



Plant Varieties Act 1997

1997 CHAPTER 66

PART I

PLANT VARIETIES

Naming of protected varieties

18 Selection and registration of names

- (1) The Ministers may by regulations—
 - (a) make provision for the selection of names for varieties which are the subject of applications for the grant of plant breeders' rights,
 - (b) make provision about change of name in relation to varieties in respect of which plant breeders' rights have been granted, and
 - (c) make provision for the keeping of a register of the names of varieties in respect of which plant breeders' rights have been granted.
- (2) Regulations under subsection (1) above may, in particular—
 - (a) make provision enabling the Controller to require an applicant for the grant of plant breeders' rights to select a name for the variety to which the application relates,
 - (b) make provision enabling the Controller to require the holder of plant breeders' rights to select a different name for the protected variety,
 - (c) prescribe classes of variety for the purposes of the regulations,
 - (d) prescribe grounds on which the registration of a proposed name may be refused,
 - (e) prescribe the circumstances in which representations may be made regarding any decision as to the name to be registered in respect of any variety,
 - (f) make provision enabling the Controller—
 - (i) to refuse an application for the grant of plant breeders' rights, or
 - (ii) to terminate the period for which a grant of plant breeders' rights has effect,

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if the applicant or holder fails to comply with a requirement imposed under the regulations,

- (g) make provision for the publication or service of notices of decisions which the Controller proposes to take, and
 - (h) prescribe the times at which, and the circumstances in which, the register may be inspected by members of the public.
- (3) The Controller shall publish notice of all entries made in the register, including alterations, corrections and erasures—
- (a) in the gazette, and
 - (b) in such other manner as appears to the Controller to be convenient for the publication of these to all concerned.
- (4) For the purposes of subsection (1) above, the variety in respect of which plant breeders' rights are granted is the protected variety.

19 Duty to use registered name

- (1) Where a name is registered under section 18 above in respect of a variety, a person may not use any other name in selling, offering for sale or otherwise marketing propagating material of the variety.
- (2) Subsection (1) above shall have effect in relation to any variety from the date on which plant breeders' rights in respect of that variety are granted, and shall continue to apply after the period for which the grant of those rights has effect.
- (3) Subsection (1) above shall not preclude the use of any trade mark or trade name (whether registered under the Trade Marks Act 1994 or not) if—
- (a) that mark or name and the registered name are juxtaposed, and
 - (b) the registered name is easily recognisable.
- (4) A person who contravenes subsection (1) above shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) In any proceedings for an offence under subsection (4) above, it shall be a defence to prove that the accused took all reasonable precautions against committing the offence and had not at the time of the offence any reason to suspect that he was committing an offence.

20 Improper use of registered name

- (1) If any person uses the registered name of a protected variety in offering for sale, selling or otherwise marketing material of a different variety within the same class, the use of the name shall be a wrong actionable in proceedings by the holder of the rights.
- (2) Subsection (1) above shall also apply to the use of a name so nearly resembling the registered name as to be likely to deceive or cause confusion.
- (3) In any proceedings under this section, it shall be a defence to a claim for damages to prove that the defendant took all reasonable precautions against committing the wrong and had not, when using the name, any reason to suspect that it was wrongful.
- (4) In this section—

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“class” means a class prescribed for the purposes of regulations under section 18(1) above,

“registered name”, in relation to a protected variety, means the name registered in respect of it under section 18 above.