

**SEED ACT (ACT No. 9 of 1996) AMENDED
ARRANGEMENT OF SECTIONS**

PART I

PRELIMINARY

SECTION

1. Short title
2. Interpretation

PART II ADMINISTRATION

3. Controller of Seeds
4. Registers

PART III

RECOGNITION OF CERTAIN VARIETIES

5. Variety list
6. Variety Recognition
7. Application and procedure
8. Requirements for recognition of variety
9. Consideration and examination of applications
10. Rejection of application
11. Recognition of variety
12. Alterations and deletions from variety list
13. Evaluation of variety
14. Power to enter into agreements with other governments

PART IV SEED TESTS

15. Establishment of seed-testing laboratory
16. Designation of official seed analysts
17. Registers of official seed analysts and seed testing laboratories. Prohibition against testing of prescribed seed except in seed testing laboratories
18. Delivery of samples for official seed-testing
19. Reports to be in forms prescribed

PART V SEED INSPECTION

20. Seed inspectors
21. Authority of seed inspectors may be general or limited
22. Powers to take samples of seed
23. Powers to search premises and seize certain goods
24. Prohibition against obstruction, etc of seed inspectors

PART VI REGISTRATION OF SEED SELLERS

25. Registration of sellers of seed
26. Registering Officer
27. Application for registration

- 28. Renewal of registration
- 29. Reasons for refusal of registration or non-renewal of registration
- 30. Appeal to the Minister
- 31. Use of variety names

PART VII PRESCRIBED SEED

- 32. Power of Minister to declare seed to be prescribed seed
- 33. Treating and cleaning of prescribed seed
- 34. Duties of seller on sale of prescribed seed
- 35. Disposal of sub-standard prescribed seed

PART VIII IMPORT AND EXPORT OF SEED

- 36. *Repealed by 9 of 1996 (Restriction on importation of certain seeds)*
- 37. *Repealed by 9 of 1996 (Registration of seed importers)*
- 38. Conditions for importation of prescribed seed
- 39. Testing of imported prescribed seed
- 40. Importation of trade samples
- 41. Court may order forfeiture and disposal of illicit prescribed seed

PART IX CERTIFICATION OF SEED, PRODUCTION OF SEED FOR CERTIFICATION AND SEED CERTIFICATION SCHEME

- 42. Certification of seed
- 43. Variety of certified seed
- 44. Registration of seed producers
- 45. Register of seed producers
- 46. Establishment of certification scheme
- 47. Provision of scheme
- 48. Appeal to the minister by seed producers
- 49. Certification of seed by the Controller of Seed
- 50. Certified seed of Malawi to be produced from approved seed
- 51. Certificate to be produced on sale of Malawi Certified Seed
- 52. Certification of imported seed as Imported Certified Seed
- 53. Duties of seller on sale of certified seed in sealed containers
- 54. Prohibition respecting sale of uncertified seed
- 55. Prohibition against sale of certified seed without being in possession of appropriate certificate

PART X
OFFENCES AND MISCELLANEOUS PROVISIONS

- 56. Failure to comply with Act or Regulations
- 57. Prohibition against tampering with samples
- 58. Prohibition against altering, defacing or removing official records, etc
- 59. Prohibition against altering, etc., documents and marks
- 60. Prohibition against sale of untested seed
- 61. Prohibition against sale of sub-standard prescribed seed
- 62. Prohibition against sale of prescribed seed under name other than varietal name
- 63. Penalties
- 64. Inspection of registers
- 65. When Act not applicable to sale of prescribed seed
- 66. Exemption from the provisions of this Act
- 67. Minister's decision upon appeal to be final
- 68. Regulations)
- 69. Distribution of plants
- 70. Certain provisions
- 71. Preservation and proof of documents
- 72. Inspection of documents
- 73. Secrecy
- 74. Publication of misleading advertisement
- 75. Presumption and evidence
- 76. Liability of employer
- 77. Limitation of liability
- 78. Other offences and penalties
- 79. Repeal of laws
- 80. Short title and date of commencement
- 81. Establishment of Seed Services Fund

overall *specific objectives*

**An Act to provide for the minimum standards to regulate and control (of)
production, processing, sale, importation, exportation and testing
and further to provide for the certification of seed and for matters
incidental to or connected therewith.**

PART I
PRELIMINARY

1. This Act may be cited as the Seed Act.
2. In this Act, unless the context otherwise requires –
 - "advertisement" includes any statement, picture, design or device –
 - (a) published in any news paper or other publication in general circulation to the public; 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;
 - "certified seed" means any prescribed seed which is certified under the provisions of Part IX;
 - "container" includes a bag, barrel, case, tin, package or any other container in which seed is placed or packed;
 - "contract of sale" includes an agreement to sell;
 - "Controller of Seeds" means the officer in the public service designated as such under the provisions of section 3;
 - "Homogeneous" means the crop stand is uniform without variations e.g., height, colour flowers and as may be defined by the Controller of Seeds;
 - "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 under the provisions of Part IX;
 - "label" includes any legend, work, mark, symbol or design applied or attached to, or accompanying, any seed or package of seed;
 - "Malawi Certified Seed" means any prescribed seed produced in Malawi and certified as such under the provisions of Part IX;
 - "Minister" means the Minister responsible for Agriculture;
 - "official seed-tester" means any [person] designated as an official seed-tester under Part IV;
 - "owner", in relation to any seed, includes any person having for the time being the possession, custody or control thereof;
 - "purity" means analytical purity expressed as a percentage by weight;
 - "quality declared seed" means any seed declared as such by an order made under section 33;
 - "registered" means registered in terms of this Act;
 - "registered seed seller" means any seed seller registered under Part V;
 - "seed" means the part of any plant, customarily referred to as seed, intended for planting and includes other propagating materials;
 - "seed analyst" means any person designated as seed analyst under section 16;
 - "seed cleaner" means any person engaged in the trade or business of removing impurities from seed;

- "seed cleaning plant" includes any premises used for the removal of impurities from seed;
- "seed importer" means any person who, either exclusively, or in conjunction with any other trade or business, imports seed into Malawi for resale;
- "seed inspector" means any person designated as seed inspector under section 21;
- "seed producer" means any person who, either exclusively or in conjunction with any other trade or business, produces seed for sale;
- "seed seller" means any person who, either exclusively or in conjunction with any other trade of business, sells seed for sowing;
- "seed-testing laboratory" means any premises, suitably equipped for the purpose, where seed is tested for its purity and germination capacity;
- "sell" includes to exchange or barter or 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] for or in pursuance of a sale, exchange or barter;
- "special variety" means any variety of prescribed seed which has been specified by the Minister pursuant to section 44 for the purposes of Part IX;
- "variety" means
- (a).breeding line or clone which –
 - (i) is sufficiently homogeneous, and
 - (ii) can be differentiated from another of the same kind or one or more characteristics which are capable of definition and recognition;
 - (iii) and is reasonably uniform and stable after repeated propagation; or
 - (b).a first generation F1 hybrid;
 - (c) a multi-line.

"Varietal name" means the name given to a specific variety of seed by its originator or discoverer.

PART II ADMINISTRATION

3. Controller of Seeds

- (1) There shall be a Controller of Seeds for the purposes of this Act, who shall be an officer in the public service, and who, subject to the general and special directions of the Minister, shall be responsible for the administration of this Act.
- (2) (a) The Controller of Seeds may authorize any officer or, with the approval of the Minister, a person who is not an officer, to exercise, perform or carry out any power, function or duty of the Controller of Seeds.
 (b) Any decision made or order given by such officer or person may be withdrawn or amended by the Controller of Seeds, and shall, until it has been so withdrawn or amended be deemed, except for the purpose of this paragraph, to have been made or given by the Controller of Seeds.
- (3) The provisions of this Act shall apply to any seed which the Controller of Seeds may, by inclusion in a Variety List, declare to be a prescribed or notified kind or variety for the purposes of this Act and different kinds or varieties may be prescribed or notified for different areas.]

4. The Controller of Seeds shall keep and maintain all registers prescribed or required under this Act, each of which shall contain such particulars as are prescribed in respect of such register.

PART III
RECOGNITION OF CERTAIN VARIETIES

*expected out put
specific gene*

5. Variety List

strategy

- (1) Only varieties that have been approved for release and notified and included in the variety list may be sold.

- (2)(a) The Controller of Seeds shall keep a variety list in which shall be entered the denomination for a variety, the date of recognition of the variety, variety descriptors and other particulars as may be considered by the Controller of Seeds.

- (b) The variety list shall be published at least once a year, and a variety included in the list shall be regarded as a notified variety.

- (3). Where an application for the recognition of a variety has been withdrawn, the Controller of seeds shall return all the papers submitted in connection with the application to the applicant at the address indicated in the application at, if this is not practicable destroy them after expiry of the prescribed period.

6. Variety Recognition

The Controller of Seeds shall consider and examine all applications for the recognition of a variety or varieties.

7. Application and Procedure

- (1) An application for the recognition of a variety may be made by any person provided that where the applicant is not resident or, in the case of a juristic person, does not have a registered office in Malawi, an application shall be submitted only through a person who is authorized in writing and is resident in Malawi.

- (2) Such application shall be made to the Controller of Seeds in the form and manner prescribed, along with the necessary application fee.

8. Requirements for Recognition of Variety

- (1) A variety may be recognized if –

- (a) it is by reason of any important characteristic clearly distinguishable from any other variety of the same kind the existence of which is a matter of common knowledge, whatever the origin, artificial or natural, of the initial variation from which it may be resulted;

- (b) it is sufficiently homogeneous having regard to the particular features of the reproduction or vegetative propagation thereof;

- (c) it is stable with regard to the essential characteristics thereof and remains true to the description thereof after repeated reproduction or propagation or, where the breeder has defined a particular cycle of reproduction or multiplication, at the end of each cycle; and
 - (d) it is identified by a denomination which complies with the provisions of subsection (3) of this article.
- (2) A characteristic referred to in subsection (1)(a) of this article may be of a morphological, physiological or any other nature and shall be such that it is clearly recognizable and precisely describable.
- (3) The denomination of a variety shall be proposed by the person who applies for such recognition and –
- (a) shall be suitable to identify a variety;
 - (b) shall not be such as to be liable to mislead concerning the characteristics, value or identity of the variety in question or the identity of the breeder thereof;
 - (c) shall be different from every denomination which designates existing varieties of the same or a closely related kind of plant;
 - (d) shall not be inimical to public interest; and
 - (e) shall comply with such further requirements as the Controller of Seeds may determine.
- (4) (a) The Controller of Seeds shall by notice in the *Gazette* publish such particulars relating to the application as may be prescribed for public information.
- (b) Any person may, within two months, lodge an objection with the Controller of Seeds, on payment of the prescribed fee, stating the reasons for objection.
- (c) The Controller of Seeds shall hear the applicant and the objector or objectors before giving his or her decision on the application, for recognition of the variety.

9. Consideration and Examination of Applications

- (1) The Controller of Seeds shall consider every application for the recognition of a variety and all documents and any other proof submitted to him or her in connection therewith in order to ascertain whether the application complies with the requirements of this Act.
- (2) The Controller of Seeds shall either conduct such verification tests and trials of a variety–
 - (a) as necessary in respect of which an application is being considered under subsection (1) of this article; or

- (b) use the results of tests and trials conducted on that variety and obtained by him in terms of an agreement referred to in article (14) in order to enable him to determine whether such a variety may be recognized.
- (3) A person whose application is being considered shall, for the purposes of such tests and trials and at the time and place determined by the Controller of Seeds –
- (a) subject to the provisions of subsection (4) of this article, pay the appropriate prescribed examination fee; and
 - (b) furnish the Controller of Seeds –
 - (i) with such quantity of seed of the variety as may be defined by the Controller of Seed;
 - (ii) with such specimens of plants of the variety or of such parts thereof as may be defined by the Controller of Seed; and
 - (iii) with such information in connection with the variety as may be defined by the Controller of Seed.
- (4) If the Controller of Seeds for the purposes of the consideration of an application in terms of subsection (1) of this article, decides to use the results referred to in subsection (2)(b) of this article –
- (a) the costs incurred in obtaining the results shall be reimbursed to the Controller of Seeds by the person whose application is being considered; and
 - (b) the Controller of Seeds may before taking any steps, require that person to furnish a written undertaking or suitable guarantee for the reimbursement of such costs.

10. Rejection of Application

- (1) The Controller of Seeds may reject an application for the recognition of a variety if it appears to him –
- (a) that the application
 - (i) does not comply with any provision of this Act;
 - (ii) contains a material misrepresentation;
 - (iii) fraudulently affects the rights of the holder of a plant breeders' right or of the person to whom provisional protection has been granted in terms of this Act;
 - (b) that the applicant
 - (i) is not, under this Act, entitled to make the application;
 - (ii) refuses or has failed or is not able to propose an acceptable denomination;
 - (iii) refuses or has failed or is not able to furnish a written undertaking or suitable guarantee referred to in article 8(4) after having been requested to do so.

(c) that the variety in respect of which the application is made has previously been recognised in terms of this Act or any other previous Act;

(d) that the propagation of the variety in question would require repeated use of plants or propagating material of another variety for which the applicant is not the owner unless such plants are or such propagating material is used under a license; or

(e) that the description submitted does not clearly describe the variety.

(2) If the Controller of Seeds rejects an application under article (10)(1), or refuses an application under article 11(2), he shall advise the applicant in writing of his decision and of the grounds on which it is based.

11. Recognition of Variety

(1) If the Controller of Seeds, after considering an application and examining the results of any tests or trials conducted on the variety in question, is of the opinion that the application conforms to the requirements of this Act, and that the variety complies with the requirements referred to in article 8, he shall recognise and notify the variety and enter it in the variety list.

(2) Notwithstanding the provisions of subsection (1) of this article –

(a) the Controller of Seeds may refuse to recognize a variety if, in his opinion, it is the public interest to do so;

(b) the Controller of Seeds shall refuse to recognize a variety if the Minister, after an evaluation referred to in article 13, directs him to do so; and

(c) the Controller of Seeds shall not recognize a variety before –

(i) the Minister has decided under article 13(1) not to investigate the variety;

(ii) the Minister has under article 13(5) published the results of the evaluation or has under article 13(6) informed the Controller of Seeds that he has decided not to publish such results.

(3) The Controller of Seeds shall, in respect of each variety which is recognized –

(a) enter the applicable particulars in the variety list;

(b) by notice in the *Gazette* publish such particulars relating to the recognition of the variety as may be prescribed; and

(c) inform the applicant in writing of such recognition.

12. Alterations in and Deletions from Variety List

- (1) A denomination of a variety entered in the variety list may be altered or supplemented by the Controller of Seeds on an application made to him by the applicant giving the reasons for the same.
- (2) The Controller of Seeds may delete the denomination of a variety entered in the variety list if he is satisfied –
 - (a) that any information submitted to him in the application for the recognition of such variety or in connection with such an application was incorrect and that the variety would not have been recognized if he had known that the information was incorrect; or
 - (b) that information has come to light which if discovered earlier, would have resulted in the refusal of such application; or
 - (c) that it is in the public interest to delete it; or
 - (d) that plants and propagating material of such variety capable of reproducing the variety in such a manner ~~that the morphological, physiological and other~~ characteristics thereof correspond with the characteristics described at the time of the recognition thereof, cannot be readily obtained; or
 - (e) that the variety no longer conforms to the requirements referred to in article 8; or
 - (f) if the Minister, after an evaluation referred to in article 13, directs him to do so.
- (3) The Controller of Seeds shall by notice in the *Gazette* publish the prescribed particulars relating to an alteration, supplementation or deletion in terms of this section.

13. Evaluation of Variety

The Minister may, if he deems it necessary, investigate –

- (a) a variety in respect of which an application for recognition has been submitted in ~~terms of article 7;~~
- (b) a variety of which the denomination has been entered in the variety list, in order that the usefulness thereof for agricultural or industrial purposes may be evaluated.

The evaluation of a variety referred to in subsection(1)(a) of this article shall commence within 12 months from the date on which the relevant application for recognition is received by the Controller of Seeds, and the applicant concerned shall within that period be advised in writing whether the Minister intends investigating the variety under the said subsection.

The prescribed quantity or mass of plant or propagating material of the variety in question required for the purposes of the evaluation –

(a) shall, in the case of a variety referred to in subsection (13)(a) of this article, be supplied free of charge to the Minister by the applicant at the prescribed time and place; and

(b) may, in the case of a variety referred to in subsection (13)(b) of this article, be procured by the Minister against payment from any person.

The investigation may be undertaken in the manner which the Minister deems expedient and the tests and trials in connection therewith shall be adapted with due allowance to the manner of reproduction of the kind of plant in question to enable the Minister to make the evaluation.

The Minister shall publish the result of an evaluation together with such comments in connection therewith as he may deem necessary.

(c) If the results of an evaluation satisfy the Minister that the variety in question is, in relation to other varieties of the same kind, of such inferior quality that it is undesirable for use for agricultural or industrial purposes, or if the seeds or propagating material cannot be procured as contemplated in subsection (3) of this article, the Minister may direct the Controller of Seeds –

(d) In the case of a variety referred to in subsection (13)(a) of this article, to refuse the application for the recognition of the variety in question; or

(e) In the case of a variety referred to in subsection (13)(b) of this article, to delete the denomination of the variety entered in the variety list.

The Minister may at any time after an investigation under subsection (1) of this article has been undertaken, repeal the investigation, irrespective of whether the results of a previous evaluation arising there from have been published.

14. Power to Enter Into Agreement With Other Governments

(1) The Minister may enter into an agreement with another government or governments which may provide that the Controller of Seeds –

(a) shall, for the purpose of consideration by him of an application for the recognition of a variety in terms of this Act, be entitled to obtain the results of tests and trials conducted by the authorities of that country in respect of that variety;

(b) shall render available to such authority the results of tests and trials conducted by the authorities of Malawi in respect of a variety, against payment by the Controller of Seeds of that authority, as the case may be, of the amount agreed to between the two governments.

PART IV
SEED TESTS

15. The Minister may establish and maintain or designate one or more seed testing laboratories in Malawi.
16. Upon the establishment or designation of a seed testing laboratory, and from time to time thereafter, as occasion may require, the Minister shall by notice publish in the *Gazette*, designate an official seed analyst or official seed analysts, as the case may be, for each seed testing laboratory.
17. The Controller of Seeds shall keep and maintain the following registers –
- (a) a register of official seed analysts which shall contain –
 - (i) the name and address of each official seed analyst appointed under this Act;
 - (ii) such other particulars as may be prescribed;
 - (b) a register of seed testing laboratories, which all contain –
 - (i) the name and address of each seed testing laboratory established under this Act; and
 - (ii) such other particular as may be prescribed.
18. (1) Any person who, in any place which is not a seed testing laboratory, tests or purports to test for the purposes of this Act any prescribed seed shall be guilty of an offence.
(2) Upon conviction of any person of an offence under subsection (1), the court may, in addition to any other penalty imposed, declare any machinery, equipment and chemicals and any prescribed seed found in the place concerned to be forfeited or order them to be destroyed without compensation.
19. (1) Any person who has produced or acquired any prescribed seed which has not been tested may request such seed to be sampled. This seed sample should be submitted to an authorized seed testing laboratory together with a statement in writing specifying such particulars as may be prescribed.
(2) The delivery of a sample of prescribed seed pursuant to subsection (1) shall be subject to payment of such fee as may be prescribed.
(3) Upon receipt at the seed testing laboratory of any sample taken pursuant to subsection (1), the official seed analyst shall test the sample in the manner prescribed and shall furnish to the person who sought the test a report thereof setting out the date upon which the test was made, the findings resultant thereon and such other particulars as may appear to the official seed analyst necessary for, or relevant to, the report.
20. Any reports, certificates or other documents issued or furnished by a seed testing laboratory for the purposes of this Act shall be in the forms prescribed.

PART V
SEED INSPECTION

Strawley

21. (1) There shall be seed inspectors authorized as such by the Minister for the purposes of this Act.
- (2) An application for authorization as a seed inspector shall be made to the Minister in the prescribed form, and shall be accompanied with the prescribed fees.
- (3) The Minister shall cause a certificate of authorization and/or identification to be issued to each seed inspector.
- (4) A seed inspector shall produce for inspection his certificate of authorization and/or identification upon demand of any person affected by this Act.
22. The authority of a seed inspector issued under section 21 may be –
- (a) general, whereby the seed inspector shall be empowered to exercise all the powers of a seed inspector anywhere in Malawi; or
- (b) limited, either –
- (i) as to the specific powers exercisable by the seed inspector; or
- (iii) as to the place or district in which such powers are exercisable by the seed inspector.
- (c) Inspect any book, record and other documents, and make copies thereof or excerpts therefrom.
- 23 (1) A seed inspector may, for any of the purposes of this Act, and at all reasonable times
- (a) enter and inspect any place, premises or vehicle in or upon which any prescribed seed or restricted seed or propagating material is being produced, reproduced, bred, cultivated, processed, treated, prepared, tested, examined, analysed, classified, prepackaged, marked, labeled, held, kept, packed, removed, transported, ~~exhibited~~ or sold;
- (b) examine the seed or propagating material and take samples thereof; and
- (c) require the owner or occupier to produce for inspection, or for the purpose of obtaining copies or extracts, any books, labels, shipping bills, bills of lading or other documents or papers with respect to the administration of this Act
- (2) A seed inspector may take samples of any seed for any of the following purposes –
- (d) for test or examination to determine whether the seed is prescribed seed or restricted seed; or
- (e) for test to determine whether [,] if the seed lot is prescribed seed [,] it conforms to the standards of purity and germination prescribed therefore under this Act; or
- (f) for such other purposes as may be deemed necessary by the seed inspector in relation to the exercise of his[/her] powers under this Act.

24 (1) A seed inspector may, for any of the purposes of this Act, and at all reasonable times,

- (a) enter upon any land, building, premises or vehicle at or in which there is reasonable cause to believe that any prescribed seed or restricted seed is being stored, sold or transported for sale in contravention of this Act, or is being packed in packages or other containers which are marked or labeled, or are being marked or labeled, with any description, mark or date in contravention of this Act, and;
- (b) may without liability for any payment to any person whosoever, take samples of the seed found therein, and;
- (c) the owner of the land, building premises or vehicle, or his agent or the person in custody or control thereof shall on demand furnish to the seed inspector a statement in writing containing such particulars with respect to the seed as may be required by the seed inspector, who;
- (d) further, may seize and remove there from and detain any prescribed seed or restricted seed or any package or container or any label, stamp or device for marking, stamping or labeling, or any book, record or document found therein, which would afford evidence of a contravention of this Act.

(2) Every seed inspector shall, on demand by the owner, or the person having custody of such land, building, premises, plant or vehicle, produce his[or her] authority to enter upon such land, building premises, plant or vehicle.

(3) Any seed inspector who has seized and detained any item or thing pursuant to the authority under subsection (1), shall give to the person from whom such item or thing was seized a receipt for the seizure and detention thereof signed by such seed inspector.

(4) Any prosecution for an offence arising from the findings of an inspection conducted under subsection (1) shall be instituted only with the consent of the Chief Public Prosecutor; and in the event of the Controller of Seeds being advised in writing by the Chief Public Prosecutor that no prosecution should be instituted, 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 by the Controller of Seeds of such advice.

25 Any person who –

- (a) obstructs or impedes a seed inspector in the due exercise of his[or her] powers under this Act; or
 - (b) refuses to furnish to a seed inspector, on request, any particulars of information to which the seed inspector is entitled under this Act; or
 - (c) willfully or recklessly gives to a seed inspector or an authorized officer any false or misleading particulars or information with respect to any fact or matter to which the seed inspector is entitled under this Act,
- shall be guilty of an offence.

PART VI
REGISTRATION OF SEED SELLERS

26 Registration of Seller of Seed

- (1) No person or legal entity shall, himself or by any other person on his behalf, carry on the business of selling, keeping for sale, offering for sale, bartering or otherwise supplying any seed of any notified kind or variety unless –
- (a) the premises from where the seed is sold is registered for the selling of seed;
 - (b) such seed is identified as to its kind or variety and is tested and conforms to the prescribed standards and requirements as defined in the Regulations;
 - (c) the container of such seed bears the label containing the correct particulars as described in the Regulations;
 - (d) the premises and the establishment conform to the requirements given in the Regulations;
 - (e) the seller complies with other requirements as may be prescribed from time to time by the designated authority referred to in subsection 1(a) of this article.
- (2) The provisions of subsection (1) of this article shall not apply to the sale of seed –
- (a) which is grown and cleaned by a *bona fide* farmer for his own use;
 - (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 "un cleaned seed".
- (3) The Minister may prescribe by notice in the gazette other classes of seeds or the category of persons who shall be exempt from the provisions of subsection (1) of this article.

27. Registering Officer

The Controller of Seeds shall be in charge of registering premises where seed is sold.]

28. Application for Registration

- (1) Every application for registration of a premises for the selling of seed shall be submitted to the Controller of Seeds in the prescribed form and accompanied by prescribed registration fees;
- (2) Upon receipt of any application for registration and any further information as may be required, and upon being satisfied as to the requirements, the Controller of Seeds shall

register the premises and issue a registration certificate in the prescribed form which shall be prominently displayed on the registered premises;

- (3) A registration under this section may be made subject to such conditions as may be laid down by the Controller of Seeds. The registration shall be valid for a period of twelve months from the date of issue of a certificate and shall be renewable;
- (4) If the Controller of Seeds is satisfied that the conditions subject to which a registration certificate was issued have not been complied with, the Controller of Seeds may cancel the registration.

29. Renewal of Registration

- (1) A person to whom a certificate of registration of premises has been issued may apply for renewal of registration before the date of expiry thereof on the prescribed form and accompanied by the prescribed fee.
- (2) If the Controller of Seeds is satisfied that the seller of seed has followed the law and regulations of this Act and has complied with the conditions, if any, subject to which the registration of the premises was made and the records regarding the seed handled at his business premises are being kept in the prescribed manner, he shall renew the registration and shall issue a fresh certificate.

30. Reasons for Refusal of Registration or Non-Renewal of Registration

The Controller of Seeds shall give in writing the reasons in case –

- (a) an application for registration is rejected or registration is cancelled, because of non-fulfillment of conditions subject to which the registration was issued, or the registration is not renewed; or
- (b) the applicant is not satisfied with the conditions subject to which registration was made.

31 Appeal to Minister

A person whose application for registration of premises for the selling of seed has been rejected or whose registration has been cancelled or whose registration has not been renewed or who is not satisfied with the conditions subject to which registration was made, may appeal, stating the grounds of appeal, to the Minister whose decision shall be final.

32. Use of Variety Names

No person shall sell seed of any variety under a name other than the name given to it by its discoverer or originator and as mentioned in the variety list nor shall add any qualifying term or reference whatsoever. Any person, not being a seed producer or a registered seed importer, who, without a seed seller's license, sells by wholesale, or retail, for sowing, any prescribed seed shall be guilty of an offence.

PART VII
QUALITY DECLARED SEED

Gravey

33 The Minister may from time to time, by order published in the *Gazette*, declare any seed to be a Quality Declared Seed, and for each kind specify minimum standards.

34 (1) If, upon test made under Part IV, it is found and reported by an official seed analyst that any Quality Declared Seed does not conform to the prescribed standards of germination or purity, the owner thereof shall forthwith arrange for the prescribed seed to be treated or cleaned.

- (2) Where any Quality Declared Seed has been treated or cleaned pursuant to subsection (1), the owner may request a seed inspector to take a further sample thereof as required under this Act, which shall be sent by the seed inspector to a seed testing laboratory for further testing. The owner may cause further treatments or cleanings of such affected seed and further tests to be made in like manner until such time as the Quality Declared Seed is found and reported by the official seed analyst to conform to the seed standards.

35 (1) Subject to the provisions of this Act, any person who sells, for sowing, any Quality Declared Seed that has been tested in accordance with the provisions of this Act and found to conform to the standards prescribed shall –

- (a) if the Quality Declared Seed is sold in sealed containers, cause to be printed or stamped upon each such container or upon a label attached thereto or enclosed therein in such a way as to be legible without opening the container, in clear and legible letters and figures –

- (i) the words "tested seed";
- (ii) the date upon which the Quality Declared Seed was tested; and
- (iii) such other particulars as may be prescribed;

- (b) if the Quality Declared Seed is sold in bulk quantities –

(i) and the seller is the person who caused the test to be made, furnish to the buyer at the time of sale a statement in writing containing the name and address of the seed testing laboratory where the test was made, the date of the test and a declaration by the seller that the bulk quantity sold is all or part of that from which the sample tested was taken, together with such other particulars as may be prescribed;

(ii) and the seller is not the person who caused the test to be made, furnish to the buyer at the time of sale a copy of a statement furnished, under the provisions of subparagraph (i), by the person who caused such test to be made, and shall endorse thereon a declaration that the bulk quantity sold is all or part of that to which such statement was related at the time the Quality Declared Seed was procured.

- (2) Any person who fails to comply with the requirements of subsection (1) shall be guilty of an offence.

mu

(3) The validity of a contract for the sale of Quality Declared Seed, or the right to enforce such a contract, shall not be affected by non-compliance with this section.

(4) For the purposes of this section –

- (a) the expression "in bulk quantities" includes any quantity of seed, but does not include seed which is packed and sold in sealed containers;
- (b) the word "sale" includes "gift".

36. Subject to the provisions of section 34, if a sample of any Quality Declared Seed is, upon test, found and reported by an official seed-analyst not to conform to the seed standards, the Controller of Seeds may –

(a).if such Quality Declared Seed has been seized and detained in accordance with the provisions of this Act –

(i).subject to conditions of sale and use, direct its return either to the owner thereof or to the person from whose custody or control the sample was taken.

(ii) order it to be destroyed without payment or compensation to the owner if, upon reasonable grounds the owner is satisfied that it is in a state that is dangerous to public health or injurious to animals or plants.

(b).if the Quality Declared Seed has not been seized or detained in accordance with the provisions of this Act –

(i) permit the owner thereof to retain the Quality Declared Seed subject to such conditions as to its sale or use as the Controller of Seeds may impose;

(ii) order it to be destroyed at the premises where located or to be seized by the Controller of Seeds and destroyed, in either case without payment of compensation to the owner if, upon reasonable grounds, is satisfied that it is in a state dangerous to public health or injurious to animals or plants.

PART VIII
IMPORT AND EXPORT OF SEED *controlled*

37.(a) The minister may, from time to time by order published in the gazette restrict, limit, *State*
make subject to conditions, or prohibit the importation into Malawi or exportation from Malawi
of any particular variety or class of seed in this act referred to as (restricted seed)

(b) A person who imports or exports any restricted seed in contravention of this Act or any
~~regulations made there under shall be guilty of an offence.~~

38. (a) No person shall import into Malawi for sale any prescribed seed unless he is a
registered seed importer.

(b) A person who contravenes subsection (a) shall be guilty of an offence.

(1) No person shall export from the country any seed or propagating material
unless he or she is in possession of a certificate from the Controller of Seeds
authorizing such export

(2) Any person desiring to obtain any such certificate shall apply therefore to the
Controller of Seeds in the prescribed manner

(3) After receipt of an application referred to in subsection (2) the Controller of
Seeds may undertake such inspection of the plants and propagating material
intended for export as he or she may deem necessary, take such samples
thereof as he or she may deem necessary and test, examine or analyse the
~~samples or cause the samples to be tested, examined or analysed in manner~~
contemplated in Section (23), and the person who has thus applied shall pay to
the Controller of Seeds on demand the prescribed fees in connection with such
inspection and for the testing, examination or analysis of such samples

(4) If the Controller of Seeds is of opinion that a consignment of seed may not be
exported, he or she shall prohibit the export thereof in writing

(5) The provisions of subsection (1) shall not apply with reference to the export of-

- (a) seed intended for purposes other than cultivation; or
- (b) seed which does not exceed the prescribed quantity

39. (1) No seed importer shall import any prescribed seed into Malawi unless –

(a) such seed is not restricted seed;

(b) such seed conforms to the seed standards and other requirements prescribed
therefore;

(c) if such seed is packed in a container, such container complies with the provisions of
section 35 as to the manner of labeling;

(d) the genus, species and variety of such seed and the country of origin is shown on
an invoice or delivery note accompanying such seed at the time of its importation.

(2) The Minister may exempt any seed importer, or any particular species, variety or class
of Prescribed seed, from subsection (1) and such exemption may be subject to such
conditions as the Minister may, in his/[her] discretion, impose.

(3) A person who fails to comply with subsection (1) or with any condition imposed by the Minister under subsection (2) shall be guilty of an offence.

40. (1) Upon importation into Malawi of any prescribed seed, the seed importer to whom the prescribed seed is consigned shall within seven days of its delivery to him[/her], request a sample to be taken and sent for test to a seed testing laboratory.

(2) No person shall sell or otherwise dispose of imported prescribed seed prior to the receipt, by the seed importer who imported such prescribed seed, of a report on the test of the sample thereof from the seed testing laboratory confirming that the imported prescribed seed conforms to the prescribed seed standards.

(3) A person who contravenes or fails to comply with subsection (1) or (2) shall be guilty of an offence.

41. Nothing contained in this Act shall be construed as prohibiting the importation by any seed importer, by post, of a sample of any prescribed seed, not exceeding one kilogram and which is being imported into Malawi solely as a trade sample and its quantity is of no commercial value.

42. Upon the conviction of any person of an offence under this Part, the court may in addition to any other penalty imposed, declare any prescribed seed or restricted seed found in possession or under the control of the defendant and connected with the commission of the offense to be forfeited and may order it to be destroyed without compensation.

PART IX

~~PRODUCTION OF SEED FOR CERTIFICATION, CERTIFICATION OF SEED AND SEED~~ CERTIFICATION SCHEME

43. Subject to the provisions of this Part, seed may be certified by the Controller of Seeds –
(a) in the case of seed produced in Malawi, as "Malawi Certified Seed"; or
(b) in the case of imported seed, as "Imported Certified Seed".

44. The Minister may by order published in the *Gazette*, specify the variety or varieties of seed which may be cultivated for the purpose of producing seed for certification as Malawi Certified Seed or as Imported Certified Seed.

45. (1) Any person who intends to produce seed for certification must notify the Controller of Seed for such intent.

(2) The notification referred to in subsection (1) shall be made in the prescribed form and shall specify –

- (a) ~~the variety or varieties 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) Notification under this section shall be valid for one season for the production of one crop only of a particular specified variety or varieties to which it relates.

46. For the purposes of this Part, the Controller of Seeds shall keep and maintain a register of seed producers which shall contain –

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

47. Establishment of Certification Scheme *Strategies*

- (1) The Minister may, by notice in the *Gazette*, establish a scheme for the certification of seeds of the varieties referred to in the scheme with the object of maintaining the genetic quality of seeds.
- (2) The Minister may recognize certification schemes following OECD in other countries to be of equal or higher standard than the schemes established under this Act and may, in such cases, recognize seed produced under such schemes as imported certified seed.
- (3) The Minister may, at any time by notice in the *Gazette*, amend or revoke a scheme.

48. Provisions of Scheme

- (1) The Minister may, by notice in the *Gazette* –

- (a) designate the Controller of Seeds to exercise the powers, perform the functions and carry out the duties conferred upon, assigned to or imposed upon such authority under a scheme;
- (b) prescribe the kinds and varieties of seed to which the provisions of the scheme shall apply;
- (c) provide that any person intending to participate in a scheme and any unit for certification shall be registered with the authority referred to in paragraph (a);
- (d) provide for the manner in which a person or a unit for certification shall be registered and the forms to be used for an application for registration;
- (e) prescribe the requirements to be complied with by a person or unit for certification, the conditions under which such a person or unit shall be registered and the period of validity of such registration;
- (f) provide for the manner in which and the control subject to which seed intended for certification under a scheme shall be produced and treated;

- (g) determine the manner in which and the times at which any inspection of units for certification of seeds with reference to which the provisions of a scheme are applicable, shall be carried out, and the forms to be used in connection with such an inspection;
 - (h) determine the requirements and standards of quality which seed shall comply with the certification in terms of a scheme;
 - (i) determine the manner in which seed shall be certified, the form of a certificate in connection therewith and the circumstances under which such a certificate shall lapse;
 - (j) determine the manner in which certified seed shall be packed, marked, labelled, sealed, stored or distributed and the specifications of the labels and seals to be used thereof;
 - (k) determine the information which shall appear on the containers in which certified seed is packed, or on the labels affixed thereto;
 - (l) determine the records to be kept and the information to be furnished by any person registered under a scheme;
 - (m) determine the fees or charges payable to the authority by any person registered under a scheme;
 - (n) confer on the authority the powers of inspection;
 - (o) provide generally for any other matter which, in the opinion of the Minister, is necessary or expedient in order to further or better achieve the objects of a scheme.
- (2) The authority referred to in subsection (1)(a) of this article shall exercise, perform or carry out its powers, functions or duties.
- (3) The authority designated under subsection (1)(a) of this article may authorize any person to exercise, perform or carry out any power, function or duty of that authority.

49. (1) If a seed producer is not satisfied with the reasons furnished by the controller of seeds under section (48) or if the reasons have not been furnished within the prescribed time, he may, within 21 days after his receipt of the reasons or after expiry of the prescribed time, appeal to the minister in writing against the decision of the controller of seeds.

(ii) In determining the appeal made to him under subsection (i), the minister may call for the views of the controller of seed be made in writing or orally and may, as he deems appropriate, either

- (a). Uphold in whole or in part the decision by the controller of seeds; or
- (b). Direct the controller of seeds

- (i) to register the appellant as a registered seed producer in the terms of his application for registration; or

- (ii) (ii) to strike out all any of the conditions or limitations imposed by the controller of seeds, or to amend or alter such conditions or limitations in such manner as the minister may direct; or
- (iii) (iii) to restore the registration.

50. (1) Upon it being shown to the satisfaction of the Controller of Seeds that a particular seed lot –

- (a) is of a specified variety;
- (b) is of known derivation;
- (c) has been produced on the land designated in the register;
- (d) has been sown, cultivated and produced as prescribed;
- (e) has been inspected during cultivation as prescribed seed; and
- (f) has been tested in accordance with the provisions of this Act and found to conform to the standards of germination and purity.

(2) Having certified any seed as Malawi Certified Seed the Controller of Seeds shall issue to the seed producer a "certificate" in the prescribed form in respect of such seed and shall enter the particulars of such certification in the register of seed producers in relation to the seed producer concerned.

(3) The validity period of the Certificate in section (49)(2) shall be one year from the date of seed test at the time of issue of the initial certificate. The validity period may be further extended provided the seed is re-tested in the authorized Seed Testing Laboratory and is found to conform to the required standards in respect of purity, germination and insect damage. The extension of validity period of certified seed shall be for a period of six months at each subsequent validation as long as the seed lot conforms to the prescribed standards.

51. No seed producer shall use for the production of Malawi Certified Seed any variety of seed which has not been approved for such purpose by the Controller of Seeds.

52. (1) Upon any sale of Malawi Certified Seed, the seller shall at the time of such sale –

- (a). produce for inspection by the buyer the certificate issued under this Part in respect of such seed; and
- (b) furnish to the buyer a true copy of such certificate countersigned by the producer of such Malawi Certified Seed.

(2) A seed producer who fails to comply with this section shall be guilty of an offence.

53. (1) The Controller of Seeds may, upon application by a seed importer, certify as Imported Certified Seed any seed of specified variety which –

- (a) has been imported into Malawi by the applicant;
- (b) has been tested in accordance with the provisions of this Act;
- (c) has been certified as certified seed under the laws of the country of its origin;
- (d) is accompanied by a certificate which the Controller of Seeds considers acceptable for purposes of certification under this Part; and
- (e) is shown to the satisfaction of the Controller of Seeds to have been produced under conditions, and to conform to standards equal to or higher than those prescribed for the production and certification of Malawi Certified Seed.

(2) Where the Controller of Seeds has certified any imported seed as Imported Certified Seed, he or she shall issue to the seed importer a certificate in the prescribed form in respect of such certification.

(3) The Controller of Seeds shall keep and maintain a register of seed importers which shall contain –

- (a) the names and address of the seed importer;
- (b) the variety and quantity of seed imported;
- (c) the country of origin of the seed;
- (d) the date of testing in the country of origin;
- (e) the name of the certifying authority in the country of origin;
- (f) the number of the certificate
- (g) phytosanitary certificate and orange international certificate; and
- (h) any other such other particulars as may be prescribed.

54. (1) Any person who sells, for sowing, any certified seed in sealed containers shall cause to be printed or stamped upon each such container or on a label attached thereto or enclosed therein in such a way as to be legible without opening the container, in clear and legible letters and figures –

- (a) in the case of Malawi Certified Seed –
 - (i) the words "Malawi Certified Seed" in lieu of the words "tested seed" as required under section 35;
 - (ii) the date of testing;
 - (iii) the number of the certificate issued in respect thereof; and
 - (iv) such other particulars as may be prescribed;
- (b) in the case of Imported Certified Seed –
 - (i) the words "Imported Certified Seed" in lieu of the words "tested seed" as required under section 35;
 - (ii) the date of testing;
 - (iii) the number of the certificate issued in respect thereof; and
 - (iv) such other particulars as may be prescribed.

(2) Any person who fails to comply with this section shall be guilty of an offence.

55. Any person who –

- (a) sells as certified seed any seed which is not certified under this Act; or
- (b) for the purposes of sale, uses in the description or name of any seed, the word "certified" or any cognate word in regulation to seed which is not certified under this Act, shall be guilty of an offence.

56. (1) Any person who sells in bulk quantities –

- (a) any Malawi Certified Seed or Imported Certified Seed, for sowing, without having in his possession or under his control, at the time of such sale, the certificate or a copy of the certificate issued or furnished under this Part in respect of such seed;
- (b) any Malawi Certified Seed or Imported Certified Seed, for sowing, and who fails to furnish the buyer, at the time of such sale, the prescribed certificate or a copy of

certificate required to be so furnished under this Part in respect of such seed, shall be guilty of an offence.

- (2) The validity of a contract for the sale of certified seed, or the right to enforce such a contract, shall not be affected by non-compliance with this section.
- (3) For the purposes of this section, the expression "in bulk quantities" includes any quantity of seed taken, for the purpose of a particular sale, from any larger quantity of seed, but does not include seed which is packed and sold in sealed containers.
- (4). Save as provided by section 68, no person shall sell any prescribed seed for sowing unless the said seed has previously been tested as provided by this Act, and upon such test has been found of the standards of germination and purity prescribed for such seed.

PART X OFFENCES AND MISCELLANEOUS PROVISIONS

get into uncertainty

57. Any person who contravenes or fails to comply with any of the provisions of this Act or regulations, requirements or conditions lawfully prescribed there under, shall be guilty of an offence.

58. Any person who –

- (a) tampers with any seed so as to ensure] that any samples of such seed, taken under and for the purposes of this Act, does not correctly represent the bulk from which the sample was taken, or;
- (b) otherwise tampers with any sample taken under this Act; or
- (c) with intent to deceive, causes or permits to be sent to any seeds testing laboratory to be tested for the purposes of this Act, a sample of any seed which to his knowledge does not represent the bulk from which it was taken, shall be guilty of an offence.

59. Any person who, without lawful authority, alters, defaces or removes –

- (a) any register, index or other such official record maintained in pursuance of this Act, or of any order or requirement made there under; or
- (b) any entry appearing in any such register, index or other such official record, shall be guilty of an offence.

60. Any person who, without lawful authority, alters or defaces –

- (a) any certificate, report, record, invoice, accounts or other document, prescribed, issued, furnished or kept under this Act, or under any order, requirement, condition or regulation made hereunder; or
- (d) any label, note, docket or mark placed upon any container under this Act, or under any order, requirement or condition made there under, or who removes any such label, note, docket or mark from any such container, shall be guilty of an offence.

61. Any person who –

(a) is authorized for the purposes of this Act, publishes or communicates to any person without lawful authority any information acquired by him or her in the course of his or her authorization; or

(b) is in possession of any information which to his or her knowledge has been disclosed in contravention of this Act, publishes or communicates that information to any other person, shall be guilty of an offence and be liable to a fine not exceeding Malawi Kwacha equivalent of \$5000 or to imprisonment not exceeding one year, or both.

62. (1) If, upon test made pursuant to the provisions of this Act, any prescribed seed is not found to conform to the standards of germination and purity prescribed for such seed and is so reported in the report on such test furnished by an official seed analyst, such prescribed seed shall not be sold by any person, for sowing, save with the consent in writing of the Controller of Seeds previously obtained, and subject to any conditions as regards such sale as the Controller of Seeds may impose.

(2). Upon conviction of any person of an offence under this section, the court may, in addition to any other penalty imposed, declare any such sub-standard prescribed seed found in the possession or under the control of the defendant to be forfeited or may order it to be destroyed without compensation.

(3) Any person who sells any prescribed seed in contravention of subsection (1) shall be guilty of an offence.

64. Any person who sells, for sowing, any prescribed seed under a description other than its varietal name shall be guilty of an offence.

65. A person guilty of an offence under this Act for which a penalty has not been specified shall be liable to a fine of not more than Malawi Kwacha equivalent of \$5000 and to imprisonment of not more than one year, or both in the case of repeat offenders.

66. All registers maintained by the Controller of Seeds under this Act shall, at all reasonable times, be open to the inspection of any person applying to the Controller of Seeds on payment of the prescribed fee.

67. The provisions of this Act shall not apply –

(a).to any sale of prescribed seed, which is not Malawi Certified Seed and which has been produced by a seed producer on his own land and is sold by him

(i) for sowing by the buyer, and not for purposes of resale; or

(ii) to a seed cleaner in order that it may be cleaned before being sold for sowing; Provided that it is sold in a container or containers, upon which, or upon the label or labels attached to which, appears clearly and legibly the words "for cleaning purposes only";

(iii) for use as food or as farm feed or for industrial purposes.

(b).to any sale of prescribed seed, which is not certified seed, by or to a person exempted from the provisions of this Act by an order made by the Minister under section 69.

68. The Minister may, from time to time, by order published in the *Gazette*, exempt any person or class of persons from the provisions of this Act.

69. Where an appeal under this Act lies to the minister, the decision of the minister thereon shall be final and shall not be subject to any review or question by or in any court.

70. Regulations

(1) The Minister may make regulations for the better carrying out of this Act and, without prejudice to the generality of the foregoing, such regulations may make provision for –

(a) the forms of registers, notifications, certificates, authorizations and reports required to be prescribed under this Act and such other forms as the Minister deems proper to prescribe for the purposes of this Act;

(b) the forms of records to be kept by the Controller of Seeds for the purposes of this Act;

(c) the form of records to be kept and returns to be made by seed cleaners, seed importers, seed producers and seed sellers for purposes of this Act;

(d) the qualifications of official seed analysts under this Act;

(e) standards of quality and performance of scientific equipment and the variety of such equipment to be maintained in any seed testing laboratory, and the Minister may make provision for different standards and equipment for different seed testing laboratories.

(f) the operation and management of seed testing laboratories, including the number of official seed analysts to be attached to each such seed testing laboratory and the forms of records to be kept by seed testing laboratories for the purpose of this Act;

(g) the manner in which samples are to be taken under this Act, the forms to be used in and about the taking of such samples, and the fees and expenses to be paid for and in respect of the taking of such samples under particular circumstances;

(h) the methods to be employed by seed testing laboratories and official seed analysts in the testing of prescribed seed;

(i) the standards of germination and purity of specified varieties for purposes of certification as certified seed under Part IX;

(j) the conditions under which prescribed seed for sowing intended for sale may be displayed for sale or stored by any seed producer, seed cleaner or seed seller;

(k) the manner and methods of labeling, stamping, marking or sealing of containers in which any prescribed seed or certified seed is sold;

71. Distribution of plants or propagating material

The Minister may be notice in the Gazette prohibit or subject to such conditions as may be mentioned in the notice, regulate, the distribution of plants or propagating material

72. Certain provisions to apply in respect of the State

This Act except sections 32,35 and 37 shall apply also in respect of the State; provided that no fees shall be payable by the state in terms of this Act.

73. Preservation, inspection and proof of documents

All documents lodged with the registrar in terms of this Act shall, subject to the provisions of subsection (3), be preserved for the prescribed period

74. Any document referred to in subsection (1) which, in the opinion of the Controller of Seeds may lie for inspection by the public, shall upon payment of the prescribed fees be open for inspection during office hours at the office of the Controller of Seeds and copies thereof shall on request and upon payment of the prescribed fees be furnished to any person.

75. Secrecy

(1) No person shall, except-

(a) for the purpose of carrying out duties or the performance of functions under this Act.

(b) for the purposes of legal proceedings under the act of any other law:

(c) when required to do so by any court or under any law; or

(d) with the written consent of the Controller of Seeds,
disclose any information acquired in carrying out duties or functions under this Act or a scheme and which relates to the business or affairs of another person.

(2) Notwithstanding the provisions of subsection (1) the person or body designated in terms of section 24 (a) may, in respect of the relevant scheme, furnish to the holder of a plant breeder's right granted under the Plant Breeder's Rights Act, in respect of a variety, information regarding-

(a) ~~the person who applied for the certification of plants or propagating material~~
of the variety in question;

(b) the area of land of each unit for certification for which application for registration in respect of such plants or propagating material has been made; and

(c) the quantity of such plants or propagating material which has been certified.

76. Publication or distribution of false or misleading advertisements-

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

(2) It shall be sufficient defense for any person, other than the person selling the seed to which the false or misleading advertisement relates, who is charged with a contravention of subsection (1), if proven to the satisfaction of the court that the accused did not know and could not reasonably be expected to have known that an advertisement was false or

misleading in any respect, unless it is proven that the accused failed on demand by the Controller of Seeds to furnish the details of the person at whose instance the advertisement was published or distributed.

77. Presumptions and evidence

In litigation proceedings under this Act or a scheme-

- (a) any seed, or other article in or upon any premises, place or vehicle at the time a sample thereof was taken pursuant to the provisions of this Act shall, unless the contrary is proved, be deemed to possess the same properties as such sample;
- (b) any sample taken in terms of section shall be deemed to be representative of that seed, substance or other article from which it was taken unless the contrary is proved;
- (c) any statement or entry contained in any book or document, or any excerpt from or copy of particulars entered in a book or document kept or purporting to be issues by any person, or by the manager, agent or employee of such person, shall be admissible in evidence against such person as an admission of the facts set forth in that statement, entry, excerpt, or copy, unless the contrary is proved

78. Liability of employer or principal

- (1) Any act or omission of an employee, manager or agent which constitutes an offence under this Act or a scheme, shall be deemed to be the act or omission of the employer or principal, and such employer or principal may be convicted and sentenced in respect thereof unless proven that the accused-
 - (a) did not permit, connive, or condone such act or omission;
 - (b) took all reasonable measures to prevent an act or omission of the nature in question; and
 - (c) whether legal or illegal, of the nature in question did not under any condition or in any circumstances fall within the course of the employment or the scope of the authority of the employee, manager or agent concerned
- (2) For the purposes of subsection (1) (b) the fact that an employer or principal forbade an act or omission of the nature in question shall not by itself be regarded as sufficient proof that he took all reasonable measures to prevent such an act or omission.
- (3) The provisions of subsection (1) shall not relieve the employee, manager or agent concerned from liability to be convicted and sentenced in respect of the act or omission in question.

79. Limitation of liability

No compensation shall be payable by the State, the Minister of Agriculture, the Controller of Seeds, an authority designated in terms of Part V, any person authorised thereto in writing by

appropriate column. Utilize the higher sum of the two resulting values as the maximum allowable concentrations.

(iv) furnishes any particulars in connection with seed on any container in which it is sold or on a label which is attached to such seed or container, which do not correspond with the true properties thereof;

(v) distributes any seed in contravention of a notice mentioned in section or of any condition referred to in that section;

(g) who sells, removes or tampers with any sample taken or any seed, or propagating material, substance or other article seized in terms of this Act or who tampers with an identification mark or seal attached thereto;

(h) who fails to display or return a certificate of registration of premises;

(i) who fails to comply with a provision of a scheme while under an obligation to do so

(j) who, except in the circumstances referred to in this Act, discloses information acquired in the course of duties or in the performance of functions under this Act;

(k) who contravenes any provision of Part X;

(l) who falsely holds out to be an authorized person in terms of this Act;

(m) who makes a document or causes a document to be made which purports to be a certificate, authorization or other document issued in terms of this Act,

shall be guilty of an offence and liable to conviction-

(i) in the case of a first conviction of a contravention referred to in this subsection, to a fine or imprisonment for a period not exceeding one year;

(ii) in the case of a second or subsequent conviction of a contravention referred to in paragraph (c), (d), (e), (h), or (i), to a fine or to imprisonment for a period not exceeding two years; or

(iii) in the case of a second or subsequent conviction of a contravention referred to in paragraph (a), (b), (f), (g), (j), (k), (l), or (m), to a fine or to imprisonment for a period not exceeding four years.

(2) The court convicting any person of an offence under this Act may upon the application of the prosecutor declare any seed or propagating material in respect of which the offence was committed and all other seed of a similar nature of which such person is the owner or which is in his possession, to be forfeited to the State

(3) Notwithstanding anything to the contrary in any other law, a magistrate's court shall have jurisdiction to impose any penalty prescribed by this Act.

(4) Failure to comply with Act or Regulations shall lead to an offence.

81. Repeal of laws

The laws mentioned in the Schedule are hereby repealed to the extent set out in the third column of the schedule

82. Short title and date of commencement

- (1) This Act shall be called the Seed Act, 2005, and shall come into operation on a date to be fixed by the State President by proclamation in the gazette
- (2) Different dates may be so fixed in respect of different provisions of this Act

83. Establishment of a Seed Services Fund

- (1). A Seed Services Fund shall be established to finance the activities required to administer and enforce this Act and regulations enacted under this Act.
- (2) The Seed Services Fund ~~will be~~ financed from inspection fees, seed testing fees, certification fees, registration fees and from the budget of the Ministry responsible for this Act.
- (3) The administration of the Seed Services Fund shall be prescribed by regulations under this Act.