

CHAPTER 35:07
SEEDS CERTIFICATION
ARRANGEMENT OF SECTIONS

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Act 29, 1976.

An Act to make better provision for the testing, and for the control of the sale, export and use of seeds.

[Date of Commencement: 20th August, 1976]

PART I
Preliminary (ss 1-3)

1. Short title

This Act may be cited as the Seeds Certification Act.

2. Interpretation

(1) In this Act, unless the context otherwise requires-

"Government-certified seeds" means seeds in respect of which a certificate has been issued under section 9;

"Government-tested seeds" means seeds in respect of which a certificate has been issued under section 8;

"impurities" means all matter other than seeds of the kind of which the parcel purports to consist, and includes-

- (a) any seeds of the kind of which the parcel purports to consist which are sprouted, shrivelled, cracked, insect damaged, diseased or otherwise injured;
- (b) broken seeds of the kind of which the parcel purports to consist, so far as they are incapable of germinating;
- (c) all seeds or portions of seeds other than those of which the parcel purports to consist, whether they are those of weeds, harmless plants or other cultivated plants; and
- (d) inert matter, being seedlike structures from either crop, or weed plants, and other matter as follows-
 - (i) seedlike structures from crop plants, namely, all pieces of seeds not exceeding one-half of the original size of the whole seed, including similarly sized pieces of broken, sprouted, shrivelled, cracked, insect damaged, diseased or otherwise injured seeds; seeds or pieces of seeds of legumes and crucifers with seed coats entirely removed; single glumes, single pales, empty glumes and sterile florets of grasses; and, in the case of mangold or beet seed, clusters wholly devoid of seed and all material which passes through a sieve having circular holes of 2.5 mm diameter;
 - (ii) seedlike structures from weed plants, namely, seeds of legumes and crucifers with the seed coats entirely removed and single glumes, single pales, empty glumes and sterile florets of grasses;
 - (iii) other matter, including soil, sand, grit and stones; fragments of roots, stem, leaves and flowers, chaff broken cones, scales and seed wings, excreta, ergot and other fungus sclerotia, spore masses of smut and bunt, nematode galls;

"inspector" means any person appointed as an inspector under section 3;

"noxious weeds" means weeds declared to be noxious weeds under the Noxious Weeds Act;

"official seed-tester" means any person appointed as a seed-tester under section 5;

"owner", in relation to any seeds, includes any person having for the time being the possession thereof;

"packet" means any sealed container of seeds the contents of which are of 2 kg or less;

"percentage of germination" means the percentage by number of pure seed which germinate to produce normal seedlings during a germination test;

"percentage of purity" means the percentage by weight of pure seed contained in any parcel;

"purity" means analytical purity, and "pure seed" means the seed of which the parcel purports to consist after the impurities have been eliminated; but, in the case of those species, varieties, stocks or strains of plants the seeds of which cannot be distinguished from one another by expert macroscopic examination, the use of the term "purity" does not imply that the seed is genuine or true to name;

"registered seed grower" means any person for the time being registered under this

Act as a seed grower of the crop or crops in respect of which he is so registered;

"seeds" means the parts of plants, customarily referred to as seeds, intended for planting, and includes seed potatoes;

"seed-testing station" means a seed-testing station established under section 4.

(2) Seeds shall not be deemed to contain noxious weed seeds for the purposes of this Act unless more than the prescribed percentage of noxious weed seeds are so contained.

3. Appointment of inspectors

The Minister may appoint any person to be an inspector for the purposes of this Act.

PART II

Testing of Seeds (ss 4-5)

4. Establishment of seed-testing stations

(1) The Minister as soon as may be shall, either alone or in conjunction with any person or body, establish and maintain one or more seed-testing stations.

(2) Any person intending to have any sample of seeds tested at a seed-testing station shall deliver with the sample a statement in writing specifying the origin, kind, variety and quantity of the seeds and such other particulars as may be prescribed, and upon such delivery shall pay the prescribed fees.

5. Appointment of seed-testers

On the establishment of a seed-testing station, and from time to time thereafter as occasion may require, the Minister shall, by notice published in the *Gazette*, appoint one or more public officers to be official seed-testers.

PART III

Control of the Export, Sale and Use of Seeds (ss 6-9)

6. Control of export, etc., of seeds

Any person who exports any agricultural or garden seeds, other than Government-certified or Government-tested seeds, except with the permission in writing of the Minister, shall be guilty of an offence.

7. Prohibition of dealings in seeds containing noxious weed seeds

(1) Except as provided in this section, no person shall sell, or expose, offer or advertise for sale, or deliver, or buy, any seeds which contain any noxious weed seeds:

Provided that the provisions of this subsection shall not apply to the sale or delivery of seeds which have been grown in Botswana to a person purporting to purchase them with a view to cleaning them before they are sold or exposed for sale, and who, at the time of the sale or delivery, whichever is the earlier, gives to the seller or owner of the seeds an undertaking in writing that he will clean the same before selling them or exposing, offering or advertising them for sale.

(2) Any person cleaning seeds shall dispose, to the satisfaction of the Minister, of any noxious weed seeds removed during the process of cleaning.

(3) Subject to the provisions of subsections (4) and (5), any person who contravenes the provisions of subsection (1) or (2) shall be guilty of an offence.

(4) Notwithstanding the provisions of subsection (1), seeds which have grown in Botswana and which contain any noxious weed seeds may, under a permit issued by the Minister, be sold, or exposed, offered or advertised for sale, or delivered or bought for purposes other than sowing.

(5) The Minister may in his discretion refuse to issue such a permit, or may issue such a permit subject to such conditions as he may think fit to impose.

8. Control of sale of Government- tested seeds

(1) No person shall sell any seeds as Government-tested seeds, or any seeds purporting to be Government-tested seeds, or any seeds bearing any label or mark indicating or implying that such seeds are Government-tested seeds, unless-

(a) a sample of the seeds, taken in the prescribed manner, has been tested at a

- seed-testing station;
- (b) a certificate in the prescribed form, containing the prescribed particulars in respect of purity and germination of the seeds, has been issued to the seller; and
- (c) a copy of such certificate is delivered by the seller to the purchaser on or before any sale or, if the seeds are not delivered at the time of sale, on or before delivery thereof; or in the case of a packet of seeds, such packet is distinctly marked in the prescribed manner to the effect that the contents thereof conform with the provisions of this section.

(2) No person shall expose any seeds for sale as Government-tested seeds, unless the seeds so exposed for sale are Government-tested seeds, and such certificate as is referred to in subsection (1)(b) is displayed conspicuously on or in close proximity to such seeds.

(3) No person shall offer or advertise any seeds for sale as Government-tested seeds unless the seeds so offered or advertised for sale are Government-tested seeds.

(4) Any person who contravenes the provisions of subsection (1), (2) or (3) shall be guilty of an offence.

9. Control of sale of Government-certified seeds

(1) No person shall sell any seeds as Government-certified seeds, or any seeds purporting to be Government-certified seeds, or any seeds bearing any label or mark indicating or implying that such seeds are Government-certified seeds, unless-

- (a) the crop from which the seeds were obtained was inspected in the field by an inspector;
- (b) a sample of the seeds, taken in the prescribed manner, has been tested at a seed-testing station;
- (c) a certificate in the prescribed form and containing the prescribed particulars in respect of the variety, trueness to variety, purity and germination of the seeds has been issued to the seller; and
- (d) a copy of such certificate is delivered by the seller to the purchaser on or before any sale or, if the seeds are not delivered at the time of sale, on or before the delivery thereof; or in the case of a packet of seeds, such packet is distinctly marked in the prescribed manner to the effect that the contents thereof conform with the provisions of this section.

(2) No person shall expose any seeds for sale as Government-certified seeds unless the seeds so exposed for sale as Government-certified seeds and such a certificate as is referred to in subsection (1)(c) is displayed conspicuously on or in close proximity to the seeds.

(3) No person shall offer or advertise any seeds for sale as Government-certified seeds unless the seeds so offered or advertised for sale are Government-certified seeds.

(4) Any person who contravenes the provisions of subsection (1), (2) or (3) shall be guilty of an offence.

PART IV

Certificates (s 10)

10. Conditions under which statements and certificates are to be issued

(1) No certificate shall be issued in respect of any seeds under section 8 unless a sample of such seeds tested at a seed-testing station reaches the prescribed standards in respect of purity and germination.

(2) No certificate shall be issued in respect of any seeds under section 9 unless-

- (a) a sample of such seeds tested at a seed-testing station reaches the prescribed standards in respect of purity and germination;
- (b) such seeds are from a crop which has reached the prescribed standards in respect of trueness to variety and of freedom from disease;
- (c) such seeds are grown by a registered seed grower; and
- (d) the grower of such seeds has carried out, to the satisfaction of an inspector, all such

instructions with regard to selecting or roguing as may have been given to the grower by an inspector under the provisions of section 12.

(3) The copy of any certificate required to be delivered to a purchaser in respect of seeds, other than seeds in a packet, shall be contained in a sale note or invoice to be attached to, inserted in or written on the package containing the seeds.

PART V

Registered Seed Growers (ss 11-12)

11. Registration of seed growers

(1) Any person wishing to grow any crop for the production of Government-certified seeds shall register himself with the Minister as a seed grower in respect of such crop.

(2) The Minister shall from time to time publish in the *Gazette* the names of registered seed growers and particulars of the crop or crops in respect of which they are for the time being registered.

12. Power of entry upon land

An inspector may, at all reasonable times, enter upon the land of any registered seed grower to inspect the growing crop in respect of which such seed grower is registered, and the said seed grower shall carry out such instructions as the inspector may give to him with regard to selecting or roguing, or uprooting and destroying, any such crop or any other crop.

PART VI

General Powers of Inspectors and Miscellaneous Provisions (ss 13-17)

13. Powers of inspection and taking of samples

(1) An inspector may, at all reasonable times, enter any premises where seeds are sold, or offered or exposed for sale, or stored, cleaned or prepared for sale, and may, without payment, take in the prescribed manner samples thereof for testing; and the owner thereof shall on demand deliver to the inspector a statement containing such particulars with respect thereto as are required to be contained in the statement to be delivered with a sample for testing.

(2) An inspector taking a sample of seeds under this section shall divide the sample into two parts, and shall cause each part to be marked, sealed and fastened up, and shall deliver or tender one part to the owner of the seeds, and shall deliver or send by post to an official seed-tester the other part of the sample for the purpose of its being tested.

(3) A report in the prescribed form of the result of any test of a sample sent to an official seed-tester under this section or under section 16 shall be issued in the prescribed manner, and a copy of every report so issued shall as soon as it has been issued be sent to the owner of the seeds.

14. Purchaser to furnish name of vendor of seeds

Where any seeds of which a sample has been tested under section 13 were purchased by the owner thereof from any other person as Government-tested or Government-certified seeds and the Minister is satisfied from the report of the test that the seeds in some material respect fail to correspond with the particulars contained in the copy of the certificate delivered to the owner under this Act on the sale to him of the seeds, the owner shall, on application in writing made to him in that behalf by the Minister, at any time after the test has been completed, furnish to the Minister the name and address of the person from whom he purchased the seeds, together with a copy of the statement or certificate so delivered, and the Minister shall, on being furnished with the said name and address, cause to be sent to the seller, in a sealed package, a part of the sample of the seeds together with a copy of the aforesaid report.

15. Immunity from liability

No suit, prosecution or other legal proceedings shall lie against any officer for anything done in good faith and without negligence under this Act.

16. Report to be conclusive evidence

(1) Every report issued or sent under section 13 or 14 shall, in any proceedings against the owner or seller of the seeds, be conclusive evidence of the facts stated in the report, unless

the owner or seller of the seeds, within 14 days after the date on which the copy is received by him, gives notice in writing to the Minister requiring a further portion of the sample to be tested.

(2) Where a further portion of a sample is so tested and the reports issued in respect of the two tests differ, the average of the result of the two tests shall be deemed to be the result of the test for the purposes of this Act, and a certificate by the Minister as to the average of the results of the two tests shall be conclusive evidence of the facts stated in such certificate.

17. Presumption regarding certificates

(1) For the purposes of any legal proceedings on a contract for the sale of seeds, being a sale to which this Act applies, the particulars contained in the copy of the certificate delivered under section 8 or 9 on the sale shall be deemed to be true, unless it is made to appear on a test made in accordance with the provisions of this section that the seeds fail in some material respect to correspond with such particulars.

(2) If the purchaser of any seeds desires that a test thereof should be made for the purposes of this section, he may, at any time within 10 days after the date of delivery thereof to him, request an inspector to take in the prescribed manner a sample thereof at the place at which they were delivered, whether his own premises or elsewhere, and the inspector shall divide the sample so taken into two parts, of which one part shall be sent to an official seed-tester for the purpose of being tested and the other part shall be delivered or tendered to the seller.

PART VII Regulations (s 18)

18. Regulations

The Minister may make regulations for the better carrying out of the provisions of this Act and, in particular, and without prejudice to the generality of the foregoing, in regard to all or any of the following matters-

- (a) prescribing the manner in which samples are to be taken and dealt with;
- (b) prescribing the forms of the statements, certificates, reports and marking of seed packets under the provisions of this Act, and the particulars to be contained therein;
- (c) prescribing the tolerances and limits of variation in respect of any test carried out for the purposes of this Act;
- (d) prescribing the species and maximum of permissible percentage of impurities or noxious weed seeds;
- (e) applications for and registration of seed growers;
- (f) prescribing the fees to be paid for anything done, or any certificate, report or test issued or made, under this Act;
- (g) prescribing anything which is or is required to be prescribed under this Act.

PART VIII Offences and Penalties (s 19)

19. Offences and penalties

(1) Any person who-

- (a) tampers with any seeds so as to procure that any sample taken under this Act does not correctly represent the bulk of the seeds;
- (b) tampers in any manner with any sample taken under this Act;
- (c) with intent to deceive, causes or allows to be sent to any seed-testing station, or to any person, to be tested for the purposes of this Act, a sample of seeds which to his knowledge does not correctly represent the bulk of the seeds;
- (d) wilfully obstructs or interferes with, or fails to comply with any lawful order given by any inspector in the execution of his powers or duties under this Act;
- (e) makes or causes to be made any statement or certificate which is required to be delivered or displayed under this Act and which is false in any material particular; or
- (f) sells or exposes for sale any seeds which do not correspond with the description in any

certificate required to be delivered or displayed under this Act,
shall be guilty of an offence.

(2) Any person who is guilty of an offence under this Act shall be liable to a fine not exceeding P1000 or to imprisonment for a term not exceeding six months, or to both.