



Plant Varieties and Seeds Act 1964

1964 CHAPTER 14

PART I

PLANT BREEDERS' RIGHTS

1 Grant of plant breeders' rights

- (1) Rights, to be known as plant breeders' rights, may be granted in accordance with this Part of this Act in respect of plant varieties of such species or groups as may be prescribed by a scheme made by the Ministers under this Part of this Act.
- (2) Subject to this Part of this Act, plant breeders' rights shall be granted to an applicant by the Controller of the Plant Variety Rights Office established under this Part of this Act (hereafter in this Act referred to as "the Controller ") on being satisfied that the conditions laid down in the next following section are fulfilled.
- (3) Schedule 1 to this Act shall have effect for the protection of an applicant pending the decision to allow or refuse his application for the grant of plant breeders' rights.
- (4) An appeal shall lie to the Tribunal established under this Part of this Act (hereafter in this Act referred to as "the Tribunal") against the decision of the Controller to allow or refuse an application for the grant of plant breeders' rights.
- (5) Before making a scheme under this Part of this Act the Ministers shall consult the Controller and representatives of such interests as appear to the Ministers to be concerned, and any scheme under this Part of this Act—
 - (a) may make different provision for different species or groups of plant varieties,
 - (b) may contain such supplemental, incidental and transitional provisions as appear to the Ministers to be appropriate, and
 - (c) may be varied or revoked by a subsequent scheme,so, however, that the variation or revocation of a scheme shall not prejudice a grant of plant breeders' rights made before the variation or revocation takes effect.
- (6) A scheme under this Part of this Act shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

2 Conditions for grant of rights

- (1) The conditions laid down in this section must be fulfilled as respects an applicant for plant breeders' rights and the plant variety to which the application relates.
- (2) The applicant must be the person who bred or discovered the variety, or his successor in title, and the provisions of Part I of Schedule 2 to this Act shall have effect as respects priorities between two or more persons who have independently bred or discovered a variety.
- (3) The variety must conform to the rules in Part II of Schedule 2 to this Act.
- (4) References in this section and Schedule 2 to this Act to the discovery of a plant variety are references to the discovery of a plant variety, whether growing in the wild or occurring as a genetic variant, whether artificially induced or not.

3 Period for which rights are exercisable

- (1) A scheme under this Part of this Act shall prescribe the period, being a period not exceeding 25 years, for which plant breeders' rights are to be exercisable.
- (2) As respects fruit trees and their root-stocks, forest and ornamental trees and grape vines the period so prescribed shall be not less than 18 years, and a statement in a scheme under this Part of this Act to the effect that a species or group of plant varieties falls under this subsection shall be conclusive.
- (3) As respects plant varieties not falling under the last foregoing subsection the period so prescribed shall be not less than 15 years.
- (4) Subject to the following provisions of this section, the period for which plant breeders' rights are exercisable shall be the relevant period prescribed by a scheme under this Part of this Act, beginning with the date on which the grant of the plant breeders' rights by the Controller takes effect.
- (5) If on the application of the holder of any plant breeders' rights the Controller is satisfied that, for reasons beyond the control of the applicant, the holder has not been adequately remunerated by the grant of the rights, the Controller may extend the period for which his plant breeders' rights are exercisable, subject to such restrictions, conditions and other provisions, if any, as may be directed by the Controller so, however.—
 - (a) that the period as extended shall not exceed 25 years, and
 - (b) where the period as extended is less than 25 years, no further extension shall be made under this subsection.

An appeal shall lie to the Tribunal against the decision of the Controller to allow or refuse an application under this subsection.

- (6) The holder of plant breeders' rights may at any time make an application to the Controller offering to surrender his rights and if, after notice of the application has been given in the manner prescribed by regulations under this Part of this Act, and after the procedure so prescribed for hearing any person on whom the right to object is conferred by such regulations has been followed, the Controller is satisfied that the rights may properly be surrendered, he may accept the offer and terminate the period for which the rights are exercisable. An appeal shall lie to the Tribunal from any decision of the Controller under this subsection.

- (7) The Controller shall terminate the period for which any plant breeders' rights are exercisable if at any time he is satisfied—
- (a) that any information submitted in the application for the grant of the rights, or any information submitted by or on behalf of the applicant in connection with the application, was incorrect and that, if the Controller had known before the grant that it was incorrect, he would have refused the grant, or
 - (b) that facts have been discovered which, if known before the grant, would have resulted in the grant being refused on the grounds that rule 1 or rule 2 in Part II of Schedule 2 to this Act was not satisfied in respect of the plant variety.
- (8) The Controller shall revoke or, if it has begun, terminate any extension under subsection (5) of this section of the period for which any plant breeders' rights are exercisable if at any time he is satisfied that any information submitted in the application under that subsection, or any information submitted by or on behalf of the applicant in connection with the application, was incorrect and that, if the Controller had known before deciding to allow the application that it was incorrect, he would have refused the application.
- (9) An appeal shall lie to the Tribunal against any decision of the Controller to act under subsection (7) or subsection (8) of this section.

4 The nature of the rights

- (1) Subject to this Part of this Act, the holder of plant breeders' rights in a plant variety shall have the exclusive right to do, and to authorise others to do, as follows—
- (a) to sell the reproductive material of the plant variety;
 - (b) to produce the reproductive material of the plant variety in Great Britain for the purpose of selling it; and
 - (c) in the circumstances described in Schedule 3 to this Act, to exercise the other rights there specified,

and, subject to this section, infringements of plant breeders' rights shall be actionable at the suit of the holder of the rights, and in any proceedings for such an infringement all such relief, by way of damages, injunction, interdict, account or otherwise, shall be available as is available in any corresponding proceedings in respect of infringements of other proprietary rights.

- (2) Paragraph (a) of the foregoing subsection shall not apply to the sale of reproductive material which is not in Great Britain when it is sold; but if any person purchases the reproductive material of the plant variety which is not in Great Britain when it is sold and uses it in Great Britain as reproductive material, the purchase and subsequent use shall together constitute an infringement of the plant breeders' rights and the purchaser shall be liable to be proceeded against in respect of the infringement.

References in this subsection to using the reproductive material of a plant variety as reproductive material in Great Britain include references to so disposing of that material (otherwise than by way of sale) while it is in Great Britain as to make it available for use in Great Britain as reproductive material.

- (3) There shall be no right to damages in respect of an infringement of plant breeders' rights—

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- (a) if the person infringing the rights was not aware, and had no reasonable grounds for suspecting, that the plant variety in question was the subject of plant breeders' rights, or
 - (b) in a case where the infringement consists of a breach of conditions attached to a licence, if that person had no notice of any of those conditions,
- but the person who would, but for the foregoing provisions, be entitled to damages shall be entitled to an account of profits in respect of the infringement (and to payment of any amount found due on the account) whether any other relief is granted under this section or not.
- (4) The holder of plant breeders' rights may, in authorising other persons to exercise his exclusive rights, impose any conditions, limitations or restrictions which may be imposed by the holder of any other kind of proprietary rights, and plant breeders' rights shall be assignable like other kinds of proprietary rights.
- (5) A sale of the reproductive material of a plant variety which is the subject of plant breeders' rights, being a sale by the holder of the rights (or by any other person authorised to grant a licence in respect of those rights)—
- (a) shall not imply that the seller authorises the purchaser to produce the reproductive material of the plant variety for the purpose of selling it, but
 - (b) subject to any terms or conditions imposed by the seller, shall imply that the seller authorises the purchaser to sell the reproductive material sold to him.
- (6) In this section and in Schedule 3 to this Act references to selling reproductive material include references to any transaction effected in the course of business—
- (a) under which the property in the reproductive material passes from one person to another, or
 - (b) under which the reproductive material is made over by one person to another in pursuance of a contract under which he will use the reproductive material for growing further reproductive material or other crops,
- and paragraph (b) of this subsection shall apply irrespective of whether the contract provides that the property in the crop will be in the person to be regarded as the seller, or the person to be regarded as the purchaser, or a third party; and any reference to purchasing or a purchaser shall be construed accordingly.

5 Naming of protected plant varieties

- (1) The Ministers may by regulations under this section provide for the selection of names for plant varieties which are the subject of applications for plant breeders' rights and for the keeping of a register of the names so selected.
- (2) Notice of all entries made in the register, including alterations, corrections and erasures, shall be published by the Controller in the gazette to be issued under Part IV of this Act, and in such other manner as appears to the Controller to be convenient for the publication of these to all concerned.
- (3) After a section of the Index under Part II of this Act has come into force, the part of the register under this section dealing with the class of plant varieties to which that section of the Index relates shall, so far as practicable, be combined with the Index.
- (4) Regulations under this section may in particular—
- (a) prescribe the circumstances in which representations may be made regarding any decision as to the name to be registered in respect of any plant variety,

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- (b) make provision for the publication or service of notices of decisions which the Controller proposes to take, and
 - (c) prescribe the times at which, and the circumstances in which, the register may be inspected by members of the public.
- (5) Any regulations under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) If, where a name is registered under this section for a plant variety, any person uses that name, or a name so nearly resembling it as to be likely to deceive or cause confusion, in selling or offering or exposing for sale—
- (a) reproductive material of a different plant variety within the same class, or
 - (b) where under paragraph 1 of Schedule 3 of this Act plant breeders' rights in the first-mentioned plant variety have been extended to material other than reproductive material, that other material from a different plant variety within the same class,
- the use of the name shall be a wrong actionable in proceedings by the holder of the rights; but it shall be a defence to a claim for damages in any such proceedings to prove that the defendant took all reasonable precautions against committing a wrong of the kind alleged and had not when using the name any reason to suspect that it was wrongful.
- (7) In this section the expression " name" includes any designation, and references to plant varieties as being within the same class are references to them as being within the same class being either—
- (a) a class consisting of all plant varieties of the species or groups prescribed by any one scheme under this Part of this Act, or
 - (b) any other class of plant varieties prescribed for the purposes of this subsection by any such scheme.

6 Maintenance of reproductive material

- (1) The provisions of this section shall apply in relation to all plant varieties except such as fall within any species or group which is excluded from this section by a scheme under this Part of this Act.
- (2) Every holder of plant breeders' rights shall ensure that, throughout the period for which the rights are exercisable, he is in a position to produce to the Controller reproductive material which is capable of producing the variety to which the rights relate with the morphological and physiological and other characteristics taken into account when the rights were granted in respect of the variety.
- (3) It shall also be the duty of every holder of plant breeders' rights to afford to the Controller all such information and facilities as he may request for the purpose of satisfying himself that the holder of the plant breeders' rights is fulfilling his duty under subsection (2) of this section, including facilities for the inspection by or on behalf of the Controller of the measures taken for the preservation of the plant variety; and if he is satisfied that the holder of the rights has failed to comply with any request under this subsection he may if he thinks fit at any time terminate the period for which the plant breeders' rights are exercisable.
- (4) If at any time it appears to the Controller that any holder of plant breeders' rights is no longer in a position to provide the Controller with the reproductive material mentioned

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in subsection (2) of this section, he shall terminate the period for which the rights are exercisable.

- (5) An appeal shall lie to the Tribunal against any decision of the Controller under this section to terminate the period for which any rights are exercisable.

7 Compulsory licences

- (1) Subject to the provisions of this section, if any person applies to the Controller and satisfies him that the holder of any plant breeders' rights has unreasonably refused to grant a licence to the applicant, or, in granting or offering to grant a licence, has imposed or put forward unreasonable terms, the Controller shall, unless it appears to him that there is good reason for refusing the application, grant to the applicant in the form of a compulsory licence any such rights as respects the plant variety as might have been granted to the applicant by the holder of the plant breeders' rights.

- (2) A scheme under this Part of this Act may, for any species or group of plant varieties, prescribe for the purposes of this subsection a period of a length specified in the scheme, and a compulsory licence granted as respects a plant variety which falls within the species or group of plant varieties specified in the scheme shall not have effect during a period beginning with the date of grant of the rights and equal in length to the period so prescribed by the scheme.

The prescribed period may be different for different species or groups.

- (3) In entertaining applications and settling the terms of compulsory licences under this section the Controller shall endeavour to secure that the plant variety is available to the public at reasonable prices, that it is widely distributed, that it is maintained in quality and that there is reasonable remuneration for the holder of the plant breeders' rights.
- (4) A compulsory licence under this section may include terms obliging the holder of the plant breeders' rights to make reproductive material available to the holder of the compulsory licence.
- (5) Without prejudice to the following provisions of this Part of this Act requiring provision to be made by regulations as to proceedings before the Controller, where—
- (a) the holder of the plant breeders' rights to which an application under subsection (1) of this section relates is, or is represented by, a society or other organisation which has as its main object, or one of its main objects, the negotiation or granting of licences to exercise plant breeders' rights, either as the holder of the rights or as agent for holders, and
 - (b) an organisation (whether claiming to be representative of persons requiring licences or not) or a person (whether requiring a licence or not) applies to the Controller for an opportunity of making representations concerning the application, and the Controller is satisfied that the organisation or person has a substantial interest in the application and that the application involves issues which may affect other applicants for compulsory licences under this section, and
 - (c) if the applicant under paragraph (b) of this subsection is an organisation, the Controller is satisfied that it is reasonably representative of the class of persons which it claims to represent,

the Controller shall afford to the organisation or person applying under paragraph (b) of this subsection an opportunity of making representations to the Controller and of

being heard by the Controller or by a person appointed by the Controller for the purpose.

- (6) The Controller before granting a compulsory licence shall satisfy himself that the applicant is financially and otherwise in a position, and intends, to exploit the rights to be conferred on him in a competent and businesslike manner.
- (7) Without prejudice to the remedies available to the holder of a compulsory licence by the taking of proceedings in any court, the Controller may, if it is represented to him by any applicant that the holder of the plant breeders' rights has failed to meet any obligation imposed on him by a compulsory licence under this section, and he is satisfied that the representations are correct, terminate the period for which the plant breeders' rights are exercisable.
- (8) The Controller may at any time on representations made by any applicant extend, limit or vary in any other respect, or revoke, a compulsory licence.
- (9) A compulsory licence under this section may be granted to an applicant whether or not the holder of the plant breeders' rights has granted licences to the applicant or any other person, and shall not be an exclusive licence.
- (10) If and so far as any agreement purports to bind any person not to apply for a compulsory licence under this section, it shall be void.
- (11) An appeal shall lie to the Tribunal against the decision of the Controller to allow or refuse any application under subsection (1), subsection (7) or subsection (8) of this section.

8 Exclusion from Restrictive Trade Practices Act 1956

Part I of the Restrictive Trade Practices Act 1956 (registration and judicial investigation of restrictive trading agreements) shall not apply—

- (a) to any licence granted by a holder of plant breeders' rights or by any other person authorised to grant a licence in respect of such rights, or
- (b) to any assignment of plant breeders' rights or of the title to apply for the grant of such rights, or
- (c) to any agreement for such a licence or assignment,

being a licence, assignment or agreement under which no such restrictions as are described in section 6(1) of that Act are accepted except in respect of goods which are plants or parts of plants of the plant variety which is the subject of those plant breeders' rights, or will be the subject of them if granted.

9 Regulations as to applications, fees, etc.

- (1) Regulations may be made under this section by the Ministers as respects the manner in which the Controller is to discharge his functions under this Part of this Act, and in particular as respects—
 - (a) applications for the grant of plant breeders' rights and other applications to the Controller under this Part of this Act, and
 - (b) the charging of fees, including periodical fees payable by persons holding plant breeders' rights,and regulations concerning fees charged by the Controller shall be separate regulations made with the approval of the Treasury.

Status: This is the original version (as it was originally enacted).

- (2) Regulations under this section may authorise the Controller—
- (a) in the case of a failure to pay any fees payable in connection with any application to him under this Part of this Act, to refuse the application, and
 - (b) in the case of a failure by a holder of plant breeders' rights to pay any fees payable in connection with those rights, to terminate the period for which the rights are exercisable,
- with or without, in any case, a right of appeal against the Controller's decision, and may provide for the restoration of the application or the rights if the failure to pay fees is made good.
- (3) The regulations shall provide for affording, before the Controller makes a decision to which this subsection applies, both to the person entitled to appeal to the Tribunal against that decision, and to persons of such other descriptions as may be prescribed by the regulations, an opportunity of making representations to the Controller and of being heard by the Controller or by a person appointed by the Controller for the purpose.
- This subsection applies to any decision of the Controller against which, under the provisions contained in this Part of this Act, an appeal lies to the Tribunal.
- (4) The regulations may, in addition to the rights of appeal conferred by the provisions contained in this Part of this Act, confer a right of appeal to the Tribunal against any decision of the Controller under regulations made under section 5 of this Act or this section.
- (5) Regulations under this section may in particular—
- (a) prescribe the information and facilities to be afforded by an applicant and the reproductive material and other plant material to be submitted at the time of the application or subsequently,
 - (b) prescribe the tests, trials, examinations and other steps to be taken by the applicant or the Controller before any application is granted, and the time within which any such steps are to be taken,
 - (c) restrict the making of repeated applications on the same subject,
 - (d) prescribe the circumstances in which representations may be made regarding any decision on any application,
 - (e) make provision as to the keeping of registers and records by the Controller and their rectification, and prescribe (the circumstances in which they may be inspected by members of the public,
 - (f) make provision for the publication or service of notice of applications and of the Controller's decisions,
 - (g) prescribe the manner of dealing with objections to applications.
- (6) Subject to the provisions of this section requiring the approval of the Treasury for regulations concerning fees, any regulations under this section shall be made by the Ministers by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

10 The Tribunal

- (1) There shall be a Plant Variety Rights Tribunal in relation to which the provisions of Schedule 4 to this Act shall apply.

Status: This is the original version (as it was originally enacted).

- (2) Subject to this section, section 9 of the Tribunals and Inquiries Act 1958 (appeals on questions of law) shall apply as if the Tribunal were included among the tribunals mentioned in subsection (1) of that section and, subject to that section, the decisions of the Tribunal shall be final and conclusive.
- (3) The Tribunal shall, in addition to their jurisdiction under this Part of this Act, hear and determine any matters agreed to be referred to the Tribunal by any arbitration agreement relating to the infringement of plant breeders' rights, or to matters which include the infringement of plant breeders' rights, but subsection (2) of this section shall not apply in relation to any jurisdiction conferred on the Tribunal by this subsection.
- (4) The fees payable to the Tribunal for acting under any arbitration agreement shall be such as the Tribunal may determine, and nothing in section 4 of the Arbitration (Scotland) Act 1894 (power to name oversman) or in section 9 of the Arbitration Act 1950 (agreements for reference to three arbitrators) shall be taken as applying to the Tribunal.
- (5) Regulations may be made by the Ministers under this section as respects any appeal to the Tribunal under this Act, or under regulations made under this Act for all or any of the following purposes, that is—
 - (a) to provide for determining in which part of Great Britain any appeal is to be heard;
 - (b) to authorise persons other than the appellant and the Controller or other authority whose decision is appealed against to appear and be heard as parties to any appeal;
 - (c) to provide for suspending, or authorising or requiring the suspension of, the operation of a decision pending final determination of an appeal against a decision, and
 - (d) to provide for the publication of notices or the taking of other steps for securing that the persons affected by the suspension of the operation of a decision appealed against will be informed of its suspension.

Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

- (6) In the application of this section to England and Wales " arbitration agreement" has the meaning given by section 32 of the Arbitration Act 1950.

11 The Plant Variety Rights Office

- (1) For the purposes of this Part of this Act there shall be an office to be known as the Plant Variety Rights Office which shall be under the immediate control of an officer appointed by the Ministers, to be known as the Controller of Plant Variety Rights.
- (2) The Controller shall in the exercise of his functions, other than the taking of any decision from which an appeal lies to the Tribunal, act under the general direction of the Ministers.
- (3) The Ministers may, in addition to the Controller, appoint a deputy controller and such other officers and servants to act in the Plant Variety Rights Office as the Ministers may with the consent of the Treasury determine, and there shall be paid to the Controller and any other officers and servants appointed under this section such remuneration and allowances as the Treasury may determine.

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- (4) Without prejudice to the Controller's general discretion as to the manner in which he performs his duties under this Act, and subject to subsection (2) of this section, the Controller—
- (a) in carrying out the tests and trials which he considers expedient for the purposes of this Part of this Act, and in assessing the results of any tests and trials (whether carried out by him or not) which he considers relevant for those purposes, may use the services of persons who are not officers or servants appointed under this section and may pay to such persons in respect of their services fees in accordance with such a scale as he may with the approval of the Treasury determine, and
 - (b) may establish and maintain reference collections of plant material, and
 - (c) may by means of grants of such amounts as he may with the approval of the Treasury determine defray or contribute towards the expenses incurred by any other person in maintaining any reference collection of plant material.
- (5) Any act or thing directed to be done by or to the Controller may be done by or to any officer authorised by the Ministers, and prima facie evidence, or in Scotland sufficient evidence, of any document issued by the Controller may be given in all legal proceedings by the production of a copy or extract certified to be a true copy or extract by an officer appointed under this section and authorised to give a certificate under this subsection.
- (6) There shall be an official seal for the Plant Variety Rights Office, which shall be officially and judicially noticed, and shall be authenticated by the signature of the Controller or of an officer appointed under this section and authorised to authenticate the seal.
- (7) Any document purporting to be certified or sealed in accordance with subsection (5) or subsection (6) of this section shall, unless the contrary is proved, be deemed to have been duly certified or sealed without proof of the official character or handwriting of the person appearing to have certified the document or authenticated the seal.

12 Application of Tribunals and Inquiries Act 1958

- (1) Subject to this section, Part I of Schedule 1 to the Tribunals and Inquiries Act 1958 shall have effect as if—
- (a) the Controller and any officer authorised to exercise the functions of the Controller under section 11(5) of this Act, and
 - (b) the Tribunal
- were specified therein.
- (2) Notwithstanding the foregoing subsection, section 5 of that Act (which makes it necessary to obtain the concurrence of the Lord Chancellor and of certain judicial officers in Scotland and Northern Ireland to dismissals in certain cases) shall not apply to the Controller or any such officer as is mentioned in paragraph (a) of the foregoing subsection.
- (3) References in that Act, as applied by this section, to the working or a decision of, or procedural rules for, the Controller shall not include references to his working, decisions or procedure in the exercise of executive functions.

13 False representations as to rights and false information

- (1) If a person falsely represents that he is entitled to exercise any plant breeders' rights, or rights derived from plant breeders' rights, whether or not the variety as respects which the representation is made is the subject of plant breeders' rights, and he knows that the representation is false or makes the representation recklessly, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding three months, or to both.
- (2) If—
 - (a) any information submitted in an application to the Controller for a decision against which an appeal lies to the Tribunal, or any information submitted by or on behalf of the applicant in connection with such an application, or
 - (b) any information given in pursuance of a request under section 6(3) of this Act, is false in a material particular and the person giving the information or making the statement knows that it is fake or gives the information or makes the statement recklessly, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding three months, or to both.

14 Application of Part I to the Crown

- (1) If any servant or agent of the Crown infringes any plant breeder's rights or makes himself liable to civil proceedings under section 5 of this Act, and the infringement or wrong is committed with the authority of the Crown, then civil proceedings in respect of the infringement or wrong shall lie against the Crown.
- (2) Subject to the foregoing subsection, no proceedings shall lie against the Crown by virtue of the Crown Proceedings Act 1947 in respect of the infringement of plant breeder's rights or of any such wrong.
- (3) This section shall have effect as if contained in Part I of the Crown Proceedings Act 1947.

15 Interpretation of Part I

- (1) References in this Part of this Act to reproductive material are references to reproductive material of plant varieties, and include references—
 - (a) to seeds for sowing,
 - (b) to seed potatoes and other vegetative propagating material,
 - (c) to whole plants, as well as parts of plants, where whole plants may be used as reproductive material, and
 - (d) to ornamental plants and parts of ornamental plants when used commercially as propagating material in the production of ornamental plants and cut flowers.
- (2) References in this Part of this Act to an applicant for plant breeders' rights, or to the holder of plant breeders' rights, include, where the context allows, references to his predecessors in title or his successors in title.