

No. S 17

CONSTITUTION OF BRUNEI DARUSSALAM
(Order made under Article 83(3))
PLANT VARIETIES PROTECTION ORDER, 2015
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CONSTITUTION OF BRUNEI DARUSSALAM
(Order made under Article 83(3))

PLANT VARIETIES PROTECTION ORDER, 2015

In exercise of the power conferred by Article 83(3) of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order —

PART I

PRELIMINARY

Citation and commencement and long title.

1. (1) This Order may be cited as the Plant Varieties Protection Order, 2015 and shall commence on a date to be appointed by the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification in the *Gazette*.

(2) The long title of the Order is “An Order to protect plant varieties and for any matters connected and incidental herewith”.

Interpretation.

2. In this Order, unless the context otherwise requires —

“applicant”, in relation to any application, means the person by whom or on whose behalf the application is made;

“application” means an application for a grant of protection;

“breeder”, in relation to any plant variety, means —

(a) subject to paragraph (b), a person who bred, or discovered and developed, the plant variety;

(b) if the plant variety was bred, or discovered and developed, by a person in the course of performing his duties or functions as an employee of another person, that other person; or

(c) the successor in title to the person in paragraph (a) or (b), as the case may be;

“Convention” means the international agreement called the International Convention for the Protection of New Varieties of Plants of 2nd December 1961, as revised or amended from time to time;

“Court” means the High Court;

“denomination” means the distinguishing name or identification for a plant variety;

“grant of protection” means a grant of protection made by the Registrar under section 20;

“grantee” means the holder of a grant of protection;

“Minister” means the Minister responsible for plant varieties;

“plant” includes all fungi and algae but does not include bacteria, bacteroids, mycoplasmas, viruses, viroids and bacteriophages;

“procedural representative”, in relation to any plant variety, means a person who is resident or has an office in Brunei Darussalam and who is appointed by the breeder of that variety to act on his behalf in respect of the making of any application for, or any proceedings relating to, a grant of protection for that variety;

“propagating material”, in relation to a plant of a particular plant variety, means any part or product from which, whether alone or in combination with other parts or products of that plant, another plant with the same characteristics can be produced;

“propagation”, in relation to a plant or any of its components, means the growth, culture or multiplication of that plant or component;

“protected variety” means a plant variety in respect of which complies with the conditions of protection by virtue of sections 21 and 35;

“register” means the register of plant varieties maintained under section 38;

“Registrar” means the Registrar of Plant Varieties referred to in section 5;

“Registry” means the Registry of Plant Varieties referred to in section 7;

“term”, in relation to a grant of protection, means the term of the grant of protection under section 23;

“UPOV member” means a state or an intergovernmental party to the Convention which is a member of the International Union for the Protection of New Varieties of Plants constituted pursuant to the Convention;

“variety” means a plant grouping within single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of breeder’s right are fully met, can be —

(a) defined by the expression of the characteristics resulting from a given genotype or combination of genotypes;

(b) distinguished from any other plant grouping by the expression of at least one said characteristics; and

(c) considered as a unit with regard to its suitability for being propagated unchanged.

Order to bind Government.

3. This Order shall bind the Government but nothing in this Order shall render the Government liable to be prosecuted for an offence.

Application.

4. This Order shall apply to all plant genera and species.

PART II

ADMINISTRATION

Registrar of Plant Varieties and other officers.

5. (1) There shall be a Registrar of Plant Varieties who shall have the chief control of the Registry of Plant Varieties.

(2) There shall be one or more Deputy Registrars of Plant Varieties who shall, subject to the control of the Registrar, have all the powers and functions of the Registrar under this Order, other than the powers of the Registrar under section 6.

(3) There shall be one or more Assistant Registrars of Plant Varieties.

(4) The Registrar and all the other officers under this section shall be appointed by His Majesty the Sultan and Yang Di-Pertuan.

Delegation by Registrar.

6. (1) The Registrar may, in relation to a particular matter or class of matters, by writing under his hand, delegate all or any of his powers or functions under this Order (except this power of delegation) to an Assistant Registrar of Plant Varieties so that the delegated powers and functions may be exercised by the delegate with respect to the matter or class of matters specified in the instrument of delegation.

(2) A delegation under this section is revocable at will and no delegation shall prevent the exercise of a power or function by the Registrar or by any Deputy Registrar of Plant Varieties.

Registry of Plant Varieties.

7. For the purposes of this Order, there shall be an office which shall be known as the Registry of Plant Varieties.

Seal of Registry.

8. There shall be a seal of the Registry and impressions of the seal shall be judicially noticed.

Powers of Registrar.

9. The Registrar may, for the purposes of this Order —

- (a) summon witnesses;
- (b) receive evidence on oath, whether orally or otherwise; and
- (c) require the production of documents or articles.

Disobedience to summons an offence.

10. (1) A person who has been summoned to appear as a witness before the Registrar shall not, without lawful excuse, fail to appear in obedience to the summons.

(2) A person who has been required by the Registrar to produce a document or article shall not, without lawful excuse, fail to produce the document or article.

(3) Any person who contravenes subsection (1) or (2) is guilty of an offence and liable on conviction to a fine not exceeding \$2,000, imprisonment for a term not exceeding 3 months or both.

Refusal to give evidence an offence.

11. (1) A person who appears before the Registrar shall not, without lawful excuse, refuse to be sworn or to make an affirmation, or to produce documents or articles, or to answer questions, which he is lawfully required to produce or answer.

(2) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$2,000, imprisonment for a term not exceeding 3 months or both.

Costs awarded by Registrar.

12. (1) The Registrar may award costs in respect of the matters, and in the amounts provided for in rules made under this Order, against any party to proceedings brought before him.

(2) The rules may provide for the taxation of the costs, or any part of the costs, by the Registrar.

(3) A party desirous to obtain costs or to have the costs taxed must apply to the Registrar in accordance with the rules.

(4) If a party is ordered to pay the costs of another party, the costs may be recovered in a court of competent jurisdiction as a debt due by the first party to the other party.

PART III

APPLICATION FOR GRANT OF PROTECTION

Application for grant of protection.

13. (1) An application for a grant of protection for a plant variety shall be made by the breeder of that plant variety in the prescribed manner to the Registrar.

(2) The application shall contain or be accompanied by the following —

(a) a description of the plant variety;

(b) the proposed denomination, or a breeder's reference, for the plant variety which qualifies for approval and registration under section 35;

(c) an address for service in relation to that application, being an address within Brunei Darussalam; and

(d) if a right of priority is claimed under section 14, full particulars of the relevant priority application must be lodged within 3 months from the filing date.

(3) The application shall be accompanied by an application fee and such other fees as may be prescribed.

(4) An application that complies with subsections (1), (2) and (3) at the time it is received at the Registry shall, for the purposes of this Order, be deemed to be made at that time.

(5) An application that does not comply with subsection (1), (2) or (3) at the time it is received shall nevertheless be deemed to be made at that time if it is rectified within such time and in such manner as the Registrar may specify.

(6) The Registrar shall, if satisfied that an application complies with subsections (1), (2) and (3) —

(a) publish the application and the proposed denomination for the plant variety in the prescribed manner; and

(b) notify the applicant of the publication.

Priority resulting from foreign application.

14. (1) If —

(a) the breeder of a plant variety has made an application in any UPOV member other than Brunei Darussalam (referred to in this section as the foreign application) for the equivalent of a grant of protection; and

(b) within 12 months after —

(i) the date on which the foreign application was made; or

(ii) where more than one foreign application has been made (whether in one UPOV member or more than one UPOV member), the date the earliest foreign application was made,

the breeder makes an application for the grant of protection in respect of the plant variety in Brunei Darussalam,

the breeder may, when making the application under this Order, claim a right of priority and sections 21 and 22 shall apply to the application for a grant of protection in Brunei Darussalam as if it had been made on the date the foreign application (or the earliest foreign application) was made.

(2) The breeder shall, within the period of not less than 3 months after making the claim of a right of priority under subsection (1), submit to the Registrar a copy of any document constituting the foreign application, which must be certified as correct by the authority in the UPOV member to which the foreign application was made.

(3) The breeder shall be allowed —

(a) a period of 2 years after the expiration of the period referred to in subsection (1)(b); or

(b) where the foreign application (or the earliest foreign application) is rejected or withdrawn, a period to be determined by the Registrar after such rejection or withdrawal,

in which to furnish any necessary information, document or material required for the purpose of the examination as may be prescribed by rules made under section 66.

Publication.

15. The Registrar shall publish the following information in the prescribed manner at regular intervals —

- (a) applications for grant of protection;
- (b) proposed and registered denominations;
- (c) withdrawals of applications for grant of protection;
- (d) rejections of applications for grant of protection;
- (e) grants of protection made;
- (f) any change in the breeder or procedural representative in respect of a plant variety;
- (g) lapses of grants of protection;
- (h) licences in relation to grants of protection, where applicable;
- (i) any other matters which the Registrar thinks fit.

Objections to denomination and grant of protection.

16. (1) Any person may, within the prescribed period after the publication of a denomination, by notice in writing to the Registrar, object to the approval of that denomination.

(2) Any person may, within the prescribed period after the publication of an application for a grant of protection for a plant variety, by notice in writing to the Registrar, object to the making of a grant in respect of that plant variety on the ground that the plant variety is not new within the meaning of section 21.

(3) The Minister may, with approval of His Majesty the Sultan and Yang Di-Pertuan, make rules to provide for objection proceedings and for matters relating thereto.

(4) If a person who neither resides nor carries on business in Brunei Darussalam makes an objection under this section, the Registrar may require the person to give security for the costs of the proceedings and may, if security is not given, dismiss the proceedings.

Examination of plant variety.

17. (1) The Registrar may, by rules prescribed under section 66, for the purpose of examining the plant variety, require the applicant, within the prescribed period after making an application to provide all necessary information, documents or material.

(2) In the course of the examination the Registrar may —

(a) cause —

(i) the growing of the variety;

(ii) the carrying out of other necessary tests; or

(b) take into account the results of growing tests or other trials which have already been carried out.

(3) Any decision to grant a protection shall require an examination for compliance with the conditions under section 21.

Withdrawal or lapse of application.

18. (1) Any application may be withdrawn by the applicant at any time before a grant of protection is made in respect of it.

(2) The withdrawal of an application shall not affect the liability of the applicant for any fees that may have become payable up to the date of that withdrawal.

(3) Subject to section 17(2)(b), where any information, document or material required to be given to the Registrar or a prescribed examination authority under the provisions of this Order is not supplied within the period stated in the written notice issued by the Registrar or the local prescribed examination authority, as the case may be, requiring such information, document or material, the application concerned shall lapse upon the expiration of that period.

Provisional protection.

19. Where a grant of protection for a plant variety has been made under section 20, the grantee shall have the right to take proceedings against any person who, during the period between the application for the grant of protection under section 13 and the grant of that protection has carried out acts which, once the right is granted requires the grantee's authorisation in respect of the protected variety under this Order as if the grant of protection had been made on the date of the publication application.

PART IV

GRANT AND REVOCATION OF PROTECTION

Making of grant of protection.

20. (1) The Registrar shall —

(a) except where an application has been withdrawn or has lapsed under section 18, make a grant of protection in respect of every application that is eligible for the making of a grant of protection; and

(b) decline to make a grant of protection in respect of every application that is not eligible for the making of a grant of protection.

(2) An application shall be treated as being eligible for the making of a grant of protection if, and only if —

(a) the applicant has complied with sections 13 and 17, as the case may be; and

(b) the Registrar —

(i) has approved, for the plant variety in respect of which the application was made, the denomination proposed by the applicant under section 35;

(ii) is satisfied that the applicant is the breeder of that plant variety; and

(iii) is satisfied that that plant variety is new, distinct, stable and uniform within the meaning of section 21.

Conditions for grant of protection.

21. (1) For the purpose of sections 16(2), 20(2)(b)(iii) and 24(2)(a) —

(a) a plant variety is new if harvested or propagating material of the plant variety has not been sold or otherwise disposed of to another person, by or with the consent of the breeder for the purposes of exploitation of the plant variety —

(i) within Brunei Darussalam, earlier than 12 months before the date the application is made; and

(ii) outside Brunei Darussalam, earlier than 6 years before that date in the case of trees or vines, or earlier than 4 years before that date in any other case;

(b) a plant variety is distinct if it is clearly distinguishable from any other plant variety whose existence is a matter of common knowledge at the time of the making of the application;

(c) a plant variety is stable if its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each cycle; and

(d) a plant variety is uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant characteristics.

(2) Where, according to section 4, this Order applies to a plant genus or species to which it did not previously apply, varieties belonging to such plant genus or species shall be deemed to satisfy the condition of novelty in subsection (1) even where the sale or disposal of to another person by or within the consent of the breeder for the purposes of exploitation of the plant variety took place in Brunei Darussalam within 4 years before the filing date or, in the case of trees or of vines, within 6 years before the said date.

(3) Subsection (2), shall only apply to an application for a grant of protection filed within one year, after this Order applies to the plant genus or species.

(4) For the purposes of subsection (1)(a), where, in order to increase the stock of a plant variety or for any testing of a plant variety, the breeder of the plant variety makes any arrangement under which —

(a) propagating material of that plant variety is to be sold to or used by some other person; and

(b) any unused portion of that propagating material, and all the material of any type produced from that propagating material, is —

(i) to be sold to the breeder by that other person; or

(ii) otherwise to become the property of the breeder,

no account shall be taken of any sale or disposal under that arrangement.

(5) For the purposes of subsection (1)(a), a plant variety does not cease to be new by virtue only of the sale or disposal at any time of —

(a) material that is not propagating material or harvested material; or

(b) propagating material if sold or disposed of as a by-product or a surplus product of the creation of that plant variety, provided that —

- (i) the material is sold or disposed of without variety identification for purposes of consumption; and
- (ii) having been produced during the breeding, increase of stock, test, or trial of that plant variety, the material is not or no longer required for any of those activities.

(6) For the purpose of subsection (1)(b), in particular, the making of an application in any country or territory for —

- (a) the grant of protection in respect of a plant variety; or
- (b) the entering of a plant variety in an official register of plant varieties,

shall be deemed to render that plant variety a matter of common knowledge from the date of application, provided that the application leads to the grant of protection in respect of that plant variety or to the entering of that plant variety in the official register of plant varieties, as the case may be.

Varieties bred or discovered and developed by 2 or more persons independently.

22. Where —

- (a) before a grant of protection has been made in respect of any plant variety, 2 or more applications in respect of that plant variety have been made;
- (b) the Registrar is satisfied that the applicants concerned are persons who bred, or discovered and developed, that plant variety independently, or are successors of such persons; and
- (c) the Registrar is satisfied that each of those applicants would be entitled to a grant of protection in respect of that plant variety,

the Registrar shall make a grant of protection to the applicant whose application was made first.

Term of grant of protection.

23. (1) The Registrar shall endorse on every grant of protection the date of the grant of protection.

(2) Subject to sections 24 and 25, the term of a grant of protection shall be a period of 25 years from the date of the grant of protection.

(3) The grantee shall during the term of the grant of protection pay an annual fee of a prescribed amount and furnish such information as the Registrar may require in the prescribed manner and within the prescribed period.

Grounds of invalidity of grant of protection.

24. (1) An application for a declaration of invalidity of any grant of protection on any ground referred to in subsection (2) may be made by any person to the Court.

(2) A grant of protection shall be declared invalid if the Court is satisfied that —

(a) the plant variety concerned was not new or distinct within the meaning of section 21 at the time of the grant of the protection;

(b) where the grant of protection was essentially based upon information and documents furnished by the breeder, the plant variety was not, at the time the grant of protection was made, stable or uniform within the meaning of section 21(1)(c) or (d), respectively; or

(c) the grant of protection has been made to a person who is not entitled to it, unless it is transferred to the person who is so entitled.

(3) The Registrar shall remove from the register any grant of protection which has been declared invalid by the Court under this section.

Cancellation of grant of protection.

25. (1) An application for cancellation of any grant of protection may be made by any person —

(a) to the Registrar, on any ground referred to in subsection (2); or

(b) to the Court, on the ground referred to in subsection (3).

(2) A grant of protection shall be cancelled by the Registrar at any time during its term in the event that —

(a) the grantee, after having been requested by the Registrar to provide such information, documents or material as the Registrar thinks fit for verifying the maintenance of the plant variety, failed to do so within the period specified by the Registrar;

(b) in any particular year, the annual fee required under section 23(3) to be paid, has not been paid within the prescribed period; or

(c) the denomination is cancelled after the grant of the protection and the grantee, after having been requested by the Registrar to propose another suitable denomination, failed to do so within the prescribed period.

(3) A grant of protection shall be cancelled by the Court at any time during its term in the event that it is established that the plant variety is no longer stable or uniform within the meaning of section 21(1)(c) or (d), respectively.

(4) The Registrar shall remove from the register any grant of protection which has been cancelled under this section.

Renunciation of grantee's right.

26. (1) A grantee may, in writing to the Registrar, renounce his grant of protection.

(2) The Registrar shall remove from the register any grant of protection which has been renounced under subsection (1).

PART V

SCOPE AND NATURE OF GRANT OF PROTECTION

Scope and nature of grant of protection.

27. (1) Subject to sections 30 and 31, a grantee in respect of any protected variety shall be entitled to prevent a person from doing any of the following acts in respect of the propagating material of the protected variety without the authorisation, by way of a licence or otherwise, of the grantee —

(a) production or reproduction (multiplication);

(b) conditioning for the purpose of propagation;

(c) offering for sale;

(d) selling or other forms of marketing;

(e) exporting;

(f) importing;

(g) stocking for any of the purposes specified in paragraphs (a) to (f).

(2) The grantee may give his authorisation subject to conditions and limitations.

(3) A grant of protection is personal property and may be assigned or transmitted in the same way as other personal property.

(4) An assignment of a grant of protection under subsection (3) is not effective unless it is in writing and signed by or on behalf of the assignor.

{5} Subject to subsection {6}, a licence granted by a grantee in respect of any protected variety is binding on every successor in title to the grantee's interest —

(a) except any person who, in good faith and without any notice (actual or constructive) of the licence, has given valuable consideration for the interest in the grant of protection; or

(b) unless the licence provides otherwise,

and any reference in this Order to doing anything with, or without, the consent of the grantee shall be construed accordingly.

{6} Every person shall be deemed to have notice of a licence if the prescribed particulars of the grant of the licence are entered in the register under section 41.

{7} Subject to sections 30 and 31, the rights of a grantee under subsection {1} shall also apply to harvested material, including entire plants and parts of plants, obtained through the unauthorised use of propagating material of the protected variety unless the grantee has had reasonable opportunity, to exercise his rights in relation to the propagating material.

Essentially derived and certain other plant varieties.

28. {1} Where a grant of protection is made under section 20, that grant of protection shall also extend to and the provisions of section 27 shall apply in relation to —

(a) any plant variety which is essentially derived from the plant variety in respect of which the grant of protection was made (referred to in this section as the protected plant variety);

(b) any plant variety which is not clearly distinguishable in accordance with section 21(1)(b) from the protected plant variety; and

(c) any plant variety the production of which requires the repeated use of the protected plant variety.

{2} For the purposes of this section, a plant variety shall be treated as being essentially derived from another variety ("the initial variety") if —

(a) it is predominantly derived from the initial plant variety or from a plant variety that is itself predominantly derived from the initial plant variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety;

(b) it is clearly distinguishable from the initial plant variety; 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 a combination of genotypes of the initial variety.

Infringement of grant of protection.

29. (1) A grant of protection is infringed by any person who undertakes any act contrary to sections 27 and 28.

(2) Subject to the provisions of this Order, the relief that the Court may grant in an action for an infringement of a grant of protection includes an injunction (subject to such terms, if any, as the Court thinks fit) and either damages or an account of profits.

(3) Where, in an action under this section —

(a) an infringement of a grant of protection is established; and

(b) the Court is satisfied that it is proper to do so, having regard to —

(i) the flagrancy of the infringement;

(ii) any benefit shown to have accrued to the defendant by reason of the infringement; and

(iii) all other relevant matters,

the Court may, in assessing damages for the infringement, award such additional damages as it considers appropriate in the circumstances.

(4) Where, in any action under this section, it is proved or admitted that an infringement was committed but proved by the defendant that, at the time of that infringement, the defendant was not aware and had no reasonable grounds for supposing that it was an infringement, the plaintiff shall not be entitled under this section to any damages against the defendant in respect of that infringement, but shall be entitled instead to an account of profits in respect of that infringement.

(5) Nothing in subsection (4) shall affect any entitlement of a grantee to any relief in respect of the infringement of that grantee's rights under this Order other than damages.

Exceptions to infringement of grant of protection.

30. (1) It is not an infringement of a grant of protection in respect of a protected variety for any person to do —

(a) any act privately and for a non-commercial purpose;

(b) any act for any experimental purpose;

(c) any act for the purposes of breeding any other plant variety, and, except where the provisions of section 28 apply,

any act referred to under section 27 in respect of such other variety.

(2) It is not an infringement of a grant of protection for any person engaging in farming activities to use, for propagating purposes, within reasonable limits and subject to the safeguarding the legitimate interests of the grantee, on his own holdings, the product of the harvest which he has obtained by planting, on his own holdings, the protected variety or a variety covered by section 28(1)(a) or (b) where —

(a) the plant genus or species to which the protected variety belongs has been prescribed for the purposes of this section as exempt from the rights of a grantee; and

(b) the use of propagating material takes place in accordance with the prescribed reasonable limits and the prescribed means for safeguarding of the legitimate interests of the grantee.

Exhaustion of grant of protection.

31. (1) An act concerning —

(a) any material of a protected variety, or of a variety covered by the provisions of section 28, which has been sold or otherwise marketed in Brunei Darussalam by or with the consent of the grantee; or

(b) any material that is derived from such material,

does not infringe a grant of protection, unless such act involves —

(i) further propagation of the variety; or

(ii) the export of any material of the variety, which enables the propagation of the protected variety into a country or territory which does not protect varieties of the plant genus or species to which the variety belongs, except where the exported material is for final consumption purposes.

(2) In this section, “material” means —

(a) propagating material of any kind;

(b) harvested material, including entire plants and parts of plants; and

(c) any product made directly from the harvested material.

PART VI

AUTHORISATION AND COMPULSORY LICENCES

Rights under authorisation.

32. Where a person has been authorised to do any act referred to in section 27(1) by licence by a grantee, that person shall have the same rights as the grantee to take proceedings in respect of any infringement of the rights of that grantee in respect of the protected variety which affects any right given under that licence and committed after the authorisation was granted.

Compulsory licences.

33. (1) Any person may apply to the Court for the grant of a compulsory licence to exploit a protected variety in Brunei Darussalam.

(2) The Court may make an order for the grant of a compulsory licence, subject to such terms as it thinks fit, in accordance with an application under subsection (1) if, and only if, the Court is satisfied that the grant of a compulsory licence is in the public interest.

(3) Notwithstanding the generality of subsection (2), the Court may set out in its order —

(a) the extent to which the protected variety may be exploited; and

(b) the right of the licensee to obtain propagating material from the grantee to the extent reasonable.

(4) The Court shall set out in its order the equitable remuneration which the licensee shall pay to the grantee.

(5) A licence shall not be granted under this section to any person who is unable to demonstrate to the Court that he will be able to exploit the protected variety in a manner acceptable to the Court.

(6) No licence shall be granted under this section unless the person applying for the licence has first taken all reasonable steps to obtain authorisation from the grantee on reasonable commercial terms and conditions and has failed to obtain such authorisation within a reasonable period of time.

(7) A licence granted under this section shall not prevent the grantee from exploiting the protected variety himself or from granting a licence in this respect.

(8) A licence in respect of a protected variety granted under this section may be transferred to another person, but only together with the business activity in connection with which the protected variety is exploited or is intended to be exploited.

{9} Any licence granted under this section may, upon the application of any interested party, be terminated by the Court where the Court is satisfied that the ground upon which the licence was granted has ceased to exist.

PART VII

NOTICE OF PROTECTION

Notice of protection.

34. (1) Where an applicant sells any propagating material of the plant variety in respect of which his application relates, he shall take all reasonable steps, by means of suitable labelling or other identification of that material to inform the purchaser of the existence of his application, unless and until his application is withdrawn or lapses or the Registrar declines to make a grant in respect of that application.

(2) Any person who —

(a) has acquired any rights in respect of any plant variety under section 20, or who is a licensee of such rights; and

(b) sells any propagating material of that plant variety,

shall take all reasonable steps, by means of suitable labeling or other identification of that material, to inform the purchaser of those rights.

(3) In determining, for the purposes of section 29(4), whether or not any person had reasonable grounds for supposing that any action was an infringement of a grant of protection; the Court may take into account the extent, if any, to which a person referred to in subsection (1) or (2), as the case may be, has complied with that subsection in respect of any propagating material in relation to which that infringement occurred.

PART VIII

DENOMINATION

Approval and registration of denomination.

35. (1) A plant variety in respect of which an application for a grant of protection is made shall have a denomination and, subject to subsections (2) and (3), the denomination shall be approved by the Registrar and registered at the time the grant of protection is made.

(2) The Registrar shall approve and register a proposed denomination for a plant variety if, and only if, in the opinion of the Registrar, it complies with the prescribed requirements.

(3) The Registrar shall not approve or register a denomination for the plant variety which —

(a) consists solely of figures, except where this is an established practice for designating plant varieties;

(b) is likely to mislead or cause confusion concerning the characteristics, value or identity of the plant variety, or the identity of the breeder;

(c) is contrary to any written law or public order, or is likely to be offensive to the public;

(d) is not different from every denomination which designates, in the country or territory of any member of UPOV, an existing variety of the same plant species or of a closely related species;

(e) affects prior rights of third persons, if by reason of a prior right, the use of the denomination of a variety is forbidden to a person who, in accordance with the provisions of section 36, is obliged to use it, the Registrar shall require the breeder to submit another denomination for the variety.

(4) Where a denomination for a plant variety has previously been submitted in any UPOV member other than Brunei Darussalam for the purpose of registration in that UPOV member, the denomination submitted for the purpose of an application in Brunei Darussalam in respect of that plant variety must be the same as the denomination submitted in the UPOV member.

(5) The Registrar shall approve the denomination submitted under subsection (4) upon the grant of protection, unless the Registrar considers the denomination to be unsuitable for use within Brunei Darussalam.

(6) Where the Registrar refuses to approve a denomination under subsection (2), (3) or (5), the Registrar shall require, and the applicant shall propose, another denomination within the prescribed period.

Use of denomination.

36. (1) Any person who offers for sale or disposes of propagating material of a protected variety shall use the registered denomination for that protected variety, whether or not the term of the grant of protection has expired.

(2) A person who sells or markets the propagating material or harvested material of a protected variety may, for that purpose, associate a trade mark, trade name or other similar indication which he owns with the registered denomination of that protected variety. If such an indication is so associated, the denomination must nevertheless be easily recognisable.

Invalidation of registration of denomination.

37. (1) An application for a declaration of invalidity of a registered denomination may be made to the Court on the ground that it is registered in breach of section 35(3).

(2) Where —

(a) the registration of a denomination has been declared invalid by the Court under subsection (1); or

(b) the use of the registered denomination by the grantee has been prohibited or restricted by an order of Court pursuant to any proceedings taken under any written law,

the Registrar shall require the grantee to submit another suitable denomination for registration within the prescribed period.

PART IX

REGISTER OF PLANT VARIETIES

Register to be maintained.

38. (1) The Registrar shall maintain a register of plant varieties.

(2) There shall be entered in the register —

(a) grants of protection made;

(b) every decision of the Registrar making or declining the making of a grant;

(c) the approved denomination for a plant variety;

(d) such particulars of the grantee as the Registrar may determine; and

(e) any other matters and information relating to a protected variety or grant of protection whose entry in the register appears to the Registrar to be useful.

(3) The register may be kept in whole or in part using a computer.

(4) Any record of a particular or other matter made by using a computer used for the purpose of keeping the register, or any part of the register, is taken to be an entry in the register.

Inspection of and extract from register.

39. (1) The register shall be available at the Registry for inspection by any person during the hours when the Registry is open for business.

(2) If the register, or any part of the register, is kept by using a computer, subsection (1) is satisfied if a person who wants to inspect the register or that part of the register is given access to a computer terminal from which he can read on a screen, or obtain a printed copy of, the particulars or other matters recorded in the register or that part of the register.

(3) Any person who applies for a certified copy of an entry in the register or a certified extract from the register shall be entitled to obtain such a copy or extract on payment of the prescribed fee.

(4) Any person who applies for an uncertified copy or extract shall be entitled to such a copy or extract on payment of the prescribed fee.

(5) In relation to any portion of the register kept otherwise than in documentary form, the right to a copy or extract conferred by subsection (3) or (4) is a right to a copy or extract in a form in which it can be taken away.

(6) In this section, “certified copy” and “certified extract” mean a copy and extract certified by the Registrar and sealed with the seal of the Registrar.

Rectification of register.

40. (1) Any person having a sufficient interest may apply to the Registrar for the rectification of an error or omission in the register.

(2) Except where the Registrar directs otherwise, the effect of a rectification of the register is that the error or omission in question is deemed never to have been made.

(3) Subject to subsection (4), an application for rectification may not be made in respect of a matter affecting the validity of a grant of protection.

(4) The Registrar may make any correction in the register pursuant to any Court order affecting a grant of protection.

(5) The Registrar may remove from the register any matter which appears to him to have ceased to have effect.

Changes reflected in register.

41. (1) The Registrar may enter the following in the register —

(a) any change in the name or address of the grantee;

(b) any change in ownership of the rights in relation to a grant of protection;

(c) a note of any licence granted by a grantee,

upon receiving such information under section 23(3) or on request made in the prescribed manner by the grantee of a registered grant of protection.

(2) Where a grant of protection has been transferred to another person, or a licence (including a licence granted under section 33) has been granted or transferred, an entry of this fact shall, upon request and the payment of the prescribed fee, be made in the register.

Registration to be *prima facie* evidence of validity.

42. In any proceedings before the Court relating to a grant of protection —

(a) the entry in the register of a person as a grantee shall be *prima facie* evidence of the validity of the grant of protection; and

(b) the entry in the register of any change in ownership of the rights in relation to the grant of protection shall be *prima facie* evidence of such change in ownership.

PART X

OFFENCES

Falsification of register.

43. Any person who —

(a) makes, or causes to be made, a false entry in the register;

(b) makes, or causes to be made, any thing false purporting to be a copy of an entry in the register; or

(c) produces or tenders, or causes to be produced or tendered in evidence any thing referred to in paragraph (b),

knowing or having reason to believe that the entry or thing, as the case may be, is false is guilty of an offence and liable on conviction to a fine not exceeding \$50,000, imprisonment for a term not exceeding 5 years or both.

Falsely representing plant variety as protected variety.

44. Any person who —

(a) falsely represents that a plant variety is a protected variety; or

(b) makes a false representation as to the propagating material of a protected variety,

knowing or having reason to believe that the representation is false is guilty of an offence and liable on conviction to a fine not exceeding \$10,000.

Misuse of denomination.

45. Any person who wilfully or negligently acts in contravention of section 36(1) or (2) is guilty of an offence and liable on conviction to a fine not exceeding \$10,000.

PART XI

ASSISTANCE BY BORDER AUTHORITIES

Interpretation of this Part.

46. In this Part, unless the context otherwise requires —

“authorised officer” means —

(a) an officer of customs as defined in section 2 of the Customs Order, 2006 (S 39/2006);

(b) any officer or class or description of officers appointed by the Minister by notification published in the *Gazette* to exercise the powers and perform the duties conferred and imposed on an authorised officer by this Part;

“Controller” has the same meaning assigned to it as in section 2 of the Customs Order, 2006 (S 39/2006);

“goods in transit” means goods imported, whether or not landed or transhipped within Brunei Darussalam, which are to be carried to another country or territory either by the same or another conveyance;

“infringement action” means an action for an infringement in respect of a grant of protection;

“objector”, in relation to particular seized goods, means the person who gave the notice under section 47 as a result of the giving of which the goods were seized;

“proprietor”, in relation to a protected plant variety, includes a grantee;

“retention period”, in relation to seized goods, means —

(a) the period specified in a notice given under section 50 in respect of the goods; or

(b) if that period has been extended under section 50, that period as so extended;

“seized goods” means good seized under section 47;

Restriction of importation of infringing goods.

47. (1) A person who is a breeder or a grantee may give the Controller a written notice —

(a) stating that he is —

(i) the breeder; or

(ii) a grantee thereof having the power to give such a notice;

(b) stating that goods which, in relation to the protected plant variety, are infringing goods are expected to be imported;

(c) providing sufficient information —

(i) to identify the goods;

(ii) to identify the importer;

(iii) to enable the Controller to ascertain when and where the goods are expected to be imported; and

(iv) to satisfy the Controller that the goods are infringing goods; and

(d) stating that he objects to such importation.

(2) A notice given under subsection (1) shall be supported by such documents and information, and accompanied by such fee, as may be prescribed by rules made under this Order.

(3) A notice under subsection (1) shall remain in force until the end of the period of 60 days commencing on the day on which the notice was given, unless it is revoked, before the end of that period, by notice in writing given to the Controller —

(a) if the person giving the first-mentioned notice is a grantee in relation to the protected plant variety and he has power to revoke the notice, by the grantee;

(b) in any other case, by the person who is then the breeder.

(4) If —

(a) a notice has been given under this section in respect of a protected variety;

(b) the notice has not lapsed or been revoked; and

(c) a person imports goods, not being goods in transit, which bear a sign that, or whose packaging bears a sign that, in the opinion of an authorised officer, is identical with or similar to the protected variety in question,

an authorised officer may seize the goods.

(5) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make rules to provide for —

(a) the forms of notices under this section;

(b) the times at which, and the manner in which, notices are to be given; and

(c) the giving of information and evidence to the Controller.

Security for liability or expense of seizure.

48. An authorised officer may refuse to seize goods under section 47 unless —

(a) the objector has deposited with the Controller a sum of money that, in the opinion of the Controller, is sufficient to —

(i) reimburse the Government for any liability or expense it is likely to incur as a result of the seizure of the goods; and

(ii) pay such compensation as may be ordered by the Court under section 54 or 55(6); or

(b) the objector has given security, to the satisfaction of the Controller, for the reimbursement of the Government for any such liability or expense and the payment of such compensation.

Secure storage of seized goods.

49. Seized goods shall be taken to such secure place as the Controller directs.

Notice of seizure.

50. (1) As soon as is practicable after the goods are seized under section 47, the Controller shall give to the importer and the objector, either personally or by post, a written notice identifying the goods and stating that they have been seized.

(2) A notice under subsection (1) shall state that the goods will be released to the importer unless —

(a) an infringement action in respect of the goods is instituted by the objector within a specified period from the day specified in the notice; and

(b) the objector gives written notice to the Controller within that period stating that the infringement action has been instituted.

(3) The period to be specified for the purpose of subsection (2)(a) is the period prescribed for the purposes of that paragraph.

(4) The day specified for the purposes of subsection (2)(a) shall not be earlier than the day on which the notice is given.

(5) The objector may, by written notice given to the Controller before the end of the period specified in a notice for the purposes of subsection (2)(a) (the initial period), request that the period be extended.

(6) Subject to subsection (7), if —

(a) a request is made in accordance with subsection (5); and

(b) the Controller is satisfied that it is reasonable that the request be granted,

the Controller may extend the initial period by such period as is prescribed.

(7) A decision on a request made in accordance with subsection (5) must be made within 2 working days after the request is made, but such a decision cannot be made after the end of the initial period to which the request relates.

Inspection, release etc of seized goods.

51. (1) The Controller may permit the objector or the importer to inspect the seized goods.

(2) If the objector gives the requisite undertakings, the Controller may permit the objector to remove a sample of the seized goods from the custody of the Controller for inspection by the objector.

(3) If the importer gives the Controller the requisite undertakings, the Controller may permit the importer to remove a sample of the seized goods from the custody of the Controller for inspection by the importer.

(4) The requisite undertakings are undertakings in writing that the person giving the undertaking will —

(a) return the sample to the Controller at a specified time that is satisfactory to the Controller; and

(b) take reasonable care to prevent damage to the sample.

(5) If the Controller permits inspection of the seized goods, or the removal of a sample, by the objector in accordance with this section, the Controller is not liable to the importer for any loss or damage suffered by the importer arising out of —

(a) damage to any of the seized goods incurred during that inspection;
or

(b) anything done by the objector or any other to, or in relation to, a sample removed from the custody of the Controller or any use made by the objector of such a sample.

Forfeiture of seized goods by consent.

52. (1) Subject to subsection (2), the importer may, by written notice to the Controller, consent to the seized goods being forfeited to the Government.

(2) The notice shall be given before any infringement action in relation to the seized goods is instituted.

(3) If the importer gives such a notice, the seized goods are forfeited to the Government and shall be disposed of —

(a) in the manner prescribed by rules made under this Order; or

(b) if no manner of disposal is so prescribed, as the Controller directs.

Compulsory release of seized goods to importer.

53. (1) The Controller shall release seized goods (not being goods forfeited to the Government under section 52) to the importer on the expiration of the retention period for the goods if the objector has not, before the expiration of that period —

(a) instituted an infringement action in relation to the goods; and

(b) given written notice to the Controller stating that the action has been instituted.

(2) If —

(a) an infringement action has been instituted in relation to the seized goods; and

(b) at the end of a period of 20 days commencing on the day on which the action was instituted, there is not in force an order of the Court in which the action was instituted preventing the release of the goods,

the Controller shall release the goods to the importer.

(3) If the objector gives written notice to the Controller stating that he consents to the release of the seized goods, the Controller shall release the goods to the importer.

(4) This section has effect subject to section 56.

Compensation for failure to take action.

54. (1) Where goods have been seized pursuant to a notice given under section 47 and the objector concerned fails to take infringement action within the retention period for the goods, a person aggrieved by such seizure may apply to the Court for an order of compensation against the objector.

(2) Where the Court is satisfied that the applicant had suffered loss or damage as a result of the seizure of the goods, the Court may order the objector to pay compensation in such amount as the Court thinks fit to the applicant.

Actions for infringement of grant of protection.

55. (1) The Court in which an infringement action is pending may, on the application of a person having a sufficient interest in the subject-matter of the action, allow the person to be joined as a defendant to the action.

(2) An authorised officer is entitled to be heard on the hearing of an infringement action.

(3) In addition to any relief that may be granted apart from this section, the Court may —

(a) at any time, order that the seized goods be released to the importer subject to such conditions, if any, as the Court thinks fit;

(b) order that the seized goods not be released to the importer before the end of a specified period; or

(c) order that the seized goods be forfeited to the Government.

(4) A Court may not make an order under subsection (3)(a) if it is satisfied that the Government or any statutory authority is required or permitted under any other written law to retain control of the seized goods.

(5) The Controller shall comply with an order made under subsection (3).

(6) If —

(a) the action is dismissed or discontinued, or if the Court decides that the relevant protected plant variety was not infringed by the importation of the seized goods; and

(b) a defendant to the infringement action satisfies the Court that he has suffered loss or damage as a result of the seizure of the goods,

the Court may order the objector to pay compensation in such amount as the Court thinks fit to that defendant.

Retention of control of seized goods.

56. Notwithstanding section 53, in a case in which no order has been made under section 55 in relation to seized goods, the Controller is not obliged to release or dispose of the goods if the Government is required or permitted, under any other written law, to retain control of the goods.

Disposal of seized goods ordered to be forfeited.

57. If the Court orders that seized goods are to be forfeited to the Government, the goods shall be disposed of —

(a) in the manner prescribed by rules made under this Order; or

(b) if no manner of disposal is so prescribed, as the Controller directs.

Insufficient security.

58. (1) If the reasonable expenses incurred by the Controller in relation to any action taken by the Controller under this Part, or taken in accordance with an order of Court under this Part exceed the amount deposited, or the amount of the security given, under section 48, the amount of the excess is a debt due to the Government.

(2) The debt created by subsection (1) is due by the objector, or, if there are two or more objectors, by the objectors jointly and severally.

Detention and examination of goods.

59. (1) Notwithstanding section 47(4), any authorised officer may –

(a) detain any goods –

- (i) that are imported into, or that are to be exported from, Brunei Darussalam; and
- (ii) that are not goods in transit, unless the goods are consigned to any person with a commercial or physical presence in Brunei Darussalam; or

(b) examine any goods, including goods in transit,

which he reasonably suspects are infringed goods in relation to a grant of protection.

(2) As soon as practicable after goods are detained under subsection (1)(a), the Controller shall give –

(a) to the importer, exporter or consignee, as the case may be, of the detained goods; and

(b) to the breeder of the protected variety,

a written notice identifying the goods, stating that they have been detained and setting out the matters referred to in subsection (3).

(3) The detained goods shall be released to the importer, exporter or consignee, as the case may be, of the goods, unless, within the prescribed period, the grantee in relation to the protected plant variety –

(a) in the case of goods that are imported into Brunei Darussalam and that are not goods in transit –

- (i) gives the Controller a written notice referred to in section 47(1);
- (ii) submits the documents and information, and pays the fee, referred to in section 47(2);
- (iii) deposits with the Controller the sum of money referred to in section 48(a) or gives the security referred to in section 48(b); or

(b) in the case of goods that are to be exported from Brunei Darussalam or goods in transit that are consigned to a person with a commercial or physical presence in Brunei Darussalam –

- (i) institutes an action for the infringement in respect of his grant of protection;
- (ii) serves on the Controller an order of the Court authorising the further detention of the goods; and
- (iii) deposits with the Controller a sum of money that, in the opinion of the Controller, is sufficient to —
 - (A) reimburse the Government for any liability or expense it has incurred and is likely to further incur as a result of the detention of the goods; and
 - (B) pay such compensation to any person who suffers loss or damage as a result of the detention of the goods as may be ordered by the Court; or

gives security, to the satisfaction of the Controller, for the reimbursement of the Government for any such liability or expense and the payment of such compensation.

(4) Every order of the Court authorising the further detention of goods under subsection (3)(b)(ii) shall be subject to the condition that the grantee complies with subsection (3)(b)(iii) within the period prescribed under subsection (3).

(5) Where the Court has made an order authorising the further detention of goods under subsection (3)(b) —

(a) the detained goods shall be taken to such secure place as the Controller directs; and

(b) sections 51, 52 and 54 to 58 shall apply, with the necessary modifications, to the further detention of the goods, and for the purposes of such application —

- (i) any reference to the objector shall be read as a reference to the grantee in relation to the grant of protection;
- (ii) any reference to the importer shall be read as a reference to the exporter or consignee, as the case may be, of the detained goods;
- (iii) any reference to the seized goods shall be read as a reference to the detained goods;
- (iv) any reference to the seizure of goods shall be read as a reference to the detention or further detention of the goods;

- (v) any reference to the import or importation of goods shall be read —
 - (A) in the case of goods that are to be exported from Brunei Darussalam, as a reference to the export of the goods; or
 - (B) in the case of goods in transit that are consigned to a person with a commercial or physical presence in Brunei Darussalam, as a reference to the import, importation or export, of the goods by the consignee;
- (vi) any reference to infringement action shall be read as a reference to an action for the infringement of the protected plant variety under subsection (3)/b/i); and
- (vii) any reference to the retention period shall be read as a reference to the prescribed period under subsection (3).

PART XII

GENERAL

Registrar not liable in respect of official acts.

60. (1) The Registrar and any officer of the Registry shall not be taken to warrant the correctness or validity of a grant of protection or the registration of a denomination under this Order or under any international agreement or convention to which Brunei Darussalam is a party.

(2) The Registrar, any officer of the Registry and any officer of a local prescribed examination authority referred to in section 17(1), shall not incur any liability by reason only of, or in connection with, any examination required or authorised by this Order, or any such international agreement or convention, or any report or other proceedings consequent on such examination.

Right of appeal.

61. (1) Except as provided in subsection (2) or by rules made under this Order, there shall be no appeal to the Court from a decision of the Registrar for any matter under this Order.

(2) The following shall be subject to appeal to the Court —

- (a) a decision of the Registrar to decline to make a grant of protection;
- (b) a decision of the Registrar to make a grant of protection;
- (c) a decision of the Registrar approving or disapproving a proposed denomination.

Forms and directions of Registrar.

62. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make rules for the publication by the Registrar of —

(a) the forms to be used for any purpose relating to a grant of protection or any other proceedings before the Registrar under this Order; and

(b) the practice directions issued by the Registrar.

Fees.

63. (1) There shall be paid in respect of applications and other matters before the Registrar under this Order such fees as may be prescribed.

(2) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make rules as to the remission of fees under prescribed circumstances.

Composition of offences.

64. (1) The Registrar or any person authorised by him in writing may, in his discretion, compound any offence under this Order which is prescribed as a compoundable offence by collecting from a person reasonably suspected of having committed the offence a sum not exceeding \$2,000.

(2) The Registrar may, with the approval of the Minister, make regulations to prescribe the offences which may be compounded.

(3) On payment of such sum of money, no further proceedings shall be taken against such person in respect of the offence.

Jurisdiction of Court.

65. Notwithstanding any provision to the contrary in the Criminal Procedure Code (Chapter 7), a Court of a Magistrate shall have jurisdiction to try any offence under this Order and shall have power to impose the full penalty or punishment in respect of the offence.

Rules.

66. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make rules —

(a) for prescribing anything authorised or required by this Order to be prescribed; and

(b) generally for regulating practice and procedure under this Order.

{2} Notwithstanding the generality of subsection (1), rules made under this section may make provision —

(a) as to the manner of making applications and filing other documents and in respect of anything that is to accompany or to be furnished together with any application;

(b) as to the procedure to be followed in connection with any application or request to the Registrar or in connection with any proceedings or other matter before the Registrar, and the rectification of irregularities of procedure;

(c) providing for the examination, testing and treatment of plant varieties to which applications relate;

(d) requiring and regulating the translation of documents and the filing and authentication of any translation;

(e) as to the service of documents;

(f) prescribing time limits for anything required to be done under this Order;

(g) providing for the extension of any time limit prescribed or specified by the Registrar, whether or not it has already expired;

(h) providing for the forfeiture of any priority given in respect of an application;

(i) authorising the preparation, publication, sale and exchange of copies of diagrams, photographs and documents filed with the Registry, and indexes and abridgments to them;

(j) prescribing the mode of publishing any matters required by this Order to be published;

(k) prescribing the requirements to be met in selecting the denomination of plant varieties, and providing for the approval or rejection by the Registrar of any denomination or the amendment to any denomination; and

(l) prescribing fees and charges for the purposes of this Order.

Made this 23rd. day of Jamadilakhir, 1436 Hijriah corresponding to the 13th. day of April, 2015 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM