
**Council for Trade-Related Aspects of
Intellectual Property Rights**

**Original: English/
anglais/
inglés**

**MAIN DEDICATED INTELLECTUAL PROPERTY
LAWS AND REGULATIONS NOTIFIED UNDER
ARTICLE 63.2 OF THE AGREEMENT**

ZIMBABWE

The present document reproduces the text¹ of the Plant Breeders Rights Amendment Act, 2001, as notified by Zimbabwe under Article 63.2 of the Agreement (see document IP/N/1/ZWE/2).

**Conseil des aspects des droits de propriété
intellectuelle qui touchent au commerce**

**PRINCIPALES LOIS ET RÉGLEMENTATIONS CONSACRÉES À LA
PROPRIÉTÉ INTELLECTUELLE NOTIFIÉES AU TITRE
DE L'ARTICLE 63:2 DE L'ACCORD**

ZIMBABWE

Le présent document contient le texte¹ de la Loi de 2001 portant modification de la Loi sur les droits d'obtenteur, notifié par le Zimbabwe au titre de l'article 63:2 de l'Accord (voir le document IP/N/1/ZWE/2).

**Consejo de los Aspectos de los Derechos de Propiedad
Intellectual relacionados con el Comercio**

**PRINCIPALES LEYES Y REGLAMENTOS DEDICADOS A LA
PROPIEDAD INTELLECTUAL NOTIFICADOS EN VIRTUD
DEL PÁRRAFO 2 DEL ARTÍCULO 63 DEL ACUERDO**

ZIMBABWE

En el presente documento se reproduce el texto¹ de la Ley de Enmienda de Derechos de los Obtentores, de 2001, notificado por Zimbabwe de conformidad con lo dispuesto en el párrafo 2 del artículo 63 del Acuerdo (véase el documento IP/N/1/ZWE/2).

¹ In English only./En anglais seulement./En inglés solamente.



ZIMBABWE

ACT

To amend the Plant Breeders Rights Act [*Chapter 18:16*] and section 23 of the Seeds Act [*Chapter 19:13*].

ENACTED by the President and the Parliament of Zimbabwe.

1 Short title

This Act may be cited as the Plant Breeders Rights Amendment Act, 2001.

2 Amendment of section 2 of Cap. 18:16

Section 2 of the Plant Breeders Rights Act [*Chapter 18:16*] (hereinafter called "the principal Act") is amended—

(a) by the insertion of the following definitions—

““approved”, in relation to the name of a plant, means approved by the Registrar in terms of section *nine*;

“Convention” means the International Union for the Protection of New Varieties of Plants, signed at Paris, France, on the 2nd December, 1961, and includes the revisions made in Geneva, Switzerland, on the 10th November, 1972, on the 23rd October, 1978, and on the 19th March, 1991;”;

(b) in the definition of “date of application” by the deletion of “subsection (5)” and the substitution of “subsection (4) or (5), as the case may be.”;

(c) by the insertion of the following definition—

““farmer” means a person who normally derives his sole or principal means of livelihood from agriculture carried on by him in Zimbabwe;”;

- (d) in the definition of “foreign application” by the deletion of “section *thirty-two*” and the substitution of “section *seven*”;
- (e) in the definition of “new variety” by the deletion of—
 - (i) “plant” and the substitution of “variety of plant”;
 - (ii) “subsection (1)” and the substitution of “subsection (2)”;
- (f) by the insertion of the following definition—
 - “plant” includes a fungus;”;
- (g) in the definition of “plant concerned” by the deletion of “or foreign application, as the case may be.”;
- (h) by the insertion of the following definition—
 - “reciprocating country” means—
 - (a) any State which is a party to the Convention or any other treaty to which Zimbabwe is also a party and which provides for the protection of rights in plant varieties; or
 - (b) any State which is not a party to the Convention or to a treaty referred to in paragraph (a) but which, in the Registrar’s opinion, effectively protects rights in plant varieties held by—
 - (i) individuals who are citizens or residents of Zimbabwe; or
 - (ii) companies or bodies corporate which carry on business in Zimbabwe or have their principal offices there;”;
 - (i) by the repeal of the definition of “stable” and the substitution of—
 - “stable”, in relation to a variety, means stable in the sense that its relevant characteristics remains unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle;”.

3 Repeal of section 3 of Cap. 18:16

Section 3 of the principal Act is repealed.

4 New Part inserted in Cap. 18:16

The principal Act is amended by the insertion after Part I of the following Part—

“PART IA

APPLICATION OF ACT

3 Plants in respect of which plant breeders rights may be granted

(1) The Registrar shall not grant plant breeders rights under this Act in respect of any plant unless it is a new variety of a prescribed kind.

(2) A plant shall be regarded as a new variety for the purposes of subsection (1) if—

(a) it was not offered for sale or marketed—

(i) in Zimbabwe prior to the date of application; or

- (ii) in any other country in respect of—
 - A. trees and grapevines, for longer than six years before the date of application; or
 - B. any other plant, for longer than four years before the date of application;
- and
- (b) it is distinct from any other variety the existence of which is a matter of common knowledge at the date of application; and
 - (c) it is sufficiently uniform in its relevant characteristics, subject to the variation that can be expected from the particular features of its propagation; and
 - (d) it is stable.
- (3) For the purposes of paragraph (b) of subsection (2)—
- (a) the filing of an application in a foreign country for—
 - (i) the granting of rights equivalent to plant breeders rights for a variety; or
 - (ii) the entering of a variety in an official register of varieties; shall be deemed to render that variety a matter of common knowledge from the date of the application, if the application leads to the granting of such rights or the entering of the variety in the official register, as the case may be;
 - (b) common knowledge of a variety shall be presumed if the variety is—
 - (i) already in cultivation or accepted for commercial purposes; or
 - (ii) included in any commercial or botanical reference collection; or
 - (iii) described precisely in any magazine, journal or other publication.

3A Persons to whom plant breeders rights may be granted

The Registrar shall not grant plant breeders rights to any person except—

- (a) the State or the government of a reciprocating country; or
- (b) an individual who is a citizen or resident of Zimbabwe or a reciprocating country; or
- (c) a company or body corporate which carries on business or has its principal office in Zimbabwe or a reciprocating country;

where the State or that government, individual, company or body corporate, as the case may be, is a breeder of the new variety concerned.”

5 Amendment of section 4 of Cap. 18:16

Section 4 of the principal Act is amended—

- (a) by the deletion of "Subject to the laws relating to the Public Service, the Minister shall appoint" and the substitution of "Subject to the Public Service Act [*Chapter 16:04*], there shall be";
- (b) in paragraph (b) by the deletion of "the Minister considers" and the substitution of "may be".

6 New section substituted for section 6 of Cap. 18:16

Section 6 of the principal Act is repealed and the following is substituted—

"6 Persons entitled to make application for plant breeders rights

(1) Subject to subsection (2), an application for the grant of plant breeders rights in respect of a new variety may be made by or on behalf of any of the following persons—

- (a) a breeder of the new variety or his assignee; or
- (b) the Minister, where the State is the breeder of the new variety or the breeder's assignee; or
- (c) the competent authority according to the laws of the country concerned, where the government of a reciprocating country is the breeder of the new variety or the breeder's assignee;

and may be made by that person alone or jointly with anyone else who is a breeder of the new variety or his assignee.

(2) An application for the grant of plant breeders rights shall be made only by a person to whom the rights may be granted in terms of section *three A*."

7 Amendment of section 7 of Cap. 18:16

Section 7 of the principal Act is amended by the repeal of subsections (3), (4) and (5) and the substitution of—

"(3) An application in terms of subsection (1) shall be lodged with the Registrar and—

- (a) shall indicate the origins of the plant concerned and give the full name of the breeder; and
- (b) where the applicant or one of the applicants is not the breeder of the plant concerned, shall contain a declaration that the applicant believes the person named as the breeder to be the breeder of the plant concerned; and
- (c) shall specify any foreign country where an application for the grant of rights similar to plant breeders rights has been or is being made and, in relation to any such application, shall specify—
 - (i) its number or title; and
 - (ii) its effective date.

(4) Subject to subsection (5), the effective date of an application in terms of subsection (1) shall be the date on which the application is received by the Registrar.

(5) Where the person by or on whose behalf an application is made in terms of subsection (1) has filed an earlier application for rights in regard to the plant concerned in a State which is a party to the Convention, the effective date of his application in terms of subsection (1) shall be deemed to be the date on which that earlier application was filed or, where he has filed two or more such earlier applications, the date on which the earliest one was filed:

Provided that he shall not be entitled to the benefits of this subsection unless, in his application in terms of subsection (1), he claims the priority of his earlier application and, within three months after lodging his application with the Registrar in terms of subsection (1), submits to the Registrar a copy of the documents which constituted the earlier application, certified to be a true copy by the authority with which the earlier application was filed.”.

8 Amendment of section 9 of Cap. 18:16

Section 9 of the principal Act is amended by the repeal of subsections (2) and (3) and the substitution of the following subsections—

“(2) The Registrar may at any time before the grant of plant breeders rights, after considering any representations made by the applicant or an objector, reject any name proposed in terms of subsection (1) if, in the Registrar’s opinion, the name proposed does not satisfy the requirements of subsection (3) or (4).

(3) The name proposed in terms of subsection (1) shall be the generic name of the plant concerned and may consist of any word, combination of words, combination of words and figures or combination of letters and figures, with or without any meaning:

Provided that—

- (i) whatever combination is used, the name shall allow the plant concerned to be identified; and
- (ii) the name shall not affect the existing rights of any third party.

(4) Where a name proposed in terms of subsection (1) has already been used for the plant concerned in Zimbabwe or in a State which is a party to the Convention, or is proposed or registered in such a State, the Registrar shall approve only that name.

(5) An appeal shall lie from any decision of the Registrar under subsection (2).”.

9 Amendment of section 10 of Cap. 18:16

Section 10 of the principal Act is amended in subsection (1) by the repeal of paragraph (d) and the substitution of—

“(d) the growing of the plant concerned, or the grant of plant breeders rights in respect of it, would be contrary to public order or morality; or”.

10 New sections substituted for section 12 of Cap. 18:16

Section 12 of the principal Act is repealed and the following sections are substituted—

"12 Publication of application

(1) If, on consideration of an application in terms of section *seven*, it appears to the Registrar that the plant concerned is a new variety of a prescribed kind and the applicant is entitled to apply for plant breeders rights in respect of it, the Registrar shall publish a notice in the *Gazette* specifying the following particulars in relation to the application—

- (a) the name of the applicant; and
- (b) the date of the application; and
- (c) the proposed name of the plant concerned; and
- (d) such particulars relating to the application and the plant concerned as may be prescribed or as the Registrar thinks appropriate.

(2) An appeal shall lie from any decision of the Registrar under subsection (1).

12A Rights of applicant for plant breeders rights

(1) Subject to subsection (2), an applicant for plant breeders rights shall have the sole right to sell, reproduce and multiply reproductive material of the plant concerned during the period from the publication of the notice in terms of section *twelve* until he is granted plant breeders rights or his application is refused or rejected in terms of this Act.

(2) After the publication of a notice in terms of section *twelve* and until the applicant is granted plant breeders rights in respect of the plant concerned or his application is refused or rejected in terms of this Act—

- (a) a person may use the plant concerned as an initial source of variation for the purpose of creating any other new variety;

Provided that this paragraph shall not apply where the plant concerned is repeatedly used for the reproduction or multiplication of another variety;

- (b) a person who has purchased the plant concerned, or reproductive material thereof, from the applicant or from a person authorised by the applicant may grow and resell the plant and any material harvested from it:

Provided that he shall not do so for the sole or primary purpose of reproducing or multiplying the plant concerned;

- (c) a farmer who cultivates less than ten hectares of land may use the harvest from any prescribed plant for the purpose of propagating the plant on that land, where the harvest was obtained by propagating the plant concerned on that land or by propagating another plant, which is essentially derived from the plant concerned, on that land;
- (d) a farmer who derives at least eighty *per centum* of his annual gross income from farming on communal land or on resettlement land as defined in section 2 of the Rural District Councils Act [*Chapter 29:13*] may—

- (i) multiply the seeds of any prescribed plant; and
 - (ii) exchange with any other such farmer—
 - A. any prescribed plant which he has grown or reproduced on his land; and
 - B. any seeds from a plant referred to in subparagraph A;
- and
- (iii) donate any plant or seed referred to in subparagraph (ii) to the State or a statutory body or to any other organisation which the Minister has authorised to seek such a donation;

and such conduct shall not be an infringement of the applicant's rights under subsection (1).”.

11 Amendment of section 13 of Cap. 18:16

Section 13 of the principal Act is amended in subsection (1) by the repeal of paragraphs (j) and (k).

12 Amendment of section 14 of Cap. 18:16

Section 14 of the principal Act is amended—

- (a) in subsection (1) by the deletion of “section *ten*” and the substitution of “sections *three A, ten*”;
- (b) in subsection (4) by the insertion after paragraph (b) of the following paragraph—
 - “or
 - (c) refused on the ground that the applicant is not qualified for the grant of plant breeders rights in terms of section *three A*.”.

13 New section substituted for section 15 of Cap. 18:16

Section 15 of the principal Act is repealed and the following is substituted—

“15 Cancellation of plant breeders rights

(1) Subject to subsection (4), the Registrar shall declare a grant of plant breeders rights void if he is satisfied—

- (a) that when the rights were granted, the plant concerned was not a new variety in that it did not meet the criteria specified in paragraph (a) or (b) of subsection (2) of section *three*; or
- (b) where the rights were granted on the basis of information and documents furnished by the applicant, that when the rights were granted the plant concerned was not a new variety, in that it did not meet the criteria specified in paragraph (c) or (d) of subsection (2) of section *three*; or
- (c) that the person to whom the rights were granted was not entitled to them, and the rights have not subsequently been transferred to the person entitled to them or to his assignee.

(2) The Registrar may make a declaration in terms of subsection (1) on his own motion or pursuant to an application in terms of subsection (3).

(3) Any person may apply to the Registrar in the prescribed manner for the making of a declaration in terms of subsection (1) in regard to any plant breeders rights, and any such application shall be accompanied by such deposit as may be prescribed.

(4) The Registrar shall not make a declaration in terms of subsection (1) unless he has—

- (a) informed the holder of the plant breeders rights concerned that he is considering making such a declaration and has provided the holder with a written statement of his reasons for considering it; and
- (b) given the holder of the plant breeders rights concerned a reasonable opportunity to make representations in the matter.

(5) A deposit paid with an application in terms of subsection (3)—

- (a) shall be refunded to the applicant if the Registrar makes a declaration in terms of subsection (1) pursuant to the application; or
- (b) shall be forfeited to the State if no such declaration is made.

(6) Within one month after making a declaration in terms of subsection (1), the Registrar shall publish notice thereof in the *Gazette*.

(7) An appeal shall lie from any decision of the Registrar under this section.”.

14 New sections substituted for section 17 of Cap. 18:16

Section 17 of the principal Act is repealed and the following sections are substituted—

“17. Rights of holder of plant breeders rights

(1) Subject to this section, during the period specified in section *seventeen A* a holder of plant breeders rights shall be entitled to prevent anyone else from selling, reproducing or multiplying reproductive material of—

- (a) the plant concerned; and
- (b) any other plant that is essentially derived from the plant concerned, as described in subsection (2), unless the plant concerned is itself essentially derived from another plant.

(2) For the purposes of subsection (1), a plant shall be deemed to be essentially derived from another plant if—

- (a) it is predominantly derived from—
 - (i) that other plant; or
 - (ii) a plant that is itself predominantly derived from that other plant;

while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of that other plant; and

- (b) it is clearly distinguishable from that other plant by one or more characteristics which are capable of precise description; and
- (c) except for differences that result from the act of derivation, it conforms to that other plant in the expression of the essential characteristics that result from the genotype or combination of genotypes of that other plant;

whether the plant has been derived through the selection of a mutant or variant, or through crossing, genetic engineering or any other means.

(3) Notwithstanding that plant breeders rights subsist in relation to any plant—

- (a) a person may use the plant as an initial source of variation for the purpose of creating any other new variety:

Provided that this paragraph shall not apply where the plant is repeatedly used for the reproduction or multiplication of another variety;

- (b) a person who has purchased the plant, or reproductive material thereof, from the holder of plant breeders rights or from a person authorised by the holder may grow and resell the plant and any material harvested from it:

Provided that he shall not do so for the sole or primary purpose of reproducing or multiplying the plant;

- (c) a farmer who cultivates less than ten hectares of land may use the harvest from any prescribed plant for the purpose of propagating the plant on that land, where the harvest was obtained by propagating the plant on that land or by propagating another plant, which is essentially derived from the plant concerned, on that land;

- (d) a farmer who derives at least eighty *per centum* of his annual gross income from farming on communal land or on resettlement land as defined in section 2 of the Rural District Councils Act [*Chapter 29:13*] may—

- (i) multiply the seeds of any prescribed plant; and

- (ii) exchange with any other such farmer—

- A. any prescribed plant which he has grown or reproduced on his land; and

- B. any seeds from a plant referred to in subparagraph A;

and

- (iii) donate any plant or seed referred to in subparagraph (ii) to the State or a statutory body or to any other organisation which the Minister has authorised to seek such a donation;

and such conduct shall not be an infringement of the holder's rights under subsection (1).

17A Duration of plant breeders rights

(1) Subject to this Act, the term of the plant breeders rights shall be twenty years from the date on which they were granted.

(2) If the Registrar is satisfied, on application by a holder of plant breeders rights, that for reasons beyond the applicant's control the applicant has not been adequately remunerated by the grant of such rights, the Registrar may extend the term of the rights for such further period, being not more than five years, as the Registrar considers suitable in the circumstances, which extension may be made subject to such conditions, if any, as the Registrar considers to be desirable.

(3) An appeal shall lie from any decision of the Registrar under subsection (2)."

15 Amendment of section 19 of Cap. 18:16

Section 19 of the principal Act is amended by the insertion after subsection (5) of the following subsection—

"(6) No order shall be made under subsection (5) which would be at variance with the Convention or with any other international treaty or agreement to which Zimbabwe is a party."

16 New Part inserted in Cap. 18:16

The principal Act is amended by the insertion after Part IV of the following Part—

"PART IVA

REMEDIES FOR INFRINGEMENT OF PLANT BREEDERS RIGHTS

25A Court that may hear proceedings for infringement of plant breeders rights

Proceedings for infringement of plant breeders rights may be instituted by the holder of the rights or his assignee or licensee—

- (a) in the High Court; or
- (b) in the Administrative Court; or
- (c) subject to the jurisdictional limits provided for in the Magistrates Court Act [*Chapter 7:10*], in a magistrates court.

25B Provisions applicable to proceedings for infringement of plant breeders rights

(1) Subject to any rules of court, the following provisions shall apply in connection with proceedings for infringement of plant breeders rights—

- (a) any ground upon which the registration of the rights may be cancelled in terms of section *fifteen* may be relied upon by way of defence;
- (b) the defendant or respondent may, by way of counterclaim in the proceedings, apply for the cancellation of the registration of the rights;

- (c) the plaintiff or applicant shall, with the documents instituting the proceedings or subsequently on the order of the court concerned, deliver full particulars of the infringement complained of;
- (d) the defendant or respondent shall, with his statement of defence or plea or replying affidavit or subsequently on the order of the court concerned, deliver particulars of any objections on which he relies;
- (e) except with the leave of the court concerned, at the hearing no evidence shall be admitted of any infringement or on any objection of which particulars have not been delivered in terms of paragraph (c) or (d).

(2) In any proceedings brought under this section by a licensee, the holder of the plant breeders rights concerned or his assignee shall be added as defendant or respondent, as the case may be, unless he is joined as plaintiff or applicant:

Provided that a person so added as defendant or respondent shall not be liable for any costs unless he takes part in the proceedings.

(3) If the holder of plant breeders rights or his assignee is the plaintiff or applicant in any proceedings under this section, he shall give notice of the proceedings to any licensee of the rights in question, and the licensee shall be entitled to intervene as a co-plaintiff or co-applicant, as the case may be, and to recover any damages he may have suffered as a result of the infringement.

25C Remedies available in proceedings for infringement

(1) Subject to this Act, in proceedings for infringement of plant breeders rights the plaintiff or applicant shall be entitled to any appropriate remedy, whether damages, interdict, attachment, the rendering of account, the delivery of infringing articles used or intended to be used for the purposes of the infringement or otherwise, that is available in respect of the infringement of any other proprietary right.

(2) Damages for infringement of plant breeders rights may, at the option of the person seeking them, be calculated on the basis of the amount that a licensee would reasonably have been expected to pay under the circumstances for his use of the rights concerned:

Provided that, if the person seeking damages intends to exercise this option, he shall give notice of his intention, in writing, to any licensee of the rights concerned.

(3) In determining the amount of damages in an action for infringement of plant breeders rights, the court concerned shall take the following factors into account, in addition to all other material considerations—

- (a) the extent and nature of the infringement; and
- (b) the market value of the rights concerned; and

- (c) the amount which could be payable to the holder of the rights or his assignee in respect of the use of the rights by some other person; and
- (d) any dilatory conduct on the part of the holder of the rights or the plaintiff in making the infringer aware that the rights were registered.

(4) If it is established, in proceedings for infringement of plant breeders rights, that an infringement was committed and the court, having regard to—

- (a) the flagrancy of the infringement; and
- (b) the market value of the rights concerned; and
- (c) any benefit shown to have accrued to the person responsible for the infringement as a result of it; and
- (d) the need to deter persons from committing further infringements;

is satisfied that effective relief would not otherwise be available to the plaintiff or applicant, the Tribunal or the court, as the case may be, shall have power to award such additional damages as it thinks fit.

(5) If it is established, in proceedings for an infringement of plant breeders rights, that an infringement was committed but that at the time of the infringement the person responsible for it was not aware and had no reasonable grounds for suspecting that he was not entitled to engage in the infringing activity, the plaintiff or applicant shall not be entitled under this section to any damages against that person in respect of the infringement.

25D Anton Piller orders

(1) If a person who has instituted or intends instituting proceedings for an infringement of plant breeders rights satisfies a court that, *prima facie*—

- (a) he has a cause of action against another person which he intends to pursue; and
- (b) the other person has in his possession documents or other things of whatsoever nature which constitute evidence of great importance in substantiation of that cause of action; and
- (c) there is a real and well-founded apprehension that the documents or other things may be hidden, destroyed or rendered inaccessible before discovery can be made in the usual way;

the court may make such order as it considers necessary or appropriate to secure the preservation of the documents or things as evidence.

(2) An order in terms of subsection (1) may be granted without notice to the person who is allegedly in possession of the documents or other things to which the order relates, and the court may sit *in camera* for the purpose of hearing an application for such an order:

Provided that the court shall not grant an order without such notice unless it is satisfied that there is a real possibility that the documents or things will be hidden, destroyed or rendered inaccessible if notice is given.

(3) An order in terms of subsection (1) may be granted on such conditions, including the giving of security by the applicant, as the court may fix.

(4) This section shall not be taken to limit any power a court may have under its ordinary jurisdiction to grant orders such as are referred to in this section.

25E Remedy for groundless threats of infringement proceedings

(1) Where any person, whether or not he is entitled to or interested in any plant breeders rights or an application for the registration of any such rights, threatens another person with proceedings for infringement of plant breeders rights, anyone who is aggrieved by the threat may bring proceedings against him in a court of competent jurisdiction for the relief referred to in subsection (2).

(2) In proceedings brought by virtue of subsection (1), the plaintiff or applicant shall be entitled to any one or more of the following remedies—

- (a) a declaration to the effect that the threats are unjustifiable;
- (b) an interdict against any continuation of the threats;
- (c) such damages, if any, as he has sustained in consequence of the threats;

unless the defendant or respondent proves that the acts in respect of which he threatened proceedings constitute or, if done, would constitute, an infringement of any registered plant breeders rights, the registration of which is not shown by the plaintiff or applicant to be invalid.

(3) The defendant or respondent in any proceedings brought in terms of subsection (1) may counter-claim for any relief to which he would be entitled in separate proceedings in respect of any infringement by the plaintiff or applicant of the plant breeders rights to which the threats relate.

(4) For the avoidance of doubt, it is declared that a mere notification that plant breeders rights are registered does not constitute a threat of proceedings within the meaning of subsection (1).”.

17 Repeal of section 32 of Cap. 18:16

Section 32 of the principal Act is repealed.

18 Repeal of section 34 of Cap. 18:16

Section 34 of the principal Act is repealed.

19 New section inserted in Cap. 18:16

The principal Act is amended by the insertion after section 37 of the following section—

“37A Use of approved name

- (1) Where the approved name of any plant—
 - (a) is still commercially exploited; or

- (b) has ceased to be commercially exploited, but the name has acquired a special significance in relation to that plant;

no person shall use, in relation to any other plant, a name which is identical to or may be confused with that approved name.

- (2) Any person who sells—

- (a) a plant in respect of which plant breeders rights have been granted; or
- (b) any seed or reproductive material of a plant in respect of which plant breeders rights have been granted;

shall use the plant's approved name in connection with the sale, even if the plant breeders rights have expired:

Provided that he may use the name in association with a trade mark, trade name or other such mark or name, if the plant's approved name remains easily recognisable.

- (3) Any contravention of this section shall be deemed to be an infringement of the plant breeders rights concerned for the purposes of Part IVA.”

20 Repeal of section 42 of Cap. 18:16

Section 42 of the principal Act is repealed.

21 Amendment of section 23 of Cap. 19:13

Section 23 of the Seeds Act [*Chapter 19:13*] is amended—

- (a) by the insertion after subsection (1) of the following subsection—

“(1a) Subject to this section, the Minister may, by order in the *Gazette*, prohibit the production, multiplication, sale or importation of seed—

- (a) which, if used as reproductive material in Zimbabwe, would be likely to cause a deterioration in any domestic variety of plant, whether through cross-pollination, physical admixture or other means; or
- (b) which is unsuitable for use in Zimbabwe; or
- (c) the use of which would not be in the general interests of agriculture, forestry or horticulture in Zimbabwe.”;

- (b) in subsection (6) by the insertion in the definition of “prohibition order” after “subsection (1)” or “or (1a)”.
-