

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
PLANT BREEDERS' RIGHTS
BILL**



(As agreed to by the Portfolio Committee on Agriculture, Forestry and Fisheries)

[B 11A—2015]

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AMENDMENTS AGREED TO

PLANT BREEDERS' RIGHTS BILL

[B 11—2015]

CLAUSE 1

1. On page 4, in line 30, to omit “42” and to substitute “45”.
2. On page 5, in line 28, to omit “51” and to substitute “54”.

CLAUSE 3

1. On page 6, in line 10, after “may” to insert “not”.

CLAUSE 4

1. On page 6, in line 20, after “register” to insert “within seven days”.

CLAUSE 6

1. On page 6, in line 33, after “subsection” to insert “within seven days”.

CLAUSE 15

1. On page 9, in line 5, after “species,” to omit “excluding fungi and algae,”.
2. On page 9, from line 38, to omit subsection (4) and to substitute:

(4) For the purposes of subsection (2)(b), the filing of an application for the—
(a) granting of a plant breeder's right; or
(b) entering in an official register of varieties,
of another variety in any country, renders that other variety a matter of common knowledge from the date of such application, if such application results in the granting of a plant breeder's right of that other variety or the entering in the official register of varieties of the said other variety, as the case may be.

CLAUSE 17

1. On page 10, from line 28, to omit subsection (3) and to substitute:
(3) The Registrar must allow the applicant to, within two years after the—
(a) expiration of the period of priority; or
(b) first application is rejected or withdrawn,
furnish the relevant information, documents or material required for the purposes of undertaking the tests and trials in terms of section 26.

CLAUSE 22

1. On page 11, in line 25, after “40” to insert “within 60 days from the date of publication”.
2. On page 11, in line 26, to omit “seven days” and to substitute “14 days”.
3. On page 11, in line 30, after “objection” to insert “within 60 days of notification”.

CLAUSE 23

1. On page 11, from line 34, to omit subsection (1) and to substitute:

(1) An applicant for the grant of a plant breeder’s right must propose a denomination that complies with the prescribed requirements and such denomination is subject to the approval of the Registrar.

CLAUSE 24

1. On page 12, in line 11, after “writing” to insert “within 21 days”.
2. On page 12, in line 19, to omit “14 days” and to substitute “21 days”.

CLAUSE 27

1. On page 13, in line 14, after “writing” to insert “within 21 days”.

CLAUSE 28

1. On page 13, in line 21, after “granted” to insert “within 90 days of receiving examination results”.

CLAUSE 29

1. On page 13, in line 29, after “place” to insert “30 days prior to the hearing”.
2. On page 13, from line 30, to omit subsection (3) and to substitute:

(3) The Registrar when considering a matter at the hearing may utilise one or more of the persons contemplated in section 43 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.
3. On page 13, in line 51, to omit “seven days” and to substitute “21 days”.

CLAUSE 30

1. On page 14, in line 16, to omit “lapses” and to substitute “may be cancelled in accordance with section 38”.

CLAUSE 35

1. On page 15, in line 29, to omit “seven days” and to substitute “21 days”.
2. On page 15, in line 32, to omit “30 days” and to substitute “60 days”.
3. On page 15, in line 38, to omit “30 days” and to substitute “21 days”.

CLAUSE 36

1. On page 15, in line 41, after “and” to add “30 days prior to the hearing”.
2. On page 16, in line 16, to omit “seven days” and substitute with “21 days”.

CLAUSE 38

1. On page 17, in line 24, to omit “board contemplated in section 41” and to substitute “Minister in terms of section 44”.

CLAUSE 41

Clause rejected.

NEW CLAUSES

1. That the following be new clauses:

Right to appeal

41. A person who feels aggrieved by any decision or action taken by the Registrar may appeal in the prescribed manner to the Minister against such decision or action.

Appeal Board, composition and membership

42. (1) The Minister may constitute a board known as the Appeal Board to investigate and consider any appeal referred to it in terms of section 41.

(2) The Board must consist of at least three members appointed by the Minister, of whom—

- (a) one person must be appointed on account of his or her knowledge in the relevant fields of the law; and
- (b) two or more persons must have expert knowledge of the subject of the appeal.

(3) The Minister must designate the person referred to in subsection (2)(a) as the chairperson.

(4) The remuneration of a member of the Board must be prescribed after consultation with the Minister of Finance.

(5) Any person appointed in terms of subsection (2) 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.

Investigation and consideration by Board

43. (1) The Minister may refer an appeal to the Board.

(2) An appeal must be heard on the date and at the time and place determined by the chairperson.

(3) The chairperson must inform the appellant and any other party

that has an interest in the appeal in writing of the date, time and place of the hearing 30 days prior to the hearing.

(4) The chairperson may, for the purposes of the hearing of an appeal—

- (a) 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 questioned or to produce that document, and the chairperson may retain for examination any document so produced; and
- (b) administer an oath to or accept an affirmation from any person called as a witness at the hearing.

(5) A person who appeals in terms of section 41 and the Registrar may be represented at the appeal.

(6) If a member of the Board—

- (a) dies during the investigation or proceedings 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
- (c) is, after the investigation has commenced, unable to continue therewith,

the parties may agree that the investigation be continued by the remaining members of the Board.

(7) Where the member of the Board who has died or has become incapacitated as envisaged in subsection (6) was or is the chairperson of the Board, the Minister must designate one of the remaining members of the Board to act as chairperson.

Consideration of appeal by Minister

44. (1) **Where** the Minister has referred an appeal to the Board in terms of section 43(1), he or she may—

- (a) confirm or set aside the recommendations of the Board; and
- (b) order the Registrar to execute the decision in connection therewith.

(2) Where the Minister considers an appeal, he or she may—

- (a) confirm, set aside or vary the decision of the Registrar; and
- (b) order the Registrar to execute the decision in connection therewith.

(3) The decision of the Minister must be in writing and a copy thereof must be furnished to the Registrar, appellant and any other party to whom decision must be conveyed within 90 days.

(4) If the Minister—

- (a) sets aside any decision or action by the Registrar the prescribed fee paid by the appellant in respect of the appeal must be refunded to the appellant; or
- (b) varies any decision or action by the Registrar, the Minister may direct that the whole or any part of such fee, be refunded to the appellant.

CLAUSE 42

1. On page 18, in line 58, to omit “is hereby” and substitute “may be”.

CLAUSE 43

1. On page 19, in line 5, after “Minister” to omit “must” and to substitute “may”.
2. On page 19, in line 49, to omit subsection 10 and to substitute:

(10) A member of the Advisory Committee must receive such subsistence and travelling allowances as may be prescribed by the Minister after consultation with the Minister of Finance.

CLAUSE 46

1. On page 20, in line 36, after “document” to insert “relating to the investigation”.
2. On page 21, from line 29, to omit subsection (6) and to substitute:

(6) The registrar may, without a warrant enter any place, premises or vehicle, 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.

CLAUSE 51

1. On page 22, in line 42, to omit “may” and to substitute “must”.

CLAUSE 52

1. On page 23, from line 43, to omit paragraphs (d) and (e).
2. On page 23, in line 59, to omit “or”.
3. On page 24, from line 1, to omit paragraph (h) and to substitute:
 - (f) falsely holds himself or herself to be the Registrar, an employee or an authorised person; or
 - (g) 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.

CLAUSE 54

1. On page 24, in line 32, to omit “reproductive” and to substitute “propagating”.

CLAUSE 55

1. On page 24, in line 38, to omit “51” and to substitute “54”.

CLAUSE 56

1. On page 24, in line 55, to omit “57” and to substitute “60”.
2. On page 25, in line 6, to omit “57” and to substitute “60”.

CLAUSE 58

1. On page 25, in line 28, to omit “2015” and to substitute “2016”.

SCHEDULE

1. On page 26, in the third line, to omit “57” and to substitute “60”.

ARRANGEMENT OF SECTIONS

1. On page 4, in line 3, to omit “41. Appeal against decision or action by Registrar” and to substitute:
 41. Right to appeal
 42. Appeal Board, composition and membership
 43. Investigation and consideration by Board
 44. Consideration of appeal by Minister
2. On page 4, in line 6, to omit “42” and to substitute “45”.
3. On page 4, in line 7, to omit “43” and to substitute “46”.
4. On page 4, in line 9, to omit “44” and to substitute “47”.
5. On page 4, in line 10, to omit “45” and to substitute “48”.
6. On page 4, in line 13, to omit “46” and to substitute “49”.
7. On page 4, in line 14, to omit “47” and to substitute “50”.
8. On page 4, in line 15, to omit “48” and to substitute “51”.
9. On page 4, in line 16, to omit “49” and to substitute “52”.
10. On page 4, in line 17, to omit “50” and to substitute “53”.
11. On page 4, in line 18, to omit “51” and to substitute “54”.
12. On page 4, in line 19, to omit “52” and to substitute “55”.
13. On page 4, in line 20, to omit “53” and to substitute “56”.
14. On page 4, in line 21, to omit “54” and to substitute “57”.
15. On page 4, in line 22, to omit “55” and to substitute “58”.
16. On page 4, in line 23, to omit “56” and to substitute “59”.
17. On page 4, in line 24, to omit “57” and to substitute “60”.
18. On page 4, in line 25, to omit “58” and to substitute “61”.