



# Plant Varieties Act 1997

## 1997 CHAPTER 66

### PART I

#### PLANT VARIETIES

##### *Scope of plant breeders' rights*

#### **6 Protected variety.**

- (1) Plant breeders' rights shall have effect to entitle the holder to prevent anyone doing any of the following acts as respects the propagating material of the protected variety without his authority, namely—
  - (a) production or reproduction (multiplication),
  - (b) conditioning for the purpose of propagation,
  - (c) offering for sale,
  - (d) selling or other marketing,
  - (e) exporting,
  - (f) importing,
  - (g) stocking for any of the purposes mentioned in paragraphs (a) to (f) above, and
  - (h) any other act prescribed for the purposes of this provision.
- (2) The holder of plant breeders' rights may give authority for the purposes of subsection (1) above with or without conditions or limitations.
- (3) The rights conferred on the holder of plant breeders' rights by subsections (1) and (2) above shall also apply as respects harvested material obtained through the unauthorised use of propagating material of the protected variety, unless he has had a reasonable opportunity before the harvested material is obtained to exercise his rights in relation to the unauthorised use of the propagating material.
- (4) In the case of a variety of a prescribed description, the rights conferred on the holder of plant breeders' rights by subsections (1) and (2) above shall also apply as respects any product which—

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*Changes to legislation: There are currently no known outstanding effects for the Plant Varieties Act 1997, Cross Heading: Scope of plant breeders' rights. (See end of Document for details)*

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- (a) is made directly from harvested material in relation to which subsection (3) above applies, and
  - (b) is of a prescribed description,
- unless subsection (5) below applies.
- (5) This subsection applies if, before the product was made, any act mentioned in subsection (1) above was done as respects the harvested material from which the product was made and either—
- (a) the act was done with the authority of the holder of the plant breeders' rights, or
  - (b) the holder of those rights had a reasonable opportunity to exercise them in relation to the doing of the act.
- (6) In this section—
- (a) “prescribed” means prescribed by regulations made by the Ministers, and
  - (b) references to harvested material include entire plants and parts of plants.

## 7 **Dependent varieties.**

- (1) The holder of plant breeders' rights shall have, in relation to any variety which is dependent on the protected variety, the same rights as he has under section 6 above in relation to the protected variety.
- (2) For the purposes of this section, one variety is dependent on another if—
- (a) its nature is such that repeated production of the variety is not possible without repeated use of the other variety, or
  - (b) it is essentially derived from the other variety and the other variety is not itself essentially derived from a third variety.
- (3) For the purposes of subsection (2) above, a variety shall be deemed to be essentially derived from another variety (“the initial variety”) if—
- (a) it is predominantly derived from—
    - (i) the initial variety, or
    - (ii) a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics resulting from the genotype or combination of genotypes of the initial variety,
  - (b) it is clearly distinguishable from the initial variety by one or more characteristics which are capable of a precise description, and
  - (c) except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.
- (4) For the purposes of subsection (3) above, derivation may, for example, be by—
- (a) the selection of—
    - (i) a natural or induced mutant,
    - (ii) a somaclonal variant, or
    - (iii) a variant individual from plants of the initial variety,
  - (b) backcrossing, or
  - (c) transformation by genetic engineering.

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- (5) Subsection (1) above shall not apply where the existence of the dependent variety was common knowledge immediately before the coming into force of this Act.

**Changes to legislation:**

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