



# Plant Varieties Act 1997

## 1997 CHAPTER 66

### PART I

#### PLANT VARIETIES

##### *General*

#### **36 Offences by bodies corporate, etc**

- (1) Where an offence under this Part of this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) Where an offence under this Part of this Act committed by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he, as well as the partnership, shall be guilty of the offence and liable to be proceeded against and punished accordingly.

#### **37 Jurisdiction in relation to offences**

- (1) Proceedings for an offence under this Part of this Act may be taken against a person before the appropriate court in the United Kingdom having jurisdiction in the place where that person is for the time being.
- (2) Subsection (1) above is without prejudice to any jurisdiction exercisable apart from that subsection.

#### **38 Interpretation of Part I**

- (1) In this Part of this Act—

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*Status: This is the original version (as it was originally enacted).*

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“the Council Regulation” means Council Regulation (EC) No 2100/94 of 27th July 1994 on Community plant variety rights, and references to particular provisions of the Council Regulation shall be construed as references to those provisions, or provisions of any Community instrument replacing them, as amended from time to time;

“gazette” means the gazette published under section 34 of the Plant Varieties and Seeds Act 1964;

“name” includes any designation;

“protected variety”, in relation to any plant breeders' rights, means the variety which was the basis of the application for the grant of the rights;

“variety” has the meaning given by section 1(3) above.

- (2) In this Part of this Act references to an applicant for the grant of 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.
- (3) For the purposes of this Part of this Act, the existence of a variety shall be taken to be a matter of common knowledge if—
  - (a) it is, or has been, the subject of a plant variety right under any jurisdiction,
  - (b) it is, or has been, entered in an official register of plant varieties under any jurisdiction, or
  - (c) it is the subject of an application which subsequently leads to its falling within paragraph (a) or (b) above.
- (4) Otherwise, common knowledge may be established for those purposes by reference, for example, to—
  - (a) plant varieties already in cultivation or exploited for commercial purposes,
  - (b) plant varieties included in a recognised commercial or botanical reference collection, or
  - (c) plant varieties of which there are precise descriptions in any publication.

### **39 Application of Part I to the Crown**

- (1) If—
  - (a) any servant or agent of the Crown infringes any plant breeders' rights or makes himself liable to civil proceedings under section 20 above, and
  - (b) the infringement or wrong is committed with the authority of the Crown,
 civil proceedings in respect of the infringement or wrong shall lie against the Crown.
- (2) Except as provided by subsection (1) above, no proceedings shall lie against the Crown by virtue of the Crown Proceedings Act 1947 in respect of the infringement of plant breeders' rights or any wrong under section 20 above.
- (3) This section shall have effect as if contained in Part I of the Crown Proceedings Act 1947.

### **40 Application of Part I to existing rights**

- (1) Subject to the following provisions of this section, this Part of this Act applies in relation to existing rights as it applies in relation to plant breeders' rights granted under this Part of this Act.

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

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- (2) Section 5 above shall not apply in relation to existing rights.
- (3) Section 11 above shall only apply to existing rights if the effect is to extend the period for which the rights are exercisable.
- (4) In this section, “existing rights” means plant breeders' rights granted under Part I of the Plant Varieties and Seeds Act 1964 which are exercisable on the coming into force of this Part of this Act.