regional authorities for matters relating to national listing, certification and quality control of plants and propagating material.

(5) (a) The Registrar may delegate to any competent employee or, subject to the approval of the Minister, delegate to a person other than an employee, the performance of any function entrusted to the Registrar under this Act.

(b) Any decision made or order given by such employee or person must be regarded as having been made by the Registrar. 5

(c) The Registrar may withdraw or amend any decision or order contemplated in paragraph (b), subject to any rights that may have vested as a consequence of such decision or order.

#### **Exercise of discretionary powers by Registrar**

4. (1) Subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000)—

(a) any discretionary power conferred on the Registrar in terms of this Act, other than the power conferred in terms of section 43(3)(a)(i), must not be exercised by him or her to the prejudice of any applicant or any other person who appears to the Registrar to be an interested party, without giving such applicant or such other person an opportunity to be heard within such period as may be prescribed or, if no period has been prescribed, within such reasonable period as the Registrar may determine; and 15

(b) an applicant or other person referred to in paragraph (a) may waive the right to be heard. 20

(2) Whenever a period is specified under this Act within which any act or anything must be done, the Registrar may, except where otherwise expressly provided, extend the time.

#### **Register of businesses and premises**

5. (1) The Registrar must keep a register in which the prescribed information and particulars in respect of every business and premises registered in terms of section 12 must be entered. 25

(2) The register must be open for inspection at the Office of the Registrar.

(3) The Registrar must furnish, at the request of any person and upon payment of the prescribed fee, a copy of any particulars in the register. 30

#### **Register of varieties**

6. (1) The Registrar must keep a register in which the prescribed particulars in respect of all applications for national listing in terms of this Act must be entered.

(2) The register must be open for inspection at the Office of the Registrar.

(3) The Registrar must furnish, at the request of any person and upon payment of the prescribed fee, a copy of any particulars in the register. 35

#### **Register to be evidence**

7. (1) The registers referred to in sections 5 and 6 are *prima facie* evidence of all matters directed or authorised by this Act to be noted therein.

(2) A copy of an entry in the register or an extract from the register, certified by the Registrar, may be admitted in evidence in any court without further proof or production of the register. 40

#### **Inspection of documents submitted in connection with applications for national listing**

8. (1) Any person may inspect any document submitted in connection with an application for national listing at a reasonable time and upon payment of a prescribed fee. 45

(2) The Registrar must furnish the person contemplated in subsection (1), upon payment of a prescribed fee, with a copy of the document contemplated in that subsection. 50

(3) Notwithstanding subsections (1) and (2) but subject to subsection (4), a person may not—

- (a) inspect that part of the document in question that contains information in respect of the name of each variety used in the breeding program and in respect of the manner in which the variety was bred;
  - (b) be furnished with a copy of the part of the document referred to in paragraph (a); or 5
  - (c) inspect, or be furnished with a copy of, any other prescribed confidential information.
- (4) Subsection (3) does not apply to—
- (a) the applicant;
  - (b) the applicant's authorised agent; or 10
  - (c) any other person who has to inspect that part of the document or information contemplated in subsection (3) in the course of the performance of a function entrusted to him or her in terms of this Act.

### CHAPTER 3

#### REGISTRATION OF BUSINESS AND PREMISES 15

##### **Types of business that may be conducted**

- 9.** (1) Any person who desires to conduct one or more of the following types of business relating to plants or propagating material for cultivation and sale, must be registered in terms of this Act and must comply with the prescribed requirements, unless exempted in terms of section 19: 20
- (a) The cleaning and conditioning of seed;
  - (b) the pre-packing of seed;
  - (c) the selling of seed;
  - (d) the running of a nursery or any other type of multiplication facility;
  - (e) the running of a laboratory; 25
  - (f) the importation of plants or propagating material; or
  - (g) the export of plants or propagating material.
- (2) A person may not conduct a type of business referred to in subsection (1) on or from any premises unless—
- (a) the premises is registered under this Act; and 30
  - (b) the type of business is specified on the certificate of registration issued in respect of such premises.
- (3) Subject to subsection (2), a person may—
- (a) conduct different types of business referred to in subsection (1) on or from the same premises; and 35
  - (b) conduct a type of business referred to in subsection (1) on or from more than one premises,
- as long as the prescribed facilities are available and prescribed practises are employed on the premises in question.
- (4) A person may not conduct a type of business referred to in subsection (1) on or from any premises of which the registration— 40
- (a) has lapsed due to failure to renew the registration in terms of section 17 within the prescribed period; or
  - (b) has been terminated by the Registrar in terms of section 20.
- (5) For the purposes of this section, subsection (1)(a) to (c) does not include the cleaning and conditioning, pre-packing and selling of tubers. 45

##### **Premises on or from which business may be conducted**

- 10.** (1) Premises on or from which a type of business referred to in section 9(1) may be conducted, must—
- (a) be registered in terms of this Act and must comply with the prescribed requirements; and 50
  - (b) have a valid registration certificate reflecting the correct physical address and any type of business which may be conducted on the premises.
- (2) The person in direct control of the premises must comply with the prescribed requirements when business contemplated in section 9(1) is conducted. 55

### Application for registration of business and premises

- 11.** (1) Any person who desires to register—
- (a) a type of business referred to in section 9(1); and
  - (b) the premises on or from which that type of business will be conducted,
- must apply to the Registrar in the prescribed manner for registration. 5
- (2) A person who desires to register additional premises on or from which he or she wishes to conduct a type of business after registration in terms of section 12 of that type of business and premises on or from which that type of business will be conducted must apply to the Registrar in the prescribed manner for registration of the additional premises. 10
- (3) A person who desires to register an additional type of business in respect of premises after registration in terms of section 12 of a type of business and that premises on or from which the last mentioned type of business will be conducted must apply to the Registrar in the prescribed manner for registration of the additional type of business.
- (4) The name of the business or premises must not be similar to or be liable to cause confusion with the name of another business or premises. 15
- (5) (a) The Registrar must consider an application referred to in subsection (1) and may undertake any investigation or inspection in connection with the application in order to determine compliance with the prescribed requirements.
- (b) Any person applying for registration in terms of subsection (1) must make available to the Registrar for inspection, in the manner and at the time and place determined by the Registrar, the premises and such particulars as may be prescribed. 20

### Registration of business and premises

- 12.** (1) The Registrar must register a business and issue a certificate of registration in respect thereof if— 25
- (a) it is a type of business contemplated in section 9(1);
  - (b) the practices employed in the business in question are in compliance with the prescribed requirements; and
  - (c) the prescribed facilities for the type of business in question are available on or at the relevant premises. 30
- (2) The Registrar must register premises and issue a certificate of registration in respect thereof if—
- (a) the premises complies with the prescribed requirements;
  - (b) the prescribed facilities for the business in question are available at the premises; 35
  - (c) the person in direct control of the premises has sufficient knowledge of the practices to be employed in the operation of the business and of the relevant provisions of this Act;
  - (d) in the case of a laboratory and multiplication facility, the responsible official of the technical operations at such premises is in possession of the prescribed qualifications, has sufficient knowledge of the practices to be employed in those operations and has sufficient knowledge of the relevant provisions of this Act; and 40
  - (e) the premises comply with such other requirements as may be prescribed.
- (3) The certificates of registration of a business and premises are not transferable. 45

### Refusal of registration of business and premises

- 13.** (1) The Registrar must refuse to register a business if one or more of the requirements set out in section 12(1) are not complied with.
- (2) The registrar must refuse to register premises if one or more of the requirements set out in section 12(2) are not complied with. 50
- (3) If the Registrar refuses an application for registration in terms of subsection (1) or (2), the Registrar must, within 14 days of the date of the refusal, notify the applicant of the refusal and furnish written reasons to the applicant for such refusal.

### Period of registration

- 14.** (1) The registration of a type of business is valid from the date of issue of the certificate of registration in terms of section 12(1) until the date of termination by the 55

person in whose name the type of business was registered or termination of registration by the Registrar in terms of section 20, whichever date is earlier.

(2) The registration of premises is valid for a period of three years from the date of issue of the certificate of registration in terms of section 12(2) or until termination by the person in whose name premises was registered or termination by the Registrar in terms of section 20, whichever date is earlier. 5

#### **Notification of change of circumstances**

**15.** (1) The person in whose name a type of business and premises has been registered in terms of section 12 must notify the Registrar in writing if there is any change with regard to any information which was submitted in respect of the application for the issue of the certificates of registration referred to in that section within 30 days of the date of change. 10

(2) The Registrar must—

- (a) consider the notice referred to in subsection (1);
- (b) inspect the premises if necessary; 15
- (c) update the information in the register contemplated in section 5, and
- (d) issue a new certificate if the change so requires.

#### **Application for renewal of registration of premises**

**16.** (1) The person to whom a certificate of registration has been issued in terms of section 12(2) must apply for the renewal of the registration before or on the date of expiry of the certificate in the prescribed manner. 20

(2) If the application for renewal has been lodged before or on the date of expiry in terms of subsection (1), the certificate remains valid until the application for renewal is decided.

#### **Approval for renewal of registration of premises** 25

**17.** (1) The Registrar must renew the registration of a premises if—

- (a) the provisions of section 12(2) are complied with; and
- (b) the prescribed records regarding the plants or propagating material handled at the premises are being kept for the period and in the manner prescribed, and such information in connection therewith as the Registrar may require has been furnished to the Registrar. 30

(2) The Registrar may renew the registration of premises subject to such conditions as he or she may determine in each case.

(3) If the Registrar renews the registration of premises, he or she must within 14 days of the decision notify the person who applied for such renewal by issuing a certificate of registration in respect of the premises and enter the relevant details in the register contemplated in section 5. 35

(4) The renewal of the registration of premises is, subject to earlier termination under this Act, valid for a period of three years from the date of issue of the certificate of registration in terms of this section. 40

(5) Section 16 applies with the changes required by the context in respect of the renewal of registration of a certificate issued in terms of this section.

#### **Refusal for renewal of registration of premises**

**18.** (1) The Registrar must refuse to renew the registration of premises if any of the provisions of section 12(2) are not complied with. 45

(2) If the Registrar refuses an application for the renewal of the registration of premises, he or she must, within 14 days of the date of that decision, inform the person who applied for the renewal in writing of his or her decision and the reasons for such decision.

#### **Exemption from registration** 50

**19.** (1) The Minister may, by notice in the *Gazette* and on such conditions as he or she may specify in the notice, exempt any type of business from the provisions of section 9 and any premises from the provisions of section 10.

(2) Any person seeking exemption from section 9 or section 10, or both, must submit an application with the Registrar in the prescribed manner.

### **Termination of registration**

**20.** (1) The registration of a type of business contemplated in section 9(1) may be terminated— 5

- (a) by the Registrar upon the written request by the person in whose name the certificate of registration was issued; or
- (b) by the Registrar if—
  - (i) a condition of or a requirement for the registration of a type of business in terms of section 12(1) is no longer complied with; 10
  - (ii) the person in whose name the certificate of registration was issued, was found guilty of an offence under this Act; or
  - (iii) ordered by a court.

(2) The registration of premises may be terminated—

- (a) by the Registrar upon the written request by the person in whose name the certificate of registration was issued; or 15
- (b) by the Registrar if—
  - (i) a condition of or a requirement for the registration of the premises in terms of section 12(2) is no longer complied with;
  - (ii) the person to whom the certificate of registration in respect thereof was issued, has been found guilty of an offence under this Act; 20
  - (iii) the person to whom the certificate of registration in respect thereof was issued ceases to be the owner or occupier of the premises;
  - (iv) the premises in question is no longer used for the conduct of the type of business for which it was registered; 25
  - (v) the person in direct control of a laboratory or multiplication facility ceases to be employed at the premises without being replaced by a person complying with the requirements;
  - (vi) the person to whom the certificate of registration in respect thereof was issued, failed to renew the registration in terms of section 17; or 30
  - (vii) ordered by a court.

(3) If the Registrar terminates the registration of a type of business in terms of subsection (1) or premises in terms of subsection (2), the Registrar must, within 14 days of the date of the decision, inform the person to whom the certificate of registration in respect of the type of business or premises was issued and must furnish that person with written reasons for the decision to terminate registration. 35

### **Display and return of certificate of registration**

**21.** (1) The certificate of registration issued in respect of a type of business and premises must be displayed at all times in a prominent position at the premises and be available for inspection by the Registrar. 40

(2) When the registration of a business and premises has been terminated in terms of section 20, the relevant certificates of registration must be collected by the Registrar within a prescribed period.

## **CHAPTER 4**

### **CONDITIONS FOR SALE OF PLANTS AND PROPAGATING MATERIAL 45**

#### **Requirements relating to sale of plants and propagating material**

- 22.** (1) Plants and propagating material sold for purposes of cultivation must—
- (a) be of varieties of the kinds of plants contemplated in section 24;
  - (b) be sold under the approved denomination or synonym entered in respect thereof in the national varietal list or regional varietal list, and a qualifying term or reference may be used in conjunction thereof; 50
  - (c) comply with the requirements prescribed in respect of the plant and propagating material in question; and
  - (d) in the case of—

- (i) propagating material, be pre-packed or packed in containers which comply with the prescribed requirements and which are sealed and branded, marked or labelled in the prescribed manner with the prescribed information; or
  - (ii) a plant or batch of plants, be labelled in the prescribed manner with the label containing the prescribed information. 5
- (2) Notwithstanding subsection (1), seed mixtures may be sold subject to prescribed requirements.
- (3) (a) A person may in writing apply to the Registrar, with the furnishing of reasons, for exemption from compliance with one or more of the requirements set out in subsection (1). 10
- (b) In order to enable the Registrar to make a decision on an application in terms of paragraph (a) the Registrar may call for further information from the applicant.
- (c) The Registrar may after considering an application—
- (i) refuse to grant exemption; or 15
  - (ii) in writing grant exemption from compliance with one or more of the requirements set out in subsection (1), subject to such conditions as the Registrar may deem fit.
- (d) If any condition referred to in paragraph (c)(ii) is not being complied with, the Registrar may in writing withdraw the exemption in question. 20
- (4) Plants and propagating material contemplated in subsection (1) must be sold from a business and premises registered in terms of this Act, unless exempted from registration in terms of section 19.

### **Exemptions regarding certain plants and propagating material**

- 23.** (1) This Act does not apply to— 25
- (a) propagating material intended for purposes other than the cultivation thereof;
  - (b) the cleaning and conditioning of propagating material for private and non-commercial purposes by the producer thereof for own use;
  - (c) the sale of propagating material by the producer thereof to the person in whose name the certificate of registration in respect to a premises was issued: 30  
Provided that—
    - (i) in the case of propagating material certified under a scheme, the containers of the material must be sealed and labelled or marked in accordance with the provisions of the scheme; and
    - (ii) in the case of propagating material not certified under a scheme, the name and address of the producer, the kind of plant and the denomination of the variety concerned must be clearly and legibly marked on the container thereof or on a label attached thereto or on an accompanying invoice; or 35
  - (d) non-commercial varieties of the kinds of plants regulated by this Act. 40
- (2) For the purposes of subsection (1)(d), “non-commercial variety”—
- (a) means an unprotected variety of any kind of plant regulated by this Act that is available for cultivation and sale on such non-commercial scale as may be prescribed; and
  - (b) in the case of any kind of plant of which seeds are regulated by this Act, means 45  
any open-pollinated variety of that kind of plant.

## **CHAPTER 5**

### **NATIONAL VARIETAL LIST**

#### **National varietal list**

- 24.** (1) The Registrar must keep and publish a list of such specific varieties or all varieties of such kinds of plants as may be prescribed. 50
- (2) In cases where specific varieties are listed, the national varietal list must, in respect of a variety, contain the denomination—
- (a) of a variety approved in terms of section 37;
  - (b) of a variety in respect of which a plant breeder’s right has been granted in terms of the Plant Breeders’ Rights Act, 1976 (Act No. 15 of 1976), if an application has been submitted in terms of section 28; or 55

- (c) by which a variety is generally known on the date when the kind of plant to which the variety belongs, has been declared as a kind of plant in terms of section 2, if an application has been submitted in terms of section 28 and the variety complies with the requirements contemplated in section 27.
- (3) If a variety is known by a synonym approved by the breeder of the variety or a trademark, the Registrar may enter these details in the varietal list in addition to the approved denomination. 5
- (4) The Registrar may enter in the varietal list any other particulars regarding a variety referred to in subsection (1) that the Registrar deems necessary.
- (5) The varietal list kept in terms of section 15 of the Plant Improvement Act, 1976 (Act No. 53 of 1976), must be incorporated in and must form part of the list kept under this section, and any document, information or other proof furnished to the registrar in terms of that Act must be regarded as having been furnished to the Registrar under the corresponding provision of this Act. 10

#### **Maintenance of propagating material** 15

- 25.** (1) The applicant for listing must ensure that he or she is able for the period that the denomination of the variety is included in the national varietal list, and when requested by the Registrar, to-
- (a) furnish the Registrar with propagating material of the listed variety that is capable of reproducing the variety in question in such a manner that the characteristics of the variety correspond with those described at the time of listing; and 20
- (b) provide the Registrar with the information and access to the relevant facilities to satisfy the Registrar that the applicant is maintaining propagating material that conform with the requirements contemplated in paragraph (a). 25
- (2) The Registrar may conduct such inspection, during business hours, in connection with any matter contemplated in subsection (1), as may be necessary in order to confirm compliance with the provisions of that subsection.

#### **Removal of variety denomination from national varietal list**

- 26.** (1) The Registrar may remove the denomination of a variety from the national varietal list if— 30
- (a) it is established that the requirement specified in section 27(1)(a) has not been complied with at the time of approval of the variety;
- (b) a requirement specified in section 27(1)(b) or (c) is no longer complied with;
- (c) it is in public interest to remove it; 35
- (d) the results of an evaluation referred to in section 38 indicate that the use of the variety is not in public interest;
- (e) the applicant has failed to provide the registrar with information or propagating material considered necessary for verifying the maintenance of the variety within three months of the date on which the registrar requested the information or material in terms of section 25(1); 40
- (f) the applicant has failed to propose within 30 days from the date of notification in terms of section 34(2) another suitable denomination if the denomination of the variety is cancelled after approval of the variety; or
- (g) a third party has, in the prescribed format, lodged an application for the removal of a denomination of a variety to the registrar, in the event that— 45
- (i) such third party has reason to believe that any of the circumstances contemplated in paragraphs (a) to (d) are present; and
- (ii) the Registrar, after investigation, is of the view that such circumstances are present. 50
- (2) The Registrar must—
- (a) notify the applicant of the variety concerned in writing that removal of the denomination of the variety from the national varietal list is being considered and provide the reasons for such consideration, unless the identity and address is unknown to the Registrar; 55
- (b) request the applicant of the variety concerned to submit reasons in writing within the prescribed period as to why the denomination of the variety should not be removed;

- (c) consider any reasons received pursuant to the notice contemplated in paragraph (a);
  - (d) make a decision whether or not to remove the denomination of the variety; and
  - (e) in the event that he or she decides to remove the denomination of the variety in accordance with subsection (1)—
    - (i) inform the applicant of the variety concerned in writing of the removal and the reasons for the decision; and
    - (ii) remove the variety within 60 days in the event that the applicant of the variety concerned does not lodge an appeal to the removal.
- (3) The Registrar must remove the denomination of a variety from the national varietal list if ordered by a court or the board contemplated in section 47.

## CHAPTER 6

### APPLICATION FOR NATIONAL LISTING

#### Varieties eligible for national listing

27. A variety must be listed if it is—
- (a) clearly distinguishable from any other variety of the same kind of plant which has been included in the national varietal list;
  - (b) sufficiently uniform with regard to the characteristics thereof, subject to the variation that may be expected from the particular features of the propagation of that variety;
  - (c) stable in that the characteristics of the variety remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle; and
  - (d) identified by a denomination which complies with the provisions of section 33.

#### Application for national listing

28. (1) An application for national listing must be made by an applicant in the prescribed manner and must be accompanied by the following duly completed documents and fees—
- (a) An application form obtainable from the office of the Registrar;
  - (b) a technical questionnaire in respect of the kind of plant of the variety in question obtainable from the office of the Registrar;
  - (c) written proof of the appointment of an agent by the applicant, if applicable;
  - (d) written proof of the transfer of the variety to the applicant, if applicable; and
  - (e) such application fee and such examination fee as may be prescribed.
- (2) If the applicant is not domiciled and resident in the Republic, the application must be submitted through an agent.
- (3) (a) In case of an old variety where the breeder cannot be traced, the applicant must furnish the Registrar with a prescribed declaration.
- (b) Neither the Registrar nor the State is liable for any claim as a result of a declaration submitted in terms of paragraph (a).
- (4) The Registrar must notify the applicant of any outstanding documentation or information within 21 days of the date of receiving the application.
- (5) The applicant must furnish the Registrar with any documentation or information required by the Registrar within three months of the date of notification contemplated in subsection (4), failure of which may result in the application being returned to the applicant.
- (6) (a) The effective filing date is the date on which the requirements of subsection (1) have been met and any outstanding documentation or information required by the Registrar in terms of subsection (5) has been received.
- (b) Copies of documents referred to in subsection (1)(a) to (d) may be submitted in order to secure a filing date, but the original documents must be submitted to the Registrar within three months of the filing date, failure of which may result in the application to lapse.
- (7) (a) In case of a variety that may not be used without prior approval in terms of other legislation, the application must be accompanied by the relevant permit or proof of general release for the variety, as the case may be.

(b) If the applicant is not the owner of the variety, the written permission of the owner must be submitted with the application.

### **Rejection of application for national listing**

- 29.** (1) The Registrar must reject an application made in terms of section 28, if—
- (a) the applicant is not entitled to make an application under this Act; 5
  - (b) the application contains a misrepresentation; or
  - (c) the applicant refuses, fails to or is not able to propose such an acceptable denomination as may be prescribed.
- (2) In the event that the Registrar rejects an application in terms of subsection (1), all fees relating to such application are forfeited. 10
- (3) If the Registrar rejects an application in terms of subsection (1), the Registrar must notify the applicant in writing within 21 days of the date of that decision and state the reasons for rejection.

### **Acceptance and registration of application for national listing**

- 30.** (1) If the Registrar accepts the application, the Registrar must register the application and must notify the applicant in writing of the acceptance within 21 days of the date of the registration of the application. 15
- (2) The Registrar must enter the particulars of every application for national listing in the relevant register.

### **Amendment of application for national listing** 20

**31.** An applicant whose application has been registered in terms of section 30 may, at any time before or after the approval of the variety, apply in the prescribed manner to the Registrar for an amendment of that application, subject to the approval of the Registrar and upon payment of the prescribed fee, if the amendment does not affect the description of the variety which is the subject of the application. 25

### **Objection to application for national listing**

- 32.** (1) Any person may lodge an objection with the Registrar in respect of an application for national listing following the publication of the information regarding the application in terms of section 40 within 60 days from the date of publication.
- (2) The Registrar must within seven days of the date of the receipt of an objection inform the applicant concerned in writing of the objection and provide the applicant with a copy of the objection. 30
- (3) The applicant may lodge a counter-statement against the objection with the Registrar within 30 days of the date of receiving the information.

## **CHAPTER 7** 35

### **VARIETY DENOMINATIONS**

#### **Denomination of variety**

- 33.** (1) An applicant for national listing must, subject to the approval of the Registrar, propose a denomination that complies with the prescribed requirements and a synonym, if required, when submitting an application for national listing. 40
- (2) No denomination other than the denomination and synonym approved by the Registrar in terms of subsection (1) may be used in connection with the variety in question.
- (3) Subsection (2) does not prohibit the proprietor or other registered user of a trademark to use such trademark in conjunction with the denomination which has been entered in the national varietal list, if such trademark is clearly distinguishable from the variety denomination. 45
- (4) A variety must be submitted to the Registrar under the same denomination as the denomination by which it is known in any other country, unless the Registrar considers that denomination unacceptable in accordance with recognised international and regional rules, in which case the applicant must submit an alternative denomination. 50

(5) If a variety is known by more than one denomination, the applicant must indicate the preferable denomination to be listed as the main denomination and the Registrar may include the other denomination as a synonym.

### **Amendment of denomination**

**34.** (1) The Registrar must amend the denomination approved in respect of a variety 5  
in terms of section 33, if—

- (a) ordered by a court on application by a person who in law has a preferential claim to the use of the denomination in question;
- (b) the information submitted to the Registrar in the application for the approval of, or in connection with, the denomination in question was incorrect and such denomination would not have been approved had the Registrar known at the time of the application that such information was incorrect; or
- (c) information comes to light which, if discovered earlier, would have resulted in the refusal of such denomination.

(2) (a) If an amendment becomes necessary on any ground referred to in subsection 15  
(1), the Registrar must notify the relevant applicant accordingly in writing and must give the reasons in the notice why the amendment is necessary.

(b) The applicant must submit proposals in writing to the registrar for an alternative denomination within 30 days from the date of receipt of the notice referred to in paragraph (a). 20

(3) An applicant may request the Registrar in the prescribed manner at any time before the approval of the variety for national listing to amend the approved denomination.

(4) The Registrar must consider the request referred to in subsection (3) and must notify the applicant of his or her decision and provide the reasons for the decision if 25  
rejected, in writing within 14 days of the date on which the request was received.

(5) Any person may lodge an objection in the prescribed manner and within the prescribed period against an intended amendment of a variety denomination.

(6) If a denomination referred to in section 24(2)(b) has been altered or supplemented in terms of the Plant Breeders' Rights Act, 1976 (Act No. 15 of 1976), and if a 30  
notification is provided to the Registrar, the registrar must alter or supplement the denomination in the national varietal list accordingly.

## **CHAPTER 8**

### **EVALUATION FOR DISTINCTNESS, UNIFORMITY AND STABILITY**

#### **Tests and trials** 35

**35.** (1) The Registrar must, in order to enable him or her to determine whether a variety in respect of which an application has been accepted, is distinct, uniform and stable in accordance with section 27—

- (a) undertake or cause to be undertaken such tests and trials as may be necessary; or
- (b) use the results of tests and trials obtained from the appropriate authority in another country. 40

(2) (a) The applicant must furnish the Registrar within the prescribed period with such material as may be prescribed.

(b) The Registrar may grant an extension to the applicant from compliance with 45  
paragraph (a) for a period not exceeding the initial prescribed period.

(c) An application for extension contemplated in paragraph (b) must be submitted to the Registrar in writing and must—

- (i) set out reasons for the request of an extension; and
- (ii) in the event of imported plant material, include prescribed proof that the plant 50  
material has been imported into the Republic.

(d) An application in terms of section 28 lapses if the material contemplated in paragraph (a) is not furnished to the Registrar within the prescribed period or the extended period, as the case may be.

(3) If an objection has been lodged against an application for national listing in terms 55  
of section 32, the Registrar may terminate all actions performed in accordance with subsection (1)(a) or (b) in the event that such objection is upheld.

**Refusal for national listing**

- 36.** (1) The Registrar must refuse the approval of a variety for national listing if—
- (a) after examining the results of any tests or trials conducted in terms of section 35(1) in respect of the variety in question, the requirements specified in section 27 have not been met; 5
  - (b) it is in the public interest to do so; or
  - (c) the Registrar, after an evaluation in terms of section 38, decides that the variety is undesirable for use.
- (2) If the results from the tests or trials conducted in terms of section 35(1) indicate that two or more varieties in respect of which different applications have been registered in terms of section 30 cannot be distinguished, the registrar must approve the variety of the applicant whose application— 10
- (a) was submitted first in time; or
  - (b) of which the filing date complies with section 28(1), whichever is earlier.
- (3) (a) The Registrar must inform any applicant contemplated in subsection (1) or (2) in writing of the Registrar's decision and of the reasons for the refusal. 15
- (b) The Registrar must in respect of each variety which is refused, enter the applicable particulars in the register contemplated in section 6.

**Approval for national listing**

- 37.** (1) The Registrar must approve national listing in respect of a variety applied for if, subject to section 36(2) and after tests and trials contemplated in section 35(1) and evaluation contemplated in section 38, that variety conforms to the requirements specified in section 27. 20
- (2) The Registrar must notify the applicant in writing of the approval of each variety.
- (3) The Registrar must, in respect of each variety which is approved, enter the applicable particulars referred to in section 24 in the national varietal list and the particulars referred to in section 6 in the register. 25

**CHAPTER 9****VALUE FOR CULTIVATION AND USE****Evaluation of variety for value, cultivation and use** 30

- 38.** (1) The Registrar may, in cases where the value for cultivation and use of a variety is doubtful, evaluate that variety in the prescribed manner in order to determine its value.
- (2) For the purposes of subsection (1), the Registrar may investigate—
- (a) any variety in respect of which an application for national listing has been accepted in terms of section 30; or 35
  - (b) any variety which has been listed in the national varietal list.
- (3) The prescribed quantity of plants or prescribed mass of propagating material of the variety in question required for the purposes of the evaluation must be supplied to the Registrar by the applicant at the prescribed time and prescribed place.
- (4) The Registrar may, in order to enable him or her to evaluate a variety— 40
- (a) examine the variety in the manner which he or she deems appropriate;
  - (b) cause the variety to be examined; or
  - (c) obtain results of an evaluation conducted on that variety.
- (5) The Registrar may, as a result of the evaluation of a variety— 45
- (a) approve or refuse the variety for national listing; or
  - (b) retain or remove the variety from the national varietal list.
- (6) If the Registrar decides to refuse or remove a variety from the national varietal list, he or she must notify the applicant in writing within 14 days of the date of the decision and the reasons for the decision.
- (7) If plants or propagating material cannot be supplied in terms of subsection (3), the Registrar must— 50
- (a) in the case of a variety referred to in subsection (2)(a), refuse the application for national listing of the variety; or
  - (b) in the case of a variety referred to in subsection (2)(b), remove the variety from the national varietal list. 55

(8) The Registrar may, at any time after an investigation in terms of this section has been undertaken, repeat the investigation.

## CHAPTER 10

### HEARING OF OBJECTIONS

#### Hearing of objection 5

**39.** (1) In considering an objection lodged in terms of section 32, the Registrar must call for a hearing in accordance with this section.

(2) The Registrar must determine the date on and the time and place at which the objection will be heard and must inform the person objecting and the applicant in question in writing of such date, time and place. 10

(3) (a) The Registrar may appoint one or more persons who have experience in the administration of justice or skill in any matter which may be considered at the hearing, to assist and advise the Registrar with regard to the hearing of the objection.

(b) A person appointed in terms of paragraph (a) must receive such remuneration as may be prescribed. 15

(4) The Registrar may, for the purposes of the hearing of an objection—

(a) summon any person who may have material information concerning the subject of the hearing or who has in his or her possession or control any document that has a bearing upon that subject, to appear before the registrar at a time and place specified in the summons, to be interrogated or to produce that document, and the Registrar may retain for examination any document so produced; 20

(b) administer an oath to or accept an affirmation from any person called as a witness at the hearing; and

(c) call any person present at the hearing as a witness and interrogate him or her and require him or her to produce any document in his or her possession or under his or her control. 25

(5) The procedure at the hearing of an objection must be prescribed.

(6) The person objecting and the applicant may be represented if they appear before the Registrar at the hearing of an objection. 30

(7) The Registrar must inform the person objecting and the applicant in writing of his or her decision and reasons for his or her decision within seven days after the date of the hearing of the objection.

## CHAPTER 11

### NATIONAL VARIETAL LIST JOURNAL 35

#### Matters to be published in Journal

**40.** (1) The Registrar must ensure that a journal, the National Varietal List Journal, is published on an annual basis or at regular intervals within each year.

(2) The subject matter of the journal contemplated in subsection (1) must be prescribed, and must include— 40

(a) particulars relating to an application in terms of section 28;

(b) any amendments or alterations made to an application contemplated in paragraph (a);

(c) any withdrawal or rejection before the approval or rejection for national listing; 45

(d) any decisions with regard to the approval or refusal for national listing; and

(e) any decision with regard to the removal of variety denominations from the national list after approval for listing.

## CHAPTER 12

## INSPECTIONS

**Inspection for quality control**

41. (1) Subject to subsection (2), premises must be regularly inspected in the prescribed manner during the period of registration. 5

(2) The Registrar, an employee or an authorised person may during office hours, without a warrant, enter any business or premises registered in terms of this Act and—

- (a) open any container found at or on the premises which he or she believes on reasonable grounds to contain plants or propagating material;
- (b) examine the plants or propagating material and take samples thereof; and 10
- (c) require the person in control of or employed at the premises to produce for inspection, or for the purposes of obtaining copies or extracts, any books, labels, shipping bills, bills of lading or other documents or papers with respect to the administration of this Act.

**Power to enter premises, inspection and sampling** 15

42. (1) The Registrar, an employee or an authorised person may, on the grounds of a warrant issued in terms of subsection (3), at any reasonable time —

- (a) enter and inspect any place, premises or vehicle in or upon which any plant, propagating material, substance or other article in respect of which this Act applies, is or is upon reasonable grounds suspected to be produced, reproduced, bred, cultivated, processed, treated, prepared, tested, examined, analysed, classified, pre-packaged, marked, labelled, held, kept, packed, removed, transported, exhibited or sold; 20

- (b) instruct a person in control of or employed at such place, premises or vehicle to— 25

- (i) deliver any book, record or other document that pertains to that plant, propagating material, substance or other article and which is in the possession or under the control of that person;
- (ii) furnish such information he or she has with regard to that plant, propagating material, substance or other article; or 30
- (iii) render such assistance that the Registrar, employee or person requires to enable him or her to perform his or her functions in terms of this Act;

- (c) inspect any book, record or other document and make copies thereof or excerpts from it; 35

- (d) seize any plant, propagating material, substance, book, record or other document or article which is or might be relevant to a prosecution under this Act and keep it in his or her custody: Provided that the person from whose possession or control any book, record or document has been taken, may, at his or her own expense and under the supervision of the Registrar, employee or person concerned, make copies thereof or excerpts from it; and 40

- (e) take samples of any plant, propagating material, substance or other article used or intended for use in the production, reproduction, breeding, cultivation, processing, treatment, preparation, testing, examining, analysing, classification, pre-packaging, marking, labelling, holding, keeping, packing, removal, transport, exhibition or sale thereof, and of any plant, propagating material, substance or other article seized in terms of paragraph (d), and examine, analyse or classify such samples. 45

(2) Any sample taken in terms of subsection (1)(e) or (6) must—

- (a) consist of the quantity or mass determined by the Registrar, taken in accordance with the methods determined by him or her; 50

- (b) be taken in the presence of the person in charge of, or the owner or custodian of such plant, propagating material, substance or other article, or, if such person, owner or custodian is not available, in the presence of any other witness, and the form determined by the Registrar must be completed in respect thereof; 55

- (c) be packed and identified in such manner as the nature thereof permits; and

(d) as soon as reasonably possible be tested, examined or analysed in accordance with such methods as the Registrar may determine or as may be prescribed, and the result of such test, examination or analysis must be entered on the form determined by the Registrar.

(3) A warrant referred to in subsection (1) must be issued by a magistrate who has jurisdiction in the area where the place or premises in question is situated, or where the vehicle is or will be, and must be issued if it appears to the magistrate from information on affirmation or oath that there are reasonable grounds for believing that an article mentioned in subsection (1)(a) and (b) is upon or in such place, premises or vehicle, and must specify which of the acts mentioned in subsection (1) may be performed thereunder by the person to whom it is issued. 5 10

(4) A warrant issued in terms of this section must be executed by day unless the person who issues the warrant authorises the execution thereof by night at times which must be reasonable, and entry upon and search of any place, premises or vehicle specified in such warrant must be conducted with strict regard to decency and order, including— 15

- (a) a person's right to, respect for and protection of his or her dignity;
- (b) the right of a person to freedom and security; and
- (c) the right of a person to his or her personal privacy.

(5) The person executing a warrant in terms of this section must immediately before commencing with the execution— 20

- (a) identify himself or herself to the person in control of the place, premises or vehicle, if such person is present, and hand to such person a copy of the warrant or, if such person is not present, affix such copy to a prominent place on the place, premises or vehicle; and
- (b) supply such person at his or her request with particulars regarding his or her authority to execute such a warrant. 25

(6) The Registrar or authorised person may enter any place, premises or vehicle without a warrant and search for, seize, take samples of and remove any article referred to in subsection (1) if the person who is competent to do so, consents to such entry, search, seizure, taking of samples and removal. 30

(7) (a) The Registrar or authorised person who may on the grounds of a warrant issued in terms of subsection (3), enter and search any place, premises or vehicle, may use such force as may be reasonably necessary to overcome resistance to such entry or search.

(b) No person may enter upon and search any place, premises or vehicle unless he or she has audibly— 35

- (i) demanded admission to the place, premises or vehicle;
- (ii) identified himself or herself; and
- (iii) notified the occupant of the purpose of his or her entry, unless such person is upon reasonable grounds of the opinion that any article may be destroyed if such admission is first demanded, such identification communicated and such purpose is first notified. 40

(8) If, during the execution of a warrant or the conducting of a search in terms of this section, a person claims that an article found on or in the place, premises or vehicle in question contains privileged information and refuses the inspection or removal of such article, the person executing the warrant or conducting the search must, if he or she is of the opinion that the article contains information which is relevant to the investigation and that such information is necessary for the investigation or hearing, request a magistrate who has jurisdiction to authorise the seizing and removal of that article for safe custody until a court of law has made a ruling on the question whether or not the information in question is privileged. 45 50

(9) A warrant issued in terms of this section may be issued on any day and remains in force until—

- (a) it is executed;
- (b) it is cancelled by the person who issued it or, if such person is not available, by any person with similar authority; 55
- (c) the expiry of one month from the day of its issue; or
- (d) the purpose for which the warrant was issued, no longer exists, whichever may occur first.

(10) If no criminal proceedings are instituted in connection with any plant, propagating material, substance, book, record or other article or document seized in terms of subsection (1) or (6), or if it appears that such plant, propagating material, substance, book, record or other article or document is not required at the trial for the purposes of evidence or an order of court, that plant, propagating material, substance, 60

book, record or other article or document must be returned to the person from whom it was seized.

## CHAPTER 13

### IMPORT AND EXPORT OF PLANTS AND PROPAGATING MATERIAL

#### Import of plants and propagating material 5

43. (1) Plants or propagating material of a kind of plant declared in terms of this Act, may only be imported into the Republic—
- (a) in compliance with all relevant legislation for the consignment concerned;
  - (b) if the importer has a certificate of registration in respect of a business and premises contemplated in section 12, unless exempted in terms of section 19; 10
  - (c) if the plants or propagating material—
    - (i) is of a variety and denomination which is listed in the national varietal list or the regional varietal list;
    - (ii) complies with the prescribed requirements;
    - (iii) is packed or pre-packed in a container which is sealed and branded, 15  
marked or labelled in the prescribed manner with the prescribed information; and
    - (iv) is imported through a prescribed port of entry or such other place as the registrar may determine.
- (2) If the plants or propagating material is not packed or pre-packed in a container in 20  
accordance with the requirements set out in subsection (1)(c)(iii), the importer must re-label and submit the plants or propagating material for inspection in order to ensure compliance with the provisions of that subsection.
- (3) (a) Notwithstanding subsection (1)—
- (i) the Registrar may on good cause shown and on such conditions as he or she 25  
may determine, give authorisation in writing for the importation of a consignment of plants or propagating material which does not conform to all or any of the requirements referred to in subsection (1) and a copy of such authorisation must accompany the consignment in question;
  - (ii) a person who does not have a business and premises contemplated in 30  
subsection (1)(b) may import plants or propagating material for own use with the written authorisation from the Registrar and subject to such conditions as the Registrar may specify; and
  - (iii) the Minister may by notice in the *Gazette* determine that any particular kind of 35  
plant, or propagating material of a particular kind of plant, must only be imported with the written permission of the Registrar and on such conditions as the Registrar may specify in such permission.
- (b) A person requiring the authorisation or permission of the Registrar in terms of paragraph (a) must submit an application to the Registrar in the prescribed manner.
- (4) A person importing a consignment of plants or propagating material must furnish 40  
the Registrar with such particulars as the Registrar may determine regarding such consignment, and such consignment must not be removed from a port or place contemplated in subsection 1(b)(iv) unless the Registrar has authorised the removal thereof in writing.
- (5) Plants and propagating material imported in terms of subsection (1) or (3) must, 45  
if the Registrar so requires, be presented for examination and sampling at a port or place contemplated in subsection (1)(b)(iv).
- (6) (a) The Registrar must determine the manner in which plants and propagating material imported in terms of subsection (1) or (3) must be presented for examination and sampling in terms of subsection (5), and the manner in which and the time and place 50  
at which the examination and sampling must be carried out.
- (b) The provisions of section 42(1)(e) and (2), subject to the changes required by the context, apply to such examination and sampling and the analysis of such sample.
- (7) (a) This section does not apply to the importation of plants and propagating material intended for re-export or for purposes other than cultivation. 55
- (b) The person importing plants or propagating material in terms of paragraph (a) must, prior to arrival thereof in the Republic, furnish the Registrar with a declaration to that effect in the prescribed manner and a copy of such declaration must accompany the consignment concerned.

- (8) If plants and propagating material have been imported contrary to the provisions of this section, the Registrar may—
- (a) taking into account the preference of the importer, order that the plants or propagating material in question must within the period determined by the Registrar—
    - (i) be destroyed without compensation; or
    - (ii) be removed from the Republic at the expense of the importer; or
  - (b) permit the disposal thereof in the Republic in such manner and on such conditions as the Registrar may determine.

### **Export of plants and propagating material** 10

**44.** (1) Any person who intends to export plants or propagating material of a kind of plant declared in terms of this Act, must have a certificate of registration in respect of the business and premises where the plants or propagating material has been prepared for export.

(2) Plants and propagating material of any kind of plant declared in terms of this Act intended for export from the Republic must comply with the prescribed minimum requirements. 15

(3) If the plants or propagating material for export do not comply with one or more of the provisions of this Act, the exporter must submit an application with motivation to the Registrar in the prescribed manner before export. 20

(4) The Registrar must consider an application received in terms of subsection (3) and may in writing authorise the export of such consignment, subject to such conditions as he or she may determine.

(5) The Registrar may undertake such inspection of the plants and propagating material intended for export as he or she may deem necessary, take such samples thereof as he or she may deem necessary and test, examine or analyse the samples or cause the samples to be tested, examined or analysed in the manner contemplated in section 42(2). 25

(6) If the inspection in terms of subsection (5) has been carried out on account of an application received in terms of subsection (3), the person who has applied must pay to the Registrar the prescribed fees in connection with such inspection and for the testing, examination or analysis of such samples. 30

(7) If the Registrar prohibits the export of a consignment of plants or propagating material, he or she must inform the exporter within 14 days of the date of the decision and provide written reasons for the decision.

(8) Subsection (1) does not apply to the export of plants or propagating material intended for purposes other than cultivation. 35

## **CHAPTER 14**

### **SCHEMES**

#### **Establishment of schemes**

**45.** (1) The Minister may, after consultation with stakeholders and the Minister of Finance, by notice in the *Gazette* establish a scheme for the certification of plants and propagating material of the kinds of plants referred to in the notice, with the object of maintaining the quality of plants and propagating material of those kinds of plants and of ensuring the usefulness for agricultural or industrial purposes of the products derived therefrom. 40 45

(2) The Minister may, after consultation with stakeholders and the Minister of Finance, by notice in the *Gazette* establish a scheme other than a certification scheme contemplated in subsection (1).

(3) The Minister may, with the concurrence of the Minister of Finance, by notice in the *Gazette* establish a scheme contemplated in subsection (1) or (2) in terms of which assistance, out of money appropriated by Parliament for this purpose, may be granted to the designated authority. 50

(4) Different schemes may be established for plants and propagating material of different kinds of plants, and the requirements for different kinds and varieties of plants and propagating material in a scheme may differ. 55

- (5) An organisation or association that desires to have a scheme contemplated in subsection (1) or (2) established must submit an application to the Registrar in the prescribed manner.
- (6) The Minister must in the notice relating to the establishment of the scheme—
- (a) designate the authority which must exercise the powers, perform the functions and carry out the duties conferred upon, assigned to or imposed upon such authority under the scheme; and 5
  - (b) if the authority referred to in paragraph (a) is not an employee in the Department, or a body consisting of such employees, subject to subsection (3), provide that such authority must exercise, perform or carry out its powers, functions or duties at its own cost and subject to the directions of the Registrar and not have any right of recourse against the State for costs so incurred. 10
- (7) The designated authority must enter into such written agreement with the Department as may be prescribed.
- (8) The Minister may by notice in the *Gazette* amend or revoke a scheme established in terms of this Act. 15
- (9) The Minister may terminate the appointment of the designated authority upon non-compliance with the prescribed requirements and provisions of the scheme or upon request by such authority.
- (10) If the appointment of a designated authority is terminated in terms of subsection (9), the Minister must inform the authority in writing and must provide reasons for the decision. 20

### Provisions of schemes

46. (1) The Minister must in a notice relating to the establishment of a scheme—
- (a) indicate the kinds of plants and varieties to which the provisions of the scheme must apply; and 25
  - (b) provide for the provisions of the scheme.
- (2) (a) The designated authority may authorise any person to exercise, perform or carry out any power, function or duty of that authority.
- (b) When the designated authority contemplated in paragraph (a) authorises any person, it may determine that— 30
- (i) the power, function or duty concerned be exercised, performed or carried out at the cost of the person concerned;
  - (ii) the person concerned has no right of recourse against that authority or State for costs so incurred; and 35
  - (iii) the person concerned must exercise, perform or carry out the power, function or duty concerned subject to the directions of that authority.
- (c) A juristic person established under any law and so authorised, must be regarded, notwithstanding the absence of any express provision to such effect in the law under which it was established, to be competent to exercise, perform or carry out the power, function or duty concerned. 40
- (d) The said juristic person may authorise any person in its service in writing to exercise, perform or carry out the power, function or duty concerned.
- (e) A decision made or order given by any person authorised under paragraph (a) may be withdrawn by such designated authority, and any such decision or order must, until it is so withdrawn or amended, be regarded, except for the purpose of this paragraph, to have been given by such authority. 45

## CHAPTER 15

### APPEALS

#### Appeal against decision or action by Registrar or designated authority 50

47. (1) A person who feels aggrieved by any decision or action taken by the Registrar or designated authority in terms of this Act may appeal in the prescribed manner to the Minister against the decision or action in question.
- (2) (a) The Minister must—
- (i) refer the appeal for investigation and decision to a board to be established by the Minister; 55
  - (ii) appoint as members of the board—

- (aa) one person on account of his or her knowledge of relevant fields of law, including but not limited to Intellectual Property Law and Administrative Law, who must be designated as chairperson; and
- (bb) two other persons who have expert knowledge of the subject of the appeal. 5
- (b) The remuneration of a member of the board must be prescribed.
- (3) A person appointed in terms of subsection (2)(a)(ii) must recuse himself or herself as a member of the board if he or she has any direct or indirect personal interest in the outcome of the appeal.
- (4) (a) An appeal in terms of subsection (1) must be heard on the date and at the time and place determined by the chairperson and the chairperson must inform the person appealing and any other party that has an interest in the appeal in writing of the date, time and place of the hearing. 10
- (b) The chairperson may, for the purposes of the hearing of an appeal—
- (i) summon any person who may have material information concerning the subject of the hearing or who has in his or her possession or custody or under his or her control any document which has any bearing upon the subject of the hearing, to appear before the board at a date, time and place specified in the summons, to be interrogated or to produce that document, and the chairperson may retain for examination any document so produced; 15
- (ii) administer an oath to or accept an affirmation from any person called as a witness at the hearing; and 20
- (iii) call any person present at the hearing as a witness and interrogate him or her and require him or her to produce any document in his or her possession or under his or her control. 25
- (c) The person appealing and the registrar or designated authority may be represented.
- (5) If a person appointed in terms of subsection (2)(a)(ii)—
- (a) dies during the investigation of the appeal or so soon before the commencement of the investigation that the vacancy cannot be filled in time;
- (b) is unable to act and another person cannot be appointed in time; or 30
- (c) is, after the investigation has commenced, unable to continue therewith, the parties may agree that the proceedings be continued by the remaining members, in which event, where the member who has died or has become incapacitated, was or is the chairperson of the board, the Minister must designate one of the remaining members to act as chairperson. 35
- (6) (a) If the parties do not agree in the manner contemplated in subsection (5), the investigation must be adjourned in order that the Minister may appoint a member, in accordance with the requirements of subsection (2)(a)(ii), in the place of the member who has died or has become incapacitated.
- (b) Where an appointment has been made in terms of paragraph (a) the investigation must, if the parties so agree, be continued as from the stage at which the investigation was interrupted by the death or incapacitation of a member or must, if the parties do not so agree, be commenced afresh. 40
- (7) The board may, after investigation of the appeal—
- (a) confirm, set aside or vary the relevant decision or action of the Registrar or designated authority; and 45
- (b) order the Registrar or designated authority to execute the decision of the board in connection therewith.
- (8) The decision of the board must be in writing and a copy thereof must be furnished to the Registrar or designated authority, the appellant and any other party. 50
- (9) If the board sets aside any decision or action by the Registrar or designated authority, the prescribed fees paid by the appellant in respect of the appeal in question must be refunded to him or her or, if the board varies any such decision or action, the board may direct that the whole or any part of such fees be refunded to the appellant.

## CHAPTER 16 55

### ADVISORY COMMITTEE

#### Establishment of Advisory Committee

48. (1) A committee to be known as the Plant Improvement Advisory Committee is hereby established.

- (2) The Advisory Committee may advise the Registrar on—
- (a) any technical matter arising from the provisions of this Act; and
  - (b) any other matter relating to the administration of this Act referred to the Advisory Committee by the Registrar.

#### **Appointment of members of Advisory Committee and termination of membership** 5

- 49.** (1) The Minister must appoint as members of the Advisory Committee—
- (a) two persons who are appropriate persons to represent breeders of plant varieties;
  - (b) two persons who are appropriate to represent farmers;
  - (c) one person who is an appropriate person to represent the interests of consumers of plant varieties or of the products of plant varieties; 10
  - (d) one person to represent conservation interests in respect of plant varieties and the potential impacts of plant varieties on the environment;
  - (e) one person to represent indigenous interests in respect of plant varieties and the source, use and impacts of plant varieties; 15
  - (f) one person with knowledge and experience in the relevant fields of law, including but not limited to administrative law; and
  - (g) two persons to represent schemes.
- (2) Whenever it is necessary to appoint a member of the Advisory Committee—
- (a) the Minister must, by notice in any appropriate media, call for the nomination of persons who comply with the criteria contemplated in subsection (1); 20
  - (b) the Minister must establish a selection committee, consisting of not more than five members appointed by the Minister;
  - (c) the Minister must refer all nominations received to such selection committee;
  - (d) the selection committee must compile a short-list of candidates in accordance with the provisions of subsection (1); 25
  - (e) the selection committee must, within 30 days after the signing of the letters of appointment of its members, recommend to the Minister a list of not less than three candidates for each of the categories referred to in subsection (1); and
  - (f) the Minister must appoint such number of members as is required from the list of candidates recommended by the selection committee. 30
- (3) A member of the Advisory Committee serves in a part-time capacity.
- (4) A member of the Advisory Committee serves for a period not exceeding three years as specified in the letter of appointment and may be reappointed for one more term not exceeding three years. 35
- (5) If, upon the expiration of the term of office of the members of the Advisory Committee, the Minister has not yet appointed new members to take their place, the existing members continue in office until new members have been appointed to replace them.
- (6) The Minister may at any time terminate the appointment of a member of the Advisory Committee if that member is incapable of performing his or her functions or is found guilty of misconduct. 40
- (7) If the appointment of a member of the Advisory Committee is terminated in terms of subsection (6), the Minister must give the person written notice informing him or her of the termination and set out the reasons for the termination. 45
- (8) A member of the Advisory Committee may resign by written notice to the Minister.
- (9) The Registrar is a member of the Advisory Committee by virtue of his or her office.
- (10) The remuneration of members of the Advisory Committee must be prescribed. 50

#### **Recusal and disclosure of interests**

- 50.** (1) Any member of the Advisory Committee who has a direct or indirect pecuniary interest in a matter being considered at a meeting of the Advisory Committee must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at the meeting. 55
- (2) A disclosure in terms of subsection (2) must be—
- (a) recorded in the minutes of the meeting of the Advisory Committee; and
  - (b) made known in any advice given by the Committee in relation to that matter.

**Meetings**

- 51.** (1) The Registrar must convene a meeting of the Advisory Committee when it is necessary for the purposes of the performance of the functions of the Advisory Committee.
- (2) At a meeting of the Advisory Committee, five members constitute a quorum. 5
- (3) The members must elect one of the members present at the meeting to preside at the meeting.
- (4) The Advisory Committee may determine the procedure to be followed in the performance of its functions.

**CHAPTER 17** 10**GENERAL PROVISIONS****Request for test results by authority of another country**

- 52.** The Registrar may provide to an appropriate authority of another country the test reports for distinctness, uniformity and stability and variety descriptions derived from tests and trials undertaken by him or her in terms of section 35(1)(a) against payment of a prescribed fee. 15

**Disclosure of information**

- 53.** (1) Subject to the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), a person must not disclose any information obtained by him or her in the performance of his or her functions in terms of this Act, except— 20
- (a) to the extent that it may be necessary for the proper administration of this Act;
  - (b) for the purposes of any legal proceedings under this Act;
  - (c) upon an order of a competent court; or
  - (d) at the request of the Minister, the Director-General or any other person whose right has been affected. 25
- (2) Notwithstanding subsection (1), the designated authority may, in respect of the relevant scheme, furnish to the holder or the appointed agent of a plant breeder's right granted under the Plant Breeder's Rights Act, 1976 (Act No. 15 of 1976), in respect of a variety, information regarding—
- (a) the persons who applied for the certification of plants or propagating material of the variety in question; 30
  - (b) the area of land of each unit for certification for which application for registration in respect of such plants or propagating material has been made; and
  - (c) the quantity of such plants or propagating material which has been certified under that scheme. 35
- (3) For the purposes of this section, "unit for certification" means an area of land which is registered in terms of a certification scheme for the cultivation of plants and propagating material of the kinds of plants and varieties to which the scheme applies.

**Publication or distribution of false or misleading advertisements** 40

- 54.** (1) (a) A person must not publish, distribute, cause or permit to be published or distributed, any false or misleading advertisement concerning plants, propagating material or premises.
- (b) For the purposes of this section, "advertisement" means any written, illustrated, visual or other descriptive material or verbal statement, communication, representation or reference brought to the attention of a member of the public and which is intended to promote the sale of plants or propagating material or encourage the use thereof or is intended to offer the services of a laboratory or designated authority. 45
- (2) It is a defence for any person, other than the person selling the plants or propagating material to which the false or misleading advertisement relates, who is charged with a contravention of subsection (1), if he or she proves to the satisfaction of the court that he or she did not know and could not reasonably be expected to have known that the advertisement was false or misleading in any respect, unless it is proved that the accused failed on demand by the registrar or a police official to furnish the name 50

and address of the person at whose instance the advertisement was published or distributed.

### Regulations

- 55.** (1) The Minister may make regulations by notice in the *Gazette* regarding—
- (a) any matter that may or must be prescribed; 5
  - (b) any certificate or other document or form to be issued or used for the purposes of this Act;
  - (c) the fees payable in respect of any application, matter or document;
  - (d) the information and particulars to be contained in registers and publications;
  - (e) requirements and standards relating to the facilities for the types of business and premises and the requirements relating to qualifications for the person in control of the premises; 10
  - (f) the information and facilities to be provided to the registrar by an applicant for registration of a business and premises to be submitted at the time of an application and thereafter; 15
  - (g) requirements and procedure for inspections relating to the Registration and renewal of registration of premises;
  - (h) requirements and procedure for inspections relating to the sampling and testing of plants and propagating material;
  - (i) requirements and standards for plants and propagating material and the marking of containers and labels; 20
  - (j) requirements for acceptability or not of variety denominations;
  - (k) the information and facilities to be provided to the registrar by an applicant for national listing, and the plants and propagating material to be submitted at the time of an application and thereafter; 25
  - (l) the tests, trials, examinations and other steps to be taken by an applicant or the registrar before approval for national listing, and the time within which they are to be taken;
  - (m) the records relating to plants and propagating material for sale, multiplication, import or export to be kept by any person who has such material in his or her possession or under his or her control, the form and manner in which they are to be kept, and how and to whom they must be available for inspection; 30
  - (n) requirements and information required for establishment of schemes;
  - (o) requirements and obligations of designated authorities;
  - (p) the procedures for lodging objections and appeals; and 35
  - (q) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.
- (2) Different regulations may be made in respect of different— 40
- (a) types of business;
  - (b) types of premises;
  - (c) kinds of plants or propagating material; and
  - (d) schemes.
- (3) The regulations may in respect of any contravention thereof, or failure to comply therewith, prescribe a fine. 45
- (4) A regulation prescribing a fee may be made only after consultation with the Minister of Finance.

### Offences

- 56.** A person is guilty of an offence if he or she—
- (a) (i) makes a false entry in the register or national varietal list or causes it to be made therein or makes a document or causes a document to be made which falsely purports to be a copy of or excerpt from the register or national varietal list; or
  - (ii) produces, tenders or causes to be produced or tendered as evidence any such entry, copy or excerpt, knowing it to be false; 55
  - (b) (i) fails or refuses to make any statement or to give any explanation demanded by an employee or an authorised person or by any designated authority in the execution of the provisions of this Act or a scheme;

- (ii) makes a false statement or representation or furnishes false information knowing it to be false; or
- (iii) fails or refuses to comply with any instruction issued under section 42(1)(b);
- (c) obstructs or hinders the registrar or an employee or an authorised person or a designated authority in the exercise of his or her powers, the performance of his or her functions or the carrying out of his or her duties under this Act or a scheme; 5
- (d) having been duly summoned to appear at any proceedings under this Act, fails without lawful excuse so to appear; 10
- (e) having appeared as a witness at any proceedings under this Act, refuses without lawful excuse to be sworn in or to make affirmation or to produce any document or answer any question which he or she may be lawfully required to produce or answer;
- (f) conducts a business in conflict with the provisions of section 10 or 11; 15
- (g) sells any plant or propagating material in contravention of section 22;
- (h) imports any plant or propagating material in contravention of section 43, or uses for the purposes of cultivation any plant or propagating material imported in accordance with section 43(7) for purposes other than cultivation or for immediate export; 20
- (i) exports any plant or propagating material in contravention of section 44;
- (j) furnishes any particulars in connection with a plant or propagating material on any container in which it is sold or on a label which is attached to such plant or container, which do not correspond with the true properties thereof;
- (k) fails to display or return a certificate of registration of premises; 25
- (l) fails to comply with a provision of a scheme while he or she is under an obligation to do so;
- (m) except in the circumstances referred to in section 53, discloses information acquired by him or her in the course of his or her duties or in the performance of his or her functions under this Act; 30
- (n) contravenes section 54(1);
- (o) sells, removes or tampers with any plant, propagating material, substance or other article, or any book or document seized in terms of section 42, or tampers with an identification mark or seal attached thereto in terms of that section; 35
- (p) falsely holds himself or herself to be the registrar, an employee or an authorised person; or
- (q) makes a document or causes a document to be made which purports to be a certificate, authorisation or other document or label issued in terms of this Act.

## **Penalties** 40

- 57.** (1) A person convicted of an offence in terms of section 56 is liable—
- (a) in the case of a conviction of an offence referred to in section 56(a), (b), (f), (g), (h), (i), (j), (m), (n), (o), (p) or (q), to a fine or to imprisonment for a period not exceeding six years; and
  - (b) in the case of a conviction of an offence referred to in section 56(c), (d), (e), (k) or (l), to a fine or to imprisonment for a period not exceeding four years.
- (2) Notwithstanding anything to the contrary in any other law, a Magistrates' court has jurisdiction to impose any penalty prescribed by this Act.
- (3) The court convicting any person of an offence under this Act may upon the application of the prosecutor declare any plant or propagating material in respect of which the offence was committed and all other plants and propagating material of a similar nature of which such person is the owner or which is in his or her possession, to be forfeited to the State. 50

## **Presumptions and evidence**

- 58.** In criminal proceedings under this Act or a scheme— 55
- (a) any plant, propagating material, substance or other article in or upon any premises, place or vehicle at the time a sample thereof is taken pursuant to the provisions of this Act must, in the absence of evidence to the contrary which raises reasonable doubt, be deemed to possess the same properties as such sample; 60

- (b) any sample taken in terms of section 42(1)(e) must, in the absence of evidence to the contrary which raises reasonable doubt, be deemed to be representative of that plant, propagating material, substance or other article from which it was taken;
- (c) a form on which particulars have been entered in terms of section 42(2)(d) is *prima facie* proof of the facts stated therein; 5
- (d) any statement or entry contained in any book or document kept or purporting to be issued by any person, or by the manager, agent or employee of such a person, is, in the absence of evidence to the contrary which raises reasonable doubt, admissible in evidence against such person as an admission of the facts set forth in that statement or entry; and 10
- (e) an excerpt from or a copy of the varietal list certified as such by the registrar, is *prima facie* proof of the information contained therein.

### Limitation of liability

59. No compensation is payable by the State, the Minister, the Registrar, any designated authority, any authorised person or any employee in respect of any act done in good faith under this Act or a scheme. 15

### Delegation

60. The Minister may, either generally or in any particular case or in relation to particular property, delegate in writing any function conferred upon the Minister under this Act, except a function referred to in section 55, to the Director-General of the Department, any employee of the Department or any other person. 20

### Transitional provisions and savings

61. (1) The employee designated as registrar in terms of section 3(1) of the Plant Improvement Act, 1976 (Act No. 53 of 1976), immediately before the commencement of this Act, must be regarded as having been designated as Registrar in terms of section 3(1) of this Act. 25

(2) Premises that have been registered in terms of sections 7 and 9 of the Plant Improvement Act, 1976, and which are still registered immediately before the commencement of this Act, must be regarded as having been registered in terms of sections 12 and 17 of this Act, and every provision of this Act apply with the changes required by the context in respect to any such registered premises. 30

(3) Approval for recognition of a variety in terms of section 20 of the Plant Improvement Act, 1976, that is valid immediately before the commencement of this Act, must be regarded as approval granted in terms of section 37 of this Act, and every provision of this Act apply with the changes required by the context in respect to any such approval for national listing. 35

(4) (a) A certification scheme that has been established in terms of section 23 of the Plant Improvement Act, 1976, and which was valid immediately before the date of commencement of this Act, must be regarded as having been established in terms of section 45 of this Act, and every provision of this Act apply with the changes required by the context in respect to any such scheme for a period of one year after the date of such commencement. 40

(b) Each designated authority must enter into a written agreement with the Department within one year from the date of such commencement. 45

(5) An authorisation issued in terms of sections 13(2) and 26(2) in terms of the Plant Improvement Act, 1976, and which is in force at the commencement of this Act, must be regarded as an authorisation issued in terms of sections 22(3) and 44(4) of this Act.

(6) Any application which was received by the Registrar on a date before the date of commencement of this Act and in respect of which a decision has not been made in terms of the Plant Improvement Act, 1976, before the date of such commencement, must be dealt with in all respects as if this Act had commenced on the date of receipt of such application. 50

**Repeal of laws**

**62.** The laws referred to in the second column of the Schedule are hereby repealed to the extent set out in the third column of that Schedule.

**Short title and commencement**

**63.** This Act is called the Plant Improvement Act, 2015, and takes effect on a date determined by the President by proclamation in the *Gazette*. 5

**SCHEDULE***(Section 62)*

<b>NUMBER AND YEAR OF LAW</b>	<b>SHORT TITLE</b>	<b>EXTENT OF REPEAL</b>
Act No. 53 of 1976	Plant Improvement Act, 1976	The whole
Act No. 10 of 1979	Plant Improvement Act, 1979	The whole
Act No. 36 of 1983	Agricultural Pests Act, 1983	Section 20
Act No. 39 of 1983	Plant Improvement Amendment Act, 1983	The whole
Act No. 17 of 1991	Plant Improvement Amendment Act, 1991	The whole
Act No. 25 of 1996	Plant Improvement Act, 1996	The whole
Act No. 88 of 1996	Abolition of Restrictions on the Jurisdiction of Courts Act, 1996	Section 60

## **MEMORANDUM ON THE OBJECTS OF THE PLANT IMPROVEMENT BILL, 2015**

### **1. BACKGROUND**

- 1.1 Plant improvement is an important element of agricultural production in South Africa and other countries across the world. Plant improvement in South Africa has been primarily regulated by the Plant Improvement Act, 1976 (Act No. 53 of 1976) (“the Act”). The scope of the Act addresses aspects relating to the quality of plants and seed utilised and traded in South Africa.
- 1.2 The standards set by the Act are recognised by international organisations such as the International Seed Testing Association (“the ISTA”) and the seed schemes of the Organization for Economic Cooperation and Development (“the OECD”). This allows South Africa to participate in the global trade of seed.
- 1.3 The significance and role of the Act lies in recognising the importance of quality plant propagating material to support sustainable agricultural production as well as participation in the global market by setting quality standards for plants and seed and for the types of business dealing with plants and seed.
- 1.4 The Act has been amended several times, the last being in 1996. Although the regulatory role of the Act in the agricultural industry remains critical, review of the Act has indicated that the scope and provisions of the Act are not entirely aligned to the Constitution of the Republic of South Africa, 1996 (“the Constitution”) and other related legislation in the agricultural sector.
- 1.5 The Plant Improvement Bill (“the Bill”) aims to enhance sustainable crop production in South Africa by regulating the quality of plants and seed. Crop production is not only dependent on the development of new varieties of plants with improved and useful characteristics of increased yields or disease tolerance, but also on the quality of plants and seed. Due to the influence of storage conditions on plants and seed for planting purposes, the Bill also prescribes standards for the different types of business involved in the selling of plants and seed. The standards set by the Bill will contribute to the food security and overall economy of the country.
- 1.6 The National Development Plan (“the NDP”) highlighted the central role of agriculture in terms of job creation, rural development and food security. Key outcomes expected from the agricultural sector include the creation of 1 million jobs by 2030, food security as well as prosperous rural areas. The NDP includes better integration of the country’s rural areas, achieved through successful land reform, infrastructure development, job creation and poverty alleviation. In order to attain these expectations, the agricultural sector will depend on access to production inputs which include high quality propagation material, like plants and seeds.
- 1.7 The Department of Agriculture, Forestry and Fisheries (“the Department”) also shifted focus towards creating an enabling environment for the agricultural sector that is accessible and inclusive of all participants, irrespective of the size of their contribution to the sector. This is to be achieved through the provision of efficient and appropriate services via its various agricultural support programmes and improved regulatory systems. It is within this framework that plant improvement activities should be recognised to provide support to strengthen existing commercial production while simultaneously improving the participation of new entrants and facilitating smallholder farmers to make the transition to mainstream agriculture.

### **2. OBJECTS OF BILL**

- 2.1 Clause 1 of the Bill contains the definitions in order to guide the interpretation of the provisions in the Bill.

- 2.2 Chapter 1 of the Bill provides for the application of the Bill. In terms of clause 2 the Bill will apply to such kinds of plants for agricultural, industrial and forestry production as the Minister may declare by notice in the *Gazette* for the purposes of the Bill.
- 2.3 Chapter 2 of the Bill deals with administration. It makes provision in clause 3 for the designation of a Registrar of Plant Improvement by the Minister. The Registrar is also empowered to appoint technical and administrative persons to support him or her in the performance of his or her functions in terms of the Bill and to delegate his or her functions. Clause 4 prescribes how the Registrar must exercise his or her discretionary powers. Clause 5 prescribes that the Registrar must keep a register of every business and premises registered in terms of the Bill and clause 6 provides for a register of all national varietal listings in terms of the Bill. In terms of clause 7 the registers in clauses 5 and 6 will be *prima facie* evidence of all matters directed or authorised by the Bill to be noted therein. Clause 8 provides for the inspection of documents submitted in connection with applications for national listing.
- 2.4 Chapter 3 of the Bill deals with the registration of business and premises. The types of business that must be registered are set out in clause 9 and the premises on or from which business may be conducted are set out in clause 10. The types of business that must be registered in terms of the Bill are the cleaning and conditioning of seed, pre-packing of seed, selling of seed, running of a nursery or other type of multiplication facility, running of a laboratory, importation of plants or propagating material and export of plants or propagating material. Premises on or from which a type of business may be conducted must be registered in terms of the Bill and must comply with requirements which will be prescribed by regulations to be made by the Minister. Clause 11 provides for the application for registration of business and premises. Clause 12 prescribes when the Registrar must register a business and premises and clause 13 when the Registrar must refuse to register a business or premises. Clause 14 prescribes the period of registration of a type of business and premises. Any change of circumstances of a person in whose name a type of business and premises has been registered must be notified to the Registrar in terms of clause 15. Clause 16 provides for the application for a renewal of the registration of premises and clauses 17 and 18 for the approval and refusal of applications for such renewal. Clause 19 empowers the Minister to exempt a type of business and premises from the requirement to register under the Bill. The power of the Registrar to terminate the registration of a type of business or premises under certain circumstances is set out in clause 20. Clause 21 provides for the display of certificates of registration at registered premises and also for the return of certificates upon termination of registration.
- 2.5 Chapter 4 of the Bill prescribes the conditions for the sale of plants and propagating material. Clause 22 prescribes the requirements relating to the sale of plants and propagating material for purposes of cultivation and clause 23 provides for exemptions regarding certain plants and propagating material.
- 2.6 Chapter 5 of the Bill deals with the National Varietal List. In terms of clause 24 the Registrar must keep and publish a list of specific varieties or all varieties of kinds of plants prescribed by the Minister by regulation. Clause 25 requires the applicant for listing to ensure that for the period that the denomination of the variety is included in the national varietal list propagating material of the listed variety is maintained for inspection. Clause 26 provides for the removal of varieties from the national varietal list.
- 2.7 Chapter 6 of the Bill regulates issues around application for national listing. Clause 27 lists the varieties that are eligible for national listing. Clause 28 regulates applications for national listing. Clauses 29 and 30 regulate the circumstances under which the Registrar must reject or accept applications for national listing. Clause 31 provides for the amendment of applications for

national listing. Clause 32 provides for the lodging of objections to applications for national listing.

- 2.8 Chapter 7 of the Bill provides for variety denominations. Clause 33 provides for issues in connection with the denomination of varieties and requires amongst other things that an applicant for national listing must propose a denomination that complies with requirements prescribed by regulation when applying for national listing. Clause 34 sets out the circumstances under which the Registrar must amend an approved denomination.
- 2.9 Chapter 8 of the Bill provides for issues in respect of the evaluation of varieties for distinctness, uniformity and stability. Clause 35 empowers the Registrar to undertake or cause to be undertaken the necessary tests and trials in order to enable the Registrar to determine whether a variety is distinct, uniform and stable. Clauses 36 and 37 set out the circumstances under which the Registrar must refuse or approve national listing.
- 2.10 Chapter 9 of the Bill in clause 38 provides for the evaluation of a variety in cases where the value for cultivation and use of the variety is doubtful.
- 2.11 Chapter 10 of the Bill deals with the hearing of objections. Clause 39 provides that the Registrar must call for a hearing in terms of that clause when considering an objection to an application for national listing. The clause sets out the procedure and powers of the Registrar in connection with such a hearing.
- 2.12 Chapter 11 of the Bill deals with the National Varietal List Journal and in this regard clause 40 provides that the Registrar must ensure that the Journal is published and sets out the subject matter of the Journal.
- 2.13 Chapter 12 of the Bill regulates inspections. Clause 41 regulates inspections for quality control. In terms of this clause, premises must be regularly inspected during the period of registration of those premises. The clause provides that a business and premises may be entered during office hours without a warrant and sets out the acts that may be performed by the Registrar, employee or authorised person during an inspection. Clause 42 deals with the power of the Registrar, employee or authorised person to enter premises on grounds of a warrant for inspection and taking of samples. The clause sets out the acts that may be performed by the Registrar, employee or authorised person and prescribes the manner in which the entry, inspection and taking of samples must be undertaken, performed or done.
- 2.14 Chapter 13 of the Bill deals with the import and export of plants and propagating material. Clause 43 provides that plants or propagating material of a kind of plant declared in terms of the Bill may only be imported into the Republic under circumstances set out in that clause. Clause 44 provides for the circumstances under which such plants and propagating material may be exported from the Republic.
- 2.15 Chapter 14 of the Bill provides for the establishment of schemes for the certification of plants and propagating material and other schemes for plants and propagating material. Clause 45 regulates the establishment of schemes and clause 46 sets out provisions for schemes established in terms of clause 45.
- 2.16 Chapter 15 of the Bill deals with appeals. Clause 47 amongst other things provides for the appointment of a board to whom a person who feels aggrieved by a decision or an action taken by the Registrar or designated authority (the authority appointed by the Minister that must exercise the powers, perform the functions and carry out the duties conferred upon that authority under a scheme) may appeal.

- 2.17 Chapter 16 of the Bill in clause 48 provides for the establishment of an Advisory Committee to advise the Registrar on technical matters arising from the provisions of the Bill and any other matters referred to the Advisory Committee by the Registrar. The appointment of members of the Advisory Committee and the termination of their membership are regulated in clause 49. Clause 50 regulates the recusal of members of the Advisory Committee and the disclosure of interest by members. Clause 51 regulates the meetings of the Advisory Committee.
- 2.18 Chapter 17 of the Bill contains general provisions. Clause 52 allows the Registrar to provide to an authority of another country the test reports for distinctness, uniformity and stability and variety descriptions derived from tests and trials undertaken by him or her against the payment of a fee. Clause 53 provides that a person may not disclose information obtained by him or her through the performance of his or her functions in terms of the Bill, except under circumstances set out in the clause. The clause is subject to the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000). Clause 54 prohibits the publication or distribution of false and misleading advertisements. Clause 55 empowers the Minister to make regulations by notice in the *Gazette*. The Minister may make different regulations in respect of different types of business, premises, kinds of plants or propagating material and schemes. Clauses 56 and 57 provide for offences and penalties. Clause 58 deals with presumptions and evidence in criminal proceedings. The provisions dealing with presumption are aligned with guidelines laid down in the relevant judgments of the Constitutional Court. Clause 59 provides for liability by determining that no compensation is payable in respect of any act done in good faith under the Bill or a scheme. Clause 60 empowers the Minister to delegate any function conferred upon the Minister under the Bill except the function to make regulations. Clause 61 makes provision for transitional provisions and savings. The clause deals with the position of the employee designated as registrar under the Act, premises that have been registered under the Act, varieties approved under the Act, the certification scheme established under the Act, authorisations issued under the Act and applications received by the Registrar under the Act after the Act has been repealed by the Bill. Clause 62, read with the Schedule, provides for the repeal of laws.
- 2.19 Clause 63 of the Bill contains the short title and provides for the commencement of the Bill.

### 3. CONSULTATION

- 3.1 A consultation workshop was held with role players in the industry on the first draft of the Bill on 11 and 12 November 2010. Their comments as well as comments from officials of the Department were incorporated into the final draft Bill dated 29 September 2012.
- 3.2 After review of the draft Bill by the State Law Advisors in 2012 and approval for publication has been obtained in 2013, a request for comments was submitted in writing to the Department of Science and Technology, Department of Water and Environmental Affairs and the Department of Trade and Industry in March 2013.
- 3.3 The draft bill was presented to the National House of Traditional Leaders on 25 April 2013 and clarification was provided to the questions posed at the meeting.
- 3.4 A formal consultation workshop was held on 23 May 2013 in Pretoria with representatives from the Agricultural Research Council, private seed companies, commodity organisations, private cultivar development companies in the Citrus, Deciduous Fruit, Wine grape and Potato industries, patent attorneys, designated authorities for certification schemes, Civil Society Organisations, Provincial Departments of Agriculture and Department directorates. After

incorporation of the comments received, the draft bill was circulated electronically to the participants for final comments.

- 3.5 In November 2013 the draft bill containing all previous input was circulated for comments to the plant production representatives of the provincial departments of Agriculture and presented at the National Plant Production Forum on 27 February 2014, hosted by the Directorate Plant Production and attended by delegates from the provincial departments of Agriculture.

#### 4. FINANCIAL IMPLICATIONS FOR STATE

The additional financial implications are outlined as follows:

Item	Cost
Additional personnel capacity: five (5) technical administrative officials and two (2) administrative clerks (to be located at Head Office in Pretoria).	R1.4 million
Members of the Advisory Board will be remunerated in accordance with prescripts provided by the National Treasury.	R450 000 (Estimated)
Support the functions of ISTA and OECD	R380 000
Upgrading of existing infrastructure of seed testing centre	R5 million
<b>Total</b>	<b>R7.23 million</b>

These funds will have to be secured in addition to the existing Medium Term Expenditure Framework allocation.

#### 5. PARLIAMENTARY PROCEDURE

- 5.1 The Constitution regulates the manner in which legislation must be enacted by Parliament. It prescribes different procedures for different types of Bills. Section 75 of the Constitution sets out the procedure to be followed when the National Assembly passes a Bill other than a Bill to which the procedure set out in section 74 or 76 of the Constitution applies. Section 74 deals with Bills amending the Constitution and does not apply to the Bill under discussion. Section 76 of the Constitution on the other hand provides for a procedure that must be followed for ordinary Bills affecting the provinces. In terms of section 76(3) of the Constitution, a Bill must be dealt with in accordance with a procedure established by either section 76(1) or 76(2) if it falls within a functional area listed in Schedule 4 to the Constitution or provides for legislation envisaged in paragraphs (a) to (f) of section 76(3). Schedule 4 to the Constitution lists functional areas of concurrent national and provincial legislative competence.
- 5.2 In *Tongoane v Minister of Agriculture and Land Affairs 2010 (6) SA 214 (CC)*, the Constitutional Court ruled on the test to be used when tagging a Bill. The Court held in paragraph 70 that the “test for determining how a Bill is to be tagged must be broader than that for determining legislative competence”. In paragraph 72 the Court stated as follows: “Whether a Bill is a section 76 Bill is determined in two ways. First, by the explicit list of legislative matters in section 76(3)(a)-(f), and second by whether the provisions of a Bill in substantial measure fall within a concurrent provincial legislative competence”. The tagging test focuses on all the provisions of the Bill in order to determine the extent to which they substantially affect functional areas listed in Schedule 4, and not on whether any of its provisions are incidental to its substance [paragraph 59 of *Tongoane*].
- 5.3 The Bill seeks to regulate all aspects relating to the propagation of, multiplication of, testing of, import of, export of and **trade** in such kind of plants for **agricultural**, industrial and forestry production as the Minister may determine for the purposes of the Bill. “Agriculture” and “Trade” are functional areas of concurrent national and provincial legislative competence listed in Schedule 4 to the Constitution. Since the provisions of the Bill in

substantial measure fall within concurrent provincial legislative competences, the Department and the Office of the Chief State Law Adviser are therefore of the opinion that the Bill must be dealt with in accordance with the procedure established by section 76(1) or (2) of the Constitution.

- 5.4 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain any provisions pertaining to customary law or to the customs of traditional communities.





