

**SEEDS ACT, 2023**

**No. 19**



**of 2023**

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**An Act to re-enact with amendments the Seed Certification Act, to provide for the control and regulation of the production, sale, import, testing and certification of seeds and for matters connected therewith.**

*Date of Assent:* 13.11.2023

*Date of Commencement:* ON NOTICE

ENACTED by the Parliament of Botswana.

## PART I – *Preliminary*

Short title and commencement

**1.** This Act may be cited as the Seeds Act, 2023, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Interpretation

**2.** In this Act, unless the context otherwise requires –

“analytical purity” or “purity” means the composition by weight of pure seed in a sample being tested determined by methods prescribed, and includes the identity of the various species of seeds and other inert particles constituting the sample being tested;

“authorised officer” means an officer appointed by the Minister under section 8;

“basic seed” means a seed derived or produced from pre-basic seed;

“breeders seed” means a seed of a variety of proven genetic purity and identity produced for breeding that variety; or if of foreign origin, a seed certified by a recognised certification agency as being breeders seed;

“certified seed” means –

- (a) a class of seed produced from basic seed; or
  - (b) any of the breeders, pre-basic, basic or certified seed as determined by the certifying authority;
- “certifying authority” means an entity designated by the Minister under section 23;
- “Committee” means the National Seed Committee established under section 3;
- “imported certified seed” means any prescribed seed certified in the country of its origin imported by a registered seed importer and certified as imported certified seed;
- “impurities” means all matter other than seeds of the kind of which the parcel purports to consist, and includes —
- (a) any seed of the kind of which the parcel purports to consist which are sprouted, shrivelled, cracked, insect damaged, diseased or otherwise damaged;
  - (b) broken seed of the kind of which the parcel purports to consist, so far as 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 seed-like structures from either crop, or weed plants, and other matter as follows —
    - (i) seed-like 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, shriveled, cracked, insect damaged, diseased, or otherwise damaged 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, or clusters wholly devoid of seed and all material which passes through a sieve having circular holes of at least 2.5 mm diameter,
    - (ii) seed-like structures from weed plants, namely, seeds of legumes and crucifers with the seed coats entirely removed and single glumes, single pales, empty glumes or sterile florets of grasses, and
    - (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, or nematode galls;
- “label” includes any legend, word, mark, symbol or design applied or attached to, included in, belonging to or accompanying any seed or package bearing reference to the contents;
- “owner” includes any person in possession of seeds;

- “package” includes a sack, bag, barrel, case or any other container in which seed is placed or packed;
- “pre-basic seed” means a class of seed derived or produced from breeders seed with assured genetic purity and identity;
- “pure seed” means the species stated by the sample being analysed, or being found to predominate in the test, and includes the botanical varieties and cultivars including immature, shriveled, undersized, diseased or germinated, or pieces of seed units larger than half their original size which can be identified as of that species;
- “restricted seed” means seed of any agricultural variety or species that is restricted under this Act;
- “seed” mean the part of a plant intended for propagation, and includes any true seed, and any vegetative material including seedling, corm, bubil, layer, marriott, root, runner, scion, set, split, stem, stock, stump, sucker or tuber used or intended for propagation;
- “Seed Analyst” means a person appointed as such under section 8;
- “seed dealer” means any person who trades in seed or undertakes seed importation, exportation, production, processing, cleaning, distribution or sale;
- “seed grower” means any person who raises any crop for seed production;
- “seed importer” means any person who imports seed into Botswana;
- “Seed Inspector” means a person appointed as such under section 8;
- “Seeds Officer” means a person appointed as a Seeds Officer under section 7;
- “seed producer” means a person who produces seed for sale; and
- “seed testing laboratory” means any premises, suitably equipped where seed is tested for its purity and germination capacity established under section 12.

## PART II — *Establishment of National Seed Committee*

Establishment  
of National  
Seed  
Committee

3. (1) There is hereby established a committee to be known as the National Seed Committee.
- (2) The Committee shall be composed of the following members —
- (a) the Permanent Secretary in the Ministry responsible for agriculture or his or her representative;
  - (b) the head of the certifying authority;
  - (c) the head of the division in the Ministry responsible for crop development and production;
  - (d) the following members appointed by the Minister —
    - (i) a representative of any university or institution responsible for agricultural research and development,

- (ii) a representative of an entity responsible for seed and grain marketing, and
  - (iii) a representative of the farming community; and
  - (e) a Seeds Officer.
- (3) The Minister shall appoint the Chairperson of the Committee.
- (4) The head of the certifying authority shall provide secretariat services to the Committee.
- 4.** (1) The Committee shall advise the Government on all matters relating to the development of the seed industry. Functions of Committee
- (2) Without prejudice to the generality of subsection (1), the functions of the Committee shall include —
- (a) advising the Ministry on formulation and implementation of the seed industry policy and the preparation and implementation of guidelines;
  - (b) advising the Ministry on the implementation and any amendment to the seeds legislation;
  - (c) advising the Ministry on all matters relating to seeds; and
  - (d) giving general advice on the co-ordination and supervision of the seed industry.
- 5.** (1) Subject to the provisions of this Act, the Committee shall regulate its own procedure. Meetings of Committee
- (2) The Committee shall meet at least four times a year at such times and places as may be necessary for the performance of its duties.
- (3) The quorum at any meeting of the Committee shall be five members.
- (4) There shall preside, at any meeting of the Committee —
- (a) the Chairperson; or
  - (b) in the absence of the Chairperson, such member as the members present may elect from among their number.
- (5) The Chairperson of the Committee may, after consultation with members, co-opt any other person to attend and speak on any matter at any meeting of the Committee, but a person so co-opted shall not have the right to vote.
- (6) A decision of the Committee shall be by a majority of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding shall have a casting vote in addition to that person's deliberative vote.
- 6.** The Committee may, for the purpose of effective implementation of its functions, establish such number of sub-committees to perform specific functions as it may deem necessary. Establishment of sub-committees
- 7.** (1) The Minister shall appoint a Seeds Officer for the purposes of this Act, who shall be an officer in the public service, and who shall, subject to the general and special directions of the Minister, be responsible for the administration of this Act. Seeds Officer
- (2) The Seeds Officer may, with the approval of the Committee, authorise any officer to exercise, perform or carry out any functions of the Seeds Officer.

(3) Any decision made or order given by the authorised officer or the authorised person under subsection (2) may be withdrawn or amended by the Seeds Officer, in consultation with the Committee, and shall, until it has been so withdrawn or amended be deemed, except for the purpose of this section, to have been made or given by the Seeds Officer.

(4) The Seeds Officer, in consultation with the Committee, may declare any seed as a prescribed variety for the purposes of this Act and different varieties of seeds may be prescribed for different areas.

(5) The Seeds Officer shall keep and maintain any register prescribed under this Act.

Appointment  
of other staff

**8.** (1) The Minister may appoint any person who holds such qualifications as may be prescribed as a Seed Analyst, Seed Inspector or an authorised officer for the purposes of this Act.

(2) The Minister shall give a person appointed as a Seed Analyst, Seed Inspector, Seeds Officer or an authorised officer a certificate, identity card or a document as proof of his or her appointment or designation which shall be produced on entering any place in the exercise of his or her powers under this Act.

(3) The head of a certifying authority may permit a Seed Analyst to perform internal seed quality control for a private specified producer, processor, seller or distributor of seed.

(4) No person shall, while holding the office of Seed Analyst, Seed Inspector, Seeds Officer or an authorised officer, engage in any business connected with the production, processing, sale or importation of seed.

Delegation of  
powers of  
Minister

**9.** (1) The Minister may delegate his or her powers under this Act to the certifying authority or to any competent institution or individual.

(2) The Minister or his or her delegate may enter into contracts with competent institutions or individuals under such terms and conditions as the Minister or his or her delegate may determine.

### *PART III – Powers of Seed Inspectors and Authorised Officers*

Powers to take  
samples

**10.** A Seed Inspector or authorised officer may take samples of any seed for any of the following purposes —

- (a) for a test or examination to determine whether the seed is prescribed seed or restricted seed;
- (b) for a test or examination to determine whether, if such seed is prescribed seed, it conforms to the standards of purity and germination prescribed under this Act; or
- (c) for such other purposes as may be deemed necessary by the Seed Inspector or authorised officer in relation to the exercise of his or her powers under this Act.

Powers of  
search and  
seizure

**11.** (1) A Seed Inspector or authorised officer may, for any of the purposes of this Act, enter any property, building, premises or vehicle which he or she has reasonable cause to believe that any prescribed seed or restricted seed is being stored, sold or transported for sale in contravention of this Act.

(2) A Seed Inspector or authorised officer may, without liability for any payment to any person —

- (a) take samples of the seed found therein and the owner of the property, building, premises or vehicle, or his or her agent or the person in whose custody or control the property is shall on demand furnish to the Seed Inspector or authorised officer a statement in writing containing such particulars with respect to the seed as may be required by the Seed Inspector or authorised officer; or
- (b) seize and remove or detain any prescribed seed or restricted seed or any package or any label, stamp or device for marking, stamping or labelling, or any book, record or document found therein, which would provide evidence of contravention of the Act.

(3) Any Seed Inspector or authorised officer who has seized and detained any item pursuant to the authority under subsection (1) shall give to the person from whom such item was seized an official receipt for the seizure and detention thereof signed by such Seed Inspector or authorised officer.

(4) Where a Seeds Officer is advised in writing by the Director of Public Prosecutions that no prosecution shall be instituted under this Act, then any item or thing seized in the course of the inspection shall be returned to the owner thereof or to the person from whose custody it was taken within ten days from the date of the receipt of such advice by the Seeds Officer or authorised officer.

#### PART IV — *Seed Testing and Certification*

12. The Minister may establish and maintain such number of seed testing laboratories as he or she may consider appropriate.

Establishment of seed testing laboratories

13. The Seeds Officer shall keep and maintain a register of seed testing laboratories, which shall contain —

Register of seed testing laboratories

- (a) the name and address of each seed testing laboratory established under this Act; and
- (b) such other particulars as may be prescribed.

14. (1) A person who, in any place which is not a seed testing laboratory, tests or purports to test for the purpose of this Act any prescribed seed commits an offence.

Testing of prescribed seed

(2) A court may, upon conviction of any person of an offence under subsection (1), in addition to any other penalty imposed, order the forfeiture of any machinery, equipment and chemicals and any prescribed seed found in the place concerned without compensating the owner.

15. Any report or document issued by a seed testing laboratory for the purposes of this Act shall be in the form prescribed.

Reports

16. (1) Any person who has produced or acquired any prescribed seed which has not been tested shall request for such seed to be sampled in a seed testing laboratory by a Seed Inspector.

Delivery of samples for official seed testing

(2) The seed sample referred to in subsection (1) shall be submitted to an authorised seed testing laboratory together with a statement in writing specifying such particulars as may be prescribed and accompanied by the prescribed fee.

(3) Upon receipt at the seed testing laboratory of any sample submitted under subsection (1), the Seed Analyst shall test the sample in the manner prescribed and shall furnish the person who sought the test with a report thereof setting out the date upon which the test was made, the findings and such other particulars as may appear to the Seed Analyst relevant to the report.

Registration  
of seed  
dealers

**17.** (1) A person shall not, in such manner as may be prescribed, deal in seeds as a seed importer, exporter, producer, processor, cleaner, distributor, re-distributor, seller or re-seller unless he or she is registered with the Seeds Officer or any other person appointed by the Seeds Officer, in consultation with the Committee.

(2) Any owner or operator of a seed processing factory shall apply, in a prescribed manner, for an operating permit for his or her factory from the Seeds Officer.

(3) An application for registration under subsection (1) shall be submitted to the Seeds Officer in the prescribed manner and shall be accompanied by the prescribed registration fee.

(4) The Seeds Officer may, after receiving an application for registration and in consultation with the Committee —

- (a) grant registration if he or she is satisfied with the contents of application; or
- (b) refuse to register an applicant.

Inspection  
on application  
for registration  
of seed dealers

**18.** Within 14 days of application being made under this Act for the registration of any seed importer, exporter, producer, processor, cleaner, distributor, re-distributor, seller or re-seller the Seeds Officer, in consultation with the Committee, may cause a Seed Inspector or authorised officer to inspect and report on such premises, equipment, storage and other facilities which the applicant proposes for the business applied for.

Issuance of  
certificate of  
registration  
of seed dealers

**19.** The Seeds Officer shall, in consultation with the Committee, within 14 days after the receipt of an application under section 18, if he or she is satisfied that the applicant complies with the prescribed requirements —

- (a) enter the name and address and principal business address of the applicant in the appropriate register; and
- (b) issue a certificate of registration containing such conditions as he or she may consider necessary.

Duration of  
certificate of  
registration of  
seed dealers

**20.** Any certificate of registration issued under section 19 shall be valid for an indefinite period subject to —

- (a) compliance with the conditions upon which it is issued; and
- (b) payment by person to whom a certificate of registration is issued of an annual fee as may be prescribed.

**21.** (1) A seed dealer may make a written application to a Seeds Officer to vary the terms and conditions of his or her certificate of registration and the Seeds Officer may, in consultation with the Committee, accede to the request subject to such terms and conditions as necessary.

Variation,  
suspension or  
revocation of  
certificate of  
registration

(2) Subject to subsections (4), (5) and (6), a Seeds Officer may, in consultation with the Committee, suspend or revoke a certificate of registration of a seed dealer where he or she is satisfied that —

- (a) the seed dealer has contravened this Act or a term or condition of such certificate of registration;
- (b) the seed dealer gave information to the Seeds Officer which is false or misleading in a material particular, at the time of applying for a certificate of registration; or
- (c) it is in the public interest to do so.

(3) Subject to subsections (4), (5) and (6), a Seeds Officer may, in consultation with the Committee, vary the terms and conditions of a certificate of registration for reasons specified under subsection (2).

(4) Where a Seeds Officer, in consultation with the Committee, proposes to vary, suspend or revoke the terms and conditions of a certificate of registration pursuant to subsections (2) and (3), the Seeds Officer shall give written notice of his or her intention to do so to the seed dealer, and the reasons thereof.

(5) A Seeds Officer shall, in consultation with the Committee and in a notice under subsection (4), require the seed dealer to show cause in writing, within such time as may be specified in the notice, as to why the certificate of registration should not be varied, suspended or revoked.

(6) A Seeds Officer shall, after considering the explanations of the seed dealer and in consultation with the Committee, make a decision and inform him or her in writing of such decision and the reasons thereof.

(7) A Seeds Officer may, in consultation with the Committee, suspend a certificate of registration on any ground specified in subsection (2) where the urgency of the matter so requires.

(8) A seed dealer shall take such steps as may be directed by the Seeds Officer where a certificate of registration is suspended or revoked.

**22.** (1) The Minister shall appoint an Appeals Committee which shall consist of five members, including a seeds expert who hold technical qualifications determined by the Minister.

Appeals  
Committee

(2) A member of the Appeals Committee shall hold office for three years and shall be eligible for re-appointment for one further term.

(3) The Minister shall appoint a chairperson of the Appeals Committee.

(4) The head of the division in the Ministry responsible for crop development and production shall be the secretariat to the Appeals Committee.

(5) A person aggrieved by any decision made by a Seeds Officer may appeal to the Appeals Committee in writing within 30 days of notification of the decision.

(6) In determining the appeal under subsection (5), the Appeals Committee may, within 30 days of receipt of the appeal, confirm or vary the decision of the Seeds Officer.

(7) A person aggrieved by a decision of the Appeals Committee may appeal to the High Court within 30 days of the notification to him or her of the Appeals Committee's decision.

#### PART V — *Seed Certification Scheme*

Designation  
of certifying  
authority  
Production of  
certified seed

23. The Minister may designate a Government department or any entity as a certifying authority to control and regulate seed production.

24. (1) The Minister may publish in the *Gazette*, the catalogue of variety of seed which may be cultivated for the purpose of producing seed for certification as Botswana Certified Seed.

(2) The certifying authority shall establish official standards and procedures to assure the genetic purity and identity of the seed certified, and such standards and procedures shall be approved by the Minister.

(3) The Minister may recognise regional or international seed certification schemes and may recognise seed produced under such schemes as imported certified seed.

Notification to  
produce seed

25. (1) A person who intends to produce seed for certification shall notify the Seeds Officer, in the prescribed form, of his or her intention.

(2) The notification referred to in subsection (1) shall specify —

- (a) the variety of seed to be produced;
- (b) the location where the seed is to be produced;
- (c) the area in hectares that is to be planted; and
- (d) the class of seed.

(3) A notification under this section shall be valid for one season for the production of only one crop of a particular specified variety to which it relates.

Register of  
seed producers  
or seed growers

26. The Seed Officer shall keep and maintain a register of seed producers or seed growers which shall contain —

- (a) the name and addresses of all seed producers or seed growers;
- (b) particulars of the specified variety or varieties to be grown by each seed producer or seed grower;
- (c) particulars of the location and area of the land where each such specified variety is to be grown by each seed producer or seed grower; and
- (d) such other particulars as may be prescribed.

#### PART VI — *General*

Offences and  
penalties

27. A person who —

- (a) tampers in any manner with any sample taken under this Act;
- (b) tampers with any seed so as to claim that any sample taken under this Act does not correctly represent the bulk of the seeds;

- (c) with intent to deceive, causes or allows to be sent to any seed testing laboratory, or to any person, to be tested for the purposes of this Act, a sample of seeds which to his or her knowledge does not correctly represent the bulk of the seeds;
- (d) willfully obstructs or interferes with, or fails to comply with any lawful order given by any Seed Inspector or an authorised officer in the execution of his or her powers or duties under this Act;
- (e) makes or causes to be made any statement or certificate which is required to be delivered under this Act and which is false in any material particular;
- (f) sells or exposes for sale any seed, which does not correspond with the description in any certificate, required under this Act;
- (g) refuses to furnish a Seed Inspector or an authorised officer, on request, with any particulars of information to which the Seed Inspector or an authorised officer is entitled under this Act; and
- (h) contravenes any provision of this Act for which no specific penalty has been provided,

commits an offence and is liable to a fine of not more than P100 000, or to imprisonment for a term not exceeding five years, or to both.

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

Immunity  
from liability

**29.** The Minister may make regulations for the better carrying out of the provisions of this Act and, without prejudice to the generality of the foregoing, may make regulations —

Regulations

- (a) prescribing the manner in which samples may be taken and dealt with;
- (b) prescribing the forms, certificates, reports and marking of seed pack under 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;
- (e) prescribing standards of germination, purity and moisture of specified crops;
- (f) prescribing fees to be paid for anything done, or any certificate, report or test issued or made under this Act; and
- (g) prescribing any matter which is to be prescribed under this Act.

**30.** The Minister may, on the recommendation of the Committee, make orders —

Minister to  
make orders

- (a) for the detention of anything seized under the provisions of this Act and for the preservation or safeguarding anything so detained; or
- (b) for the disposition of anything forfeited to the Government under this Act.

**31.** The Seed Certification Act (referred to in this Act as “the repealed Act”) is hereby repealed.

Repeal of  
Cap. 35:07

Transitional  
provisions

- 32.** Notwithstanding the repeal effected under section 31 —
- (a) any subsidiary legislation made under the repealed Act shall continue to be of force and effect as if made under the provisions of this Act, to the extent that it is not inconsistent with such provisions, until revoked or amended under this Act;
  - (b) any licence, permit or certificate issued or granted under the provisions of the repealed Act shall remain valid until its expiry date whereupon the licensee or the permit holder shall apply under this Act for a new licence;
  - (c) any decisions made and any other actions lawfully taken under the repealed Act are hereby deemed to be decisions made and actions taken under this Act; and
  - (d) every appointment made under the repealed Act and subsisting at the date of commencement of this Act shall be deemed to be an appointment made under this Act.

PASSED by the National Assembly this 10th day of August, 2023.

BARBARA N. DITHAPO,  
*Clerk of the National Assembly.*