

## CHAPTER 19:13

### SEEDS ACT

*Acts 40/1965, 53/1973 (s. 49), 39/1979, 29/1981, 22/2001 (s. 4)*

#### ARRANGEMENT OF SECTIONS

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**AN ACT to provide for the registration of sellers of seed and seed testing laboratories; to regulate the importation, exportation and sale of seed; to provide for the testing, certification and inspection of seed; and to provide for other matters connected with the foregoing.**

[Date of commencement: 16th August, 1971.]

#### **1 Short title**

This Act may be cited as the Seeds Act [*Chapter 19:13*].

#### **2 Interpretation**

In this Act—

“advertisement” includes any statement, picture, design or device—

- (a) published in any newspaper or public print; or
- (b) contained in any handbill, circular or other matter which is distributed to members of the public through the post or brought to the notice of the public in any other manner whatsoever;

“container” includes a bag, barrel, case, tin or package or any other container in which seed is placed or packed;

“grade name” means any mark, description or designation of a grade;

“kind” means all related species and subspecies of any plant which are known by the same common name;

“label” includes any legend, word, mark, symbol or design applied or attached to, included in, belonging to or accompanying any seed or package of seed;

“Minister” means the Minister of Agriculture or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“registered” means registered in terms of this Act;

- “registering officer” means the person appointed as registering officer in terms of section *three*;
- “seed” means any seed, including seed potatoes, which the Minister has, by statutory instrument, declared to be seed for the purposes of this Act;
- “seed analyst” means a person appointed a seed analyst in terms of section *fourteen*;
- “seed inspector” means a person appointed a seed inspector in terms of section *fourteen*;
- “sell” includes to offer, advertise, keep, expose, transmit, convey, deliver or prepare for sale or exchange or to dispose of for any consideration whatsoever or to transmit, convey or deliver in pursuance of a sale, exchange or disposal as aforesaid;
- “variety” means a subdivision of any kind which can be differentiated from other subdivisions of that kind by growth, plant, fruit or other characteristics and any uniform group which is a first generation hybrid (F<sub>1</sub>) reconstituted on each occasion by crossing two or more breeding stocks maintained by inbreeding.

### **3 Appointment of registering officer**

Subject to the law relating to the Public Service, the Minister shall appoint an officer in the Public Service to be styled the registering officer who shall be in charge of registering sellers of seed and seed testing laboratories.

### **4 Registration of sellers of seed and seed testing laboratories**

(1) Every application for registration as a seller of seed or as a seed testing laboratory shall be submitted to the registering officer in the prescribed form and shall be accompanied by the prescribed registration fee.

(2) On receipt of an application for registration and any further information he may require, the registering officer may register such seller or such laboratory in a register kept for the purpose.

(3) Any registration under this section may be made subject to such conditions as may be fixed by the registering officer and shall be valid for such period as may be prescribed.

(4) A registration certificate in the prescribed form shall be prominently displayed on the premises of a registered seller of seed or seed testing laboratory, as the case may be.

### **5 Cancellation of registration**

If the registering officer is satisfied that any conditions subject to which a seller of seed or seed testing laboratory was registered have not been complied with, the registering officer may cancel such registration.

### **6 Reasons to be given by registering officer**

The registering officer shall, on written application being made within the prescribed period, supply in writing within the prescribed period reasons for his decision in every case where—

- (a) an application for registration has been rejected; or
- (b) a registration has been cancelled in terms of section *five*; or
- (c) an applicant for registration is not satisfied with the conditions subject to which he has been registered.

### **7 Appeal to Minister**

Any seller of seed or seed testing laboratory—

- (a) whose application for registration has been rejected; or
- (b) whose registration has been cancelled in terms of section *five*; or
- (c) who or which, as the case may be, is not satisfied with the conditions subject to which he or it has been registered:

may appeal against such rejection, cancellation or conditions, as the case may be, to the Minister whose decision shall be final.

### **8 Unregistered person or laboratory may not sell or test seed**

(1) Subject to subsection (2), no person shall—

- (a) sell seed unless he is registered as a seller of seed; or
- (b) test seed otherwise than in a laboratory registered as a seed testing laboratory.

(2) Subsection (1) shall not apply to the sale of seed which is grown by any farmer and sold by him to a person for use as seed by such person.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

### **9 Use of variety names**

(1) No person shall, unless specially authorized by the Minister—

- (a) add to the variety name under which any seed is sold any qualifying term or reference whatsoever;
- (b) sell seed of any variety under a name other than the name given to it by its discoverer or originator.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

## 10 Requirements relating to seed sold

- (1) No person shall sell any seed unless such seed—
  - (a) complies with the prescribed requirements; and
  - (b) is packed in a container which complies with the prescribed requirements:

Provided that the Minister may prescribe classes of seed which shall be exempt from this section if sold subject to such conditions as may be prescribed.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

## 11 Savings as to sale of seed

This Act shall not apply to the sale of seed—

- (a) which is intended only for use as food or stock feed or for industrial purposes; or
- (b) which is sold to a *bona fide* cleaner of seed in order that it may be cleaned, graded or treated before it is used as seed, if there appears on the container in which the seed is sold or delivered or on a label attached thereto clearly and legibly the words “Uncleaned seed”.

## 12 Introduction of Seed Certification or Approval Scheme

(1) The Minister may introduce a scheme to be called the Seed Certification or Approval Scheme.

(2) The Minister shall publish any such scheme by statutory instrument and shall declare that it shall come into operation upon a date to be fixed in such instrument.

(3) The Minister shall designate in such instrument the organization which shall be responsible for the administration of the scheme. The organization so designated may be an office or division of the Ministry for which the Minister is responsible.

(4) Any scheme published under subsection (2) shall apply to and be binding on any person who has, in pursuance of an application made by him, been registered with the organization responsible for the administration of the scheme.

## 13 Provisions of scheme

(1) Any scheme published under section *twelve* may—

- (a) prescribe the manner in which application for registration in terms of the scheme shall be made and the circumstances under which any such registration may be refused or cancelled;
- (b) prescribe the kinds and varieties of seed to which the provisions of the scheme shall apply;
- (c) provide for the manner in which and the control subject to which seed intended for certification or approval for use in Zimbabwe shall be produced, cleaned or treated;
- (d) prescribe the requirements which shall be complied with before seed of any kind or variety may be certified or approved in terms thereof;
- (e) prescribe the manner in which seed shall be certified or approved, the form of the certificate and the circumstances under which any certificate issued shall lapse;
- (f) designate the person who or body which shall be responsible for the certification or approval of seed of a particular kind or variety;
- (g) prescribe the manner in which any certified or approved seed shall be packed, marked, labelled, stored or sold;
- (h) prescribe the records to be kept and the information to be furnished by persons to whom the provisions of the scheme apply;
- (i) prescribe the fees or charges to be paid to the organization responsible for the administration of the scheme by persons to whom the provisions of the scheme apply and stipulate that the rendering of any service may be refused to any person who is indebted to such organization for any amount in respect of such fees or charges or otherwise fails to comply with any requirements of the scheme;
- (j) provide generally for any such matter as, in the opinion of the Minister, it is necessary or desirable to provide for in order that the objects of the scheme may be achieved.

(2) Where in terms of any scheme the person or body designated in terms of paragraph (f) of subsection (1) is empowered to declare, by notice in the *Gazette*, as a certifying agency another person or body to certify seed on its behalf, the Minister may, by notice in the *Gazette*, notwithstanding the provisions of that scheme, restrict the seed which the person or body may certify to a particular kind or variety and may amend any notice published by the person or body designated in terms of paragraph (f) of subsection (1) accordingly.

## 14 Appointment of inspectors and analysts

Subject to the law relating to the Public Service, the Minister may from time to time appoint seed inspectors and seed analysts for the purposes of this Act.

## 15 Powers of inspectors

- (1) A seed inspector may at all reasonable times—
  - (a) enter upon any premises, place or vehicle at or in which there is, or is on reasonable grounds suspected to be, any seed;
  - (b) inspect any seed, book, record or document found in or upon such premises, place or vehicle;
  - (c) seize and detain any seed, book, record or document found in or upon such premises, place or vehicle which may afford evidence of a contravention of this Act;
  - (d) take so many samples or such quantities of any such seed as he may deem necessary for the purposes of testing, examination or analysis in terms of this Act or to ascertain whether there has been any contravention of any provisions of or conditions imposed under this Act.

(2) Any sample taken in terms of paragraph (d) of subsection (1) shall be taken in accordance with the methods prescribed and shall be transmitted to a seed analyst within the time prescribed.

(3) The seed analyst to whom a sample has been transmitted in terms of this section shall, as soon as possible, test, examine or analyse the sample delivered to him in accordance with the prescribed methods and the result of the test, examination or analysis shall be stated in a certificate in the prescribed form.

## 16 Importation of seed

- (1) Subject to this Act, no person shall import seed into Zimbabwe unless—
  - (a) such seed complies with the prescribed requirements; and
  - (b) such seed is packed in a container which complies with the prescribed requirements; and
  - (c) the country of origin of such seed is shown on an invoice or delivery note accompanying such seed.

(2) The Minister may grant exemption from the provisions of subsection (1) subject to such conditions as he may determine in respect of seed which is imported—

- (a) for experimental purposes; or
- (b) for reproduction and export of the seed reproduced therefrom.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

## 17 Sampling of imported seed

(1) Any officer in the Public Service authorized thereto by the Minister may take samples of any seed imported into Zimbabwe.

(2) The provisions of section *fifteen* relating to the taking and transmitting of samples and the testing, examination or analysis of samples taken shall apply, *mutatis mutandis*, in respect of samples taken in terms of this section.

(3) If any test, examination or analysis of a sample taken in terms of this section shows that any seed does not comply with the requirements of this Act, the Minister may—

- (a) order such seed—
  - (i) to be destroyed without compensation; or
  - (ii) at the option of the importer, to be removed from Zimbabwe within a specified period;

or

- (b) permit the disposal thereof in Zimbabwe on such conditions as he may fix.

(4) Any person who, without just cause, contravenes or fails to comply with—

- (a) an order in terms of paragraph (a) of subsection (3); or
- (b) any condition fixed in terms of paragraph (b) of subsection (3);

shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

## 18 Requirements relating to seed exported

(1) Subject to this Act, no person shall export from Zimbabwe seed unless such seed—

- (a) complies with the prescribed requirements; and
- (b) is packed in a container which complies with the prescribed requirements; and
- (c) has been examined by an officer referred to in subsection (2).

(2) Any officer in the Public Service authorized thereto by the Minister may examine and take samples of any seed intended for export.

(3) The provisions of section *fifteen* relating to the taking and transmitting of samples and the testing, examination or analysis of samples taken shall apply, *mutatis mutandis*, in respect of samples taken in terms of this section.

(4) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

## 19 Publication or distribution of false advertisements concerning seed

(1) No person shall publish or distribute or cause or permit to be published or distributed any false advertisement concerning seed.

(2) An advertisement concerning seed shall be deemed to be false if it describes any seed as certified or approved unless such seed has been certified or approved upon such conditions as may be prescribed:

Provided that this subsection shall not apply to any advertisement concerning seed which bears a mark which is registered as a certification mark in terms of the Trade Marks Act [*Chapter 26:04*].

(2a) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

(3) It shall be a sufficient defence for any person, other than the person selling the seed to which the false advertisement relates, who is charged with a contravention of subsection (1) if he proves to the satisfaction of the court that he did not know, and could not reasonably be expected to have known, that the advertisement was false in any respect.

## 20 Preservation of secrecy

Any person who discloses, except to the Minister or to any other person for the purpose of the performance of his duties or the exercise of his functions under this Act or when required to do so by any court or under any law, any information acquired by him in the exercise of any function under this Act, in relation to the business affairs of any other person, shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year.

[Subsection amended by section 4 of Act 22 of 2001]

## 21 Limitation of actions against state

No claim shall lie against the State, the Minister or a seed analyst, seed inspector or other employee of the State for anything done in good faith and without negligence under the powers conferred by this Act.

## 22 Testing of seed and publication of results

The Minister may direct that seed of a particular variety or varieties which is advertised, offered or displayed for sale in Zimbabwe shall be tested and may authorize the publication in such manner as he thinks fit of the results of any such test.

## 23 Prohibitions on production or sale of seed

(1) Subject to this section, the Minister may, by order in the *Gazette*, prohibit—

- (a) the production for the purposes of sale; or
- (b) the sale for the purposes of reproduction or multiplication;

of seed, whether certified or uncertified, of a particular kind or variety by any person or body, other than a person who or body which certifies that particular kind or variety of seed on behalf of a person or body designated in terms of paragraph (f) of subsection (1) of section *thirteen*.

(2) Before issuing a prohibition order the Minister shall cause to be advertised in the *Gazette* and in a newspaper circulating in Zimbabwe notice of his intention to issue the prohibition order and calling for any objections to be lodged with the Registrar in writing within one month of the date such notice is first advertised in the *Gazette*.

(3) If, after the expiry of the period referred to in subsection (2) and after giving consideration to any objections lodged in terms of that subsection, the Minister still intends to issue the prohibition order, he shall cause to be advertised in the *Gazette* and in a newspaper circulating in Zimbabwe a draft of the proposed prohibition order and notice that the proposed prohibition order will be published on such date, being not less than thirty days after the publication of the notice, as may be specified in the notice unless an appeal against his decision is lodged with the Registrar in writing within one month of the date such notice is first advertised in the *Gazette*.

(4) If any appeal is lodged in terms of subsection (3), the Registrar shall notify the Registrar of the Administrative Court and thereafter the Administrative Court Act [*Chapter 7:01*] and any rules made thereunder shall apply in respect of such appeal.

(5) The Minister shall not issue a prohibition order until the expiry of the period referred to in subsection (3) and if, during that period, an appeal is lodged in terms of subsection (3), until the appeal is determined by the Administrative Court or the Supreme Court, as the case may be, and, subject to the right of appeal in terms of section 19 of the Administrative Court Act [*Chapter 7:01*], the decision of the appeal board or of the Supreme Court shall be binding on the Minister.

(5a) Any person who contravenes or fails to comply with a prohibition order shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

(6) In this section—

“prohibition order” means an order referred to in subsection (1).

## 24 Offences and penalties

(1) Any person who hinders or obstructs a seed inspector, seed analyst or other officer in the performance of his functions under this Act shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(2) Any person who, with fraudulent intent, tampers with any sample taken in terms of this Act shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(3) Any person who, in connection with any seed, knowingly makes use of any certificate or document issued in terms of this Act in connection with any other seed shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(4) Any person who—

(a) knowingly makes any false or misleading statement in connection with any seed—

(i) in any advertisement thereof; or

(ii) in the course of the sale thereof;

or

(b) sells any seed upon the container of which he knows or ought to know there is a false or misleading statement in connection with the seed;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Section inserted by section 4 of Act 22 of 2001]

## 25 Procedure and evidence

(1) In any criminal proceedings under this Act—

(a) any quantity of seed in or upon any premises, place or vehicle at the time a sample thereof is taken under this Act shall, unless the contrary is proved, be deemed to possess the same properties as such sample;

(b) any person who is proved to have tampered with any sample shall be deemed to have acted with fraudulent intent unless the contrary is proved;

(c) a certificate stating the result of a test, examination or analysis carried out under the provisions of section *fifteen, seventeen or eighteen* and purporting to be signed by the seed analyst who carried out such test, examination or analysis shall be accepted as *prima facie* proof of the facts stated therein;

(d) any statement or entry contained in any book or document kept by any importer, exporter or owner of seed, or by the manager, agent or employee of such person, or found upon or in any premises occupied by, or any vehicle used in, the business of such person, shall be admissible in evidence against him as an admission of the facts set forth in that statement or entry, unless it is proved that that statement or entry was not made by such person or by any manager, agent or employee of such person in the course of his agency or employment.

(2) No prosecution shall be instituted as a result of any test, examination or analysis carried out in terms of the provisions of section *fifteen, seventeen or eighteen* unless a copy of the seed analyst's certificate has been transmitted at least twenty-one days before the institution of such prosecution to the person who is to be prosecuted.

## 26 Special defences in case of prosecutions

It shall be a sufficient defence for a person charged with the sale of any seed in contravention of paragraph (a) of section *ten* if he proves to the satisfaction of the court—

(a) that he purchased such seed from a person residing in Zimbabwe who had furnished him with a written warranty that such seed complied with the prescribed requirements; and

(b) that he had no reason to believe that such seed did not so comply.

## 27 Acts or omissions by manager, agent or employee

(1) Whenever any manager, agent or employee of any importer, exporter or owner of any seed does or omits to do any act which it would be an offence under this Act for such importer, exporter or owner to do or omit to do, then, unless it is proved that—

(a) in doing or omitting to do that act the manager, agent or employee was acting without the connivance or the permission of the importer, exporter or owner; and

- (b) all reasonable steps were taken by the importer, exporter or owner to prevent any act or omission of the kind in question; and
- (c) it was not under any condition or in any circumstance within the scope of the authority or in the course of the employment of the manager, agent or employee to do or to omit to do acts, whether lawful or unlawful, of the character of the act or omission charged;

the importer, exporter or owner, as the case may be, shall be presumed himself to have done or omitted to do that act and be liable to be convicted and sentenced in respect thereof, and the fact that he issued instructions forbidding any act or omission of the kind in question shall not, of itself, be accepted as sufficient proof that he took all reasonable steps to prevent the act or omission.

(2) Whenever any manager, agent or employee of an importer, exporter or owner of any seed does or omits to do an act which it would be an offence under this Act for the importer, exporter or owner to do or omit to do, he shall be liable to be convicted and sentenced in respect thereof as if he were the importer, exporter or owner.

(3) Any such manager, agent or employee may be so convicted and sentenced in addition to the importer, exporter or owner.

## 28 Regulations

(1) The Minister may make regulations—

- (a) prescribing the manner in which sellers of seed and seed testing laboratories shall be registered, and the forms which shall be used for, and the information which shall be furnished with, any application for registration;
- (b) prescribing the manner in which and the time within which an appeal under section *seven* shall be noted and prosecuted;
- (c) for preventing the adulteration of seed or the tampering with containers thereof;
- (d) prescribing the fees to be paid in respect of the testing, examination or analysis of samples of seed or the testing or examination of seed or any plant grown therefrom;
- (e) for preventing the use of false or misleading statements in advertisements of seed;
- (f) requiring any person who has in his possession or under his control any seed for sale to keep records relating thereto in the form and manner prescribed and to render returns in the form and manner and at the times prescribed;
- (g) prescribing the methods to be employed and the certificate to be issued in respect of the testing, examination or analysis of samples taken under this Act;
- (h) establishing grades with appropriate grade names for seed;
- (i) prescribing a list of variety names and the terms and conditions under which variety names may be used;
- (j) in respect of any other matter under this Act which is to be prescribed;

and, generally, for the efficient carrying out of the objects and purposes of this Act.

(2) Regulations made in terms of subsection (1) may provide penalties for contraventions thereof, but no such penalty shall exceed a fine of level five or imprisonment for a period of six months or both such fine and such imprisonment

[Subsection inserted by section 4 of Act 22 of 2001]