



Republic of Namibia
Annotated Statutes

Seed and Seed Varieties Act 23 of 2018

(GG 6814)

This Act has been passed by Parliament, but it has not yet been brought into force.
It will come into force on a date set by the Minister in the *Government Gazette*.

The correct name of the Act is the “Seed and Seed Varieties Act”, according to section 54(1) of the Act. However, the table of contents and the header of *Government Gazette 6814* both erroneously refer to the “Seeds and Seeds Varieties Act” (with the word “seed” being plural instead of singular).

ACT

To provide for the appointment of the Registrar of seed and seed varieties and the registration of producers, processors and dealers of seed and control over imports and exports of seed; to provide for the establishment of the Namibia Seed Council and the Seed Varieties Committee and their powers and functions; to provide for the establishment of a national seed varieties register; to provide for the establishment of the Seed Certification Service and its powers and functions; and to provide for incidental matters.

(Signed by the President on 18 December 2018)

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BE IT ENACTED, as passed by the Parliament, and assented to by the President, of the Republic of Namibia as follows:

CHAPTER 1
PRELIMINARY MATTERS

Definitions

1. In this Act, unless the context otherwise indicates -

“Central Seed Testing Laboratory” means the Central Seed Testing Laboratory established or declared as such in terms of section 38;

“Council” means the Namibia Seed Council established by section 13;

“dealer” means a person who carries on the business of buying and selling, exporting, or importing seed, and includes an agent of a dealer;

“denomination”, in relation to a variety means the name used to identify a variety;

“export” means taking out of Namibia by land, sea or air;

“horticulture nursery” means any place where plants, irrespective whether those plants are specified in a notice referred to in section 2(1), are produced or propagated and sold for transplantation;

“import” means bringing into Namibia by land, sea or air;

“kind” means one or more related genera, species or subspecies of any plant each individually or collectively known by one common name;

“Minister” means the Minister responsible for agriculture;

“Ministry” means the Ministry responsible for agriculture;

“plant” means a plant to which this Act applies as specified in a notice issued under section 2 and includes any part of such plant;

“prescribed” means prescribed by regulation made under this Act;

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“privately produced seed” means seed obtained from plants cultivated by a person who does not cultivate seed as a significant part of his or her business, and which is not packaged or displayed in a manner or provided under circumstances suggesting that it has been obtained from a dealer;

“producer” means a person, who cultivates, produces or organises the production of seed;

“register” when used as a noun, means the National Seed Varieties Register referred to in section 23 and when used as a verb, means to enter a variety in the register after it has been recognised;

“Registrar” means the Registrar of Seed and Seed Varieties appointed or designated under section 4;

“Secretary” means the Secretary of the Council designated in terms of section 19(1)(a);

“seed” includes any type of living embryo or propagule capable of regeneration and giving rise to a plant which is true to such type and includes, without limitation, any seedling, corm, cutting, bulb, bulbil, layer, marcot, root, runner, scion, set, split, stem, stock, stump, sucker or tuber, but does not include privately produced seed;

[The word “marcot” is misspelt in the *Government Gazette*, as reproduced above.]

“seed analyst” means a seed analyst appointed in terms of section 41;

“seed inspector” means a seed inspector appointed in terms of section 42;

“seed testing laboratory” means a seed testing laboratory established or declared as such in terms of section 39;

“Service” means the Seed Certification Service established in terms of section 36;

“staff member” means a staff member as defined in section 1 of the Public Service Act 1995 (Act No. 13 of 1995);

“this Act” includes regulations made under this Act;

“variety” means a single botanical taxon of the lowest known rank, which can be -

- (a) defined by the expression of specific characteristics resulting from a given genotype of that plant grouping;
- (b) distinguished from any other plant grouping by expression of at least one of the said characteristics,

and such characteristics remain unchanged in respect of individual plants propagated from propagating material of the variety in question.

Application of Act

2. (1) Except section 9 and 10 and any regulations relating to those provisions, this Act only applies in respect of plants specified by the Minister in a notice published in the *Gazette*.

(2) The notice referred to in subsection (1) may specify plants -

- (a) with reference to the name by which the plant concerned is commonly known;

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- (b) with reference to the taxon of the plants concerned;
- (c) as all plants not belonging to a group specified in the notice; or
- (d) by means of any other designation or classification which the Minister considers appropriate.

(3) In a notice referred to in subsection (1), the Minister may specify that only certain provisions of the Act apply to a specified class of plants.

(4) In a notice referred to in subsection (1) the Minister may specify that the provisions of this Act only apply to a certain class of propagating material of a specified class of plant in which case the definition of seed is construed to include only that class of propagating material.

(5) In a notice referred to in subsection (1) the Minister may specify that a specified class of plant may be sold in Namibia even though varieties of that class of plant may be registered, recognised and may be otherwise regulated by this Act or may indicate that certain varieties of a specified class of plant may be sold or may not be sold in Namibia.

(6) The Minister may amend or repeal a notice referred to in subsection (1) in such a manner that the Act or a specific provision of the Act no longer applies to a specific plant or the seed or other propagating material of a specified plant.

(7) The Minister may by notice in the *Gazette* exempt a specified class of horticultural nursery from the provisions of section 9 or 10 or from specified provisions of those sections.

Minister to determine general policy

3. (1) The Minister must determine the overall seed policy of Namibia and subject to the advice or recommendations of the Council and the provisions of this Act, the Minister may initiate, formulate and develop policies on all matters relating to seed and seed varieties.

(2) Without prejudice to the generality of subsection (1) the Minister may give general or specific policy directives to the Seed Varieties Committee, Service and the Registrar, and the Committee, the Service and the Registrar must comply with such directives.

**CHAPTER 2
REGISTRAR OF SEED AND SEED VARIETIES****Appointment of Registrar**

4. The Minister may -
- (a) appoint a staff member in the Public Service holding an appropriate post to be the Registrar of Seed and Seed Varieties; or
 - (b) designate a staff member of the Ministry to be the Registrar of Seed and Seed Varieties.

Powers and functions of Registrar

5. (1) The Registrar must, subject to any overall policy directives or instructions given by the Minister, the Council or the Seed Varieties Committee exercise the powers, perform the functions and carry out the duties conferred upon, assigned to or imposed upon the Registrar by or under this Act.

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(2) The Registrar may in respect of any power, function or duty which he or she has by virtue of the provisions of this Act, delegate such power to, assign such function to, or impose such duty on -

- (a) a staff member reporting to him or her; or
- (b) with the permission of the Minister, any other employee of the State or of a body having powers or duties compatible with the objects of this Act.

(3) The Registrar may withdraw or amend any delegation, assignment or imposition made under subsection (2).

(4) The Registrar may give instructions relating to any delegation, assignment or imposition done under subsection (2).

(5) Any action taken by virtue of a delegation, assignment or imposition under subsection (2), is deemed to have been done by the Registrar.

Discretionary powers of Registrar

6. (1) Whenever any discretionary power is given to the Registrar by this Act, he or she may not exercise that power in a manner adverse to an applicant or any other person who appears to the Registrar to be a person having an interest in the matter concerned, without giving such applicant or interested person an opportunity of being heard within the time prescribed or, if no time has been prescribed, within such reasonable period as may be fixed by the Registrar.

(2) If this Act specifies a time within which any act or thing must be done, the Registrar may, save where it is expressly otherwise provided, extend the time either before or after its expiration.

CHAPTER 3**REGISTRATION OF PRODUCERS, PROCESSORS AND DEALERS IN SEED
AND CONTROL OVER IMPORTS AND EXPORTS OF SEED****Seed producers and seed processing units to be registered**

7. (1) No person may cultivate, produce or organise the cultivation or production of seed unless he or she is registered as a seed producer.

(2) No person may operate a seed processing unit unless such unit is registered.

(3) The Registrar must register a producer or seed processing unit or renew the registration of a producer or seed processing unit if the producer or unit meets the prescribed specifications in terms of infrastructure, equipment and technical ability and knowledge.

(4) Every application for registration or renewal of registration under subsection (3) must be made to the Registrar in such form and manner and must be accompanied by such fee as may be prescribed.

(5) The Registrar must, after having made such enquiries and subject to such conditions as he or she thinks fit, grant a certificate of registration in such form and for such period as may be prescribed.

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(6) Every person registered as a seed producer and any person in charge of a seed processing unit must furnish periodic returns to the Registrar or to any prescribed person or institution in such form and at such time as may be prescribed specifying the quantity of seed of different kinds or varieties produced or processed.

(7) The Registrar may suspend or cancel a registration under this section, if -

- (a) such registration has been obtained by misrepresentation as to a material fact relating to the specification in terms of infrastructure, equipment or technical ability and knowledge; or
- (b) any of the provisions of this Act have been contravened.

(8) Any person who contravenes or fails to comply with subsection (1), (2) or (6) commits an offence and is liable on conviction to a fine not exceeding N\$10 000 or to imprisonment for a period not exceeding 12 months or to both such fine and imprisonment.

Seed dealers to be registered

8. (1) No person may sell, keep for sale, offer to sell, barter, import or export or otherwise supply any seed by himself or herself, or by any other person on his or her behalf unless he or she is registered as a seed dealer.

(2) Every application for registration under subsection (1) must be made to the Registrar in such form and manner and must be accompanied by such fee as may be prescribed.

(3) The Registrar must register an applicant as a seed dealer if he or she meets the prescribed requirements relating to infrastructure, equipment and technical ability and knowledge.

(4) The Registrar may, after making such enquiry and subject to such conditions as he or she thinks fit, grant a certificate of registration as a seed dealer in such form and for such period as may be prescribed.

(5) Every dealer registered under this section must furnish to the Registrar such information and returns regarding seed stocks, seed lots, expiry date of seed lots and other related information as may be prescribed.

(6) The Registrar may suspend or cancel a certificate granted under subsection (4) if -

- (a) that registration has been obtained by misrepresentation of a material fact;
- (b) the dealer has contravened any of the provisions of this Act.

(7) Any person who contravenes or fails to comply with subsection (1) or (5) commits an offence and is liable on conviction to a fine not exceeding N\$10 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

Horticulture nursery to be registered

9. (1) No person may conduct or carry on the business of a horticulture nursery unless such nursery is registered with the Registrar under this section.

(2) Every application for registration under subsection (1) must be made to the Registrar in such form and contain such particulars and must be accompanied by such fee as may be prescribed.

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(3) The Registrar must register a nursery if it meets the prescribed requirements relating to infrastructure, equipment and technical ability and knowledge.

(4) The Registrar may, after having made such enquiries and subject to such conditions as he or she thinks fit, grant a certificate of registration as a horticulture nursery in such form as may be prescribed.

(5) The Registrar may suspend or cancel the certificate of registration as a horticultural nursery if -

- (a) that registration has been obtained by misrepresentation of any material fact; or
- (b) the holder has contravened any of the provisions of this Act.

(6) Any person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N\$10 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

Duties of person conducting registered horticulture nursery

10. (1) Every person who is a holder of a certificate of registration for a horticulture nursery under section 9 must -

- (a) keep a complete record of the origin or source of all planting material and performance record of mother trees in the nursery;
- (b) keep a layout plan showing the position of the root-stocks and scions used in raising the horticulture plants;
- (c) keep a performance record of the mother trees in the nursery;
- (d) keep the nursery plants as well as the parent trees used for the production or propagation of horticulture plants free from infectious or contagious insects, pests and diseases affecting plants; and
- (e) furnish such information to the Registrar on the production, stocks, sales and prices of planting material in the nursery as may be prescribed.

(2) Any person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N\$10 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

Restrictions on importation of seed

11. (1) Subject to subsection (8), no person may import into Namibia any seed -

- (a) unless the seed -
 - (i) is of a variety of which the denomination is entered in the register;
 - (ii) complies with any prescribed requirements;
 - (iii) is packed in a container which is sealed and branded, marked or labelled in the prescribed manner with the prescribed information;

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- (iv) is imported through a prescribed port of entry;
 - (b) under a denomination other than the denomination entered in the register in respect thereof; or
 - (c) which is of a kind or belongs to a class importation of which has been prohibited by the Minister by notice in the *Gazette*.
- (2) Despite the provisions of subsection (1) the Registrar may, in his or her discretion and on such conditions as he or she may determine, in writing allow the importation of a consignment of seed which does not conform to all or any of the requirements referred to in subsection (1).
- (3) The Minister may by notice in the *Gazette* determine that any particular kind of seed, or seed of a particular kind of plant, may only be imported with a permit issued by the Registrar and on such conditions as the Registrar may specify in such permit.
- (4) A person requiring a permit of the Registrar as contemplated in subsection (3) must apply to the Registrar for such permit in the prescribed manner.
- (5) Subject to subsection (8), a person importing a consignment of seed must in the prescribed manner furnish the Registrar with the particulars which the Registrar may determine regarding such consignment, and such consignment may not be removed from a port contemplated in subsection (1)(a)(iv) unless the Registrar has authorised the removal thereof in writing.
- (6) Seed imported into Namibia must, if the Registrar so requires, be presented for examination and sampling at a port contemplated in subsection (1)(a)(iv).
- (7) If the Registrar requires seed to be presented for examination and sampling, in terms of subsection (6), he or she must determine the manner in which and the time and place at which the examination and sampling must be carried out.
- (8) The provisions of this section do not apply with reference to the importation of seed intended for purposes other than cultivation or for immediate export.
- (9) A person importing seed under the circumstances contemplated in subsection (8) must, prior to or on arrival of the seed in question in Namibia, furnish to the Registrar a declaration to that effect in the prescribed manner.
- (10) If seed has been imported contrary to the provisions of this section, the Registrar may -
- (a) order that the seed in question must within the period determined by the Registrar at the option of the importer -
 - (i) be destroyed without compensation; or
 - (ii) be removed from Namibia at the expense of the importer; or
 - (b) permit the disposal thereof in Namibia in such manner and on such conditions as he or she may determine.

(11) Any person who contravenes or fails to comply with subsection (1), (5) or (9) commits an offence and is liable on conviction to a fine not exceeding N\$10 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

Export of plants or seed

12. (1) No person may export from Namibia any seed unless he or she is in possession of a certificate from the Registrar authorising such export.

(2) Any person desiring to obtain any such certificate must apply to the Registrar in the prescribed manner and such application must be accompanied by the prescribed application fee.

(3) After receipt of an application referred to in subsection (2) the Registrar may undertake such inspection of the seed 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 and the person who has thus applied must pay to the Registrar on demand the prescribed fees in connection with such inspection and for the testing, examination or analysis of such samples.

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

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

(a) seed intended for purposes other than cultivation; or

(b) seed which do not exceed the prescribed quantity.

(6) Any person who contravenes or fails to comply with subsection (1) or a prohibition imposed under subsection (4) commits an offence and is liable on conviction to a fine not exceeding N\$10 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

CHAPTER 4 NAMIBIA SEED COUNCIL

Establishment of the Namibia Seed Council

13. (1) There is established a council to be known as the Namibia Seed Council to advise the Minister on matters referred to in section 14.

(2) The Council consists of the following persons to be appointed by the Minister -

(a) one staff member of the Ministry, who is the chairperson of the Council;

(b) three staff members in the Public Service employed in the Ministries, offices or Agencies which the Minister considers relevant and nominated by the Minister responsible for that Ministry, Office or Agency;

[The inconsistent capitalisation in paragraph (b) is replicated from the *Government Gazette*.]

(c) one person, nominated by an association or organisation representing commercial farmers, to represent the interests of commercial farmers;

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- (d) one person, nominated by an association or organisation representing communal farmers, to represent the interests of communal farmers;
- (e) one person, nominated by an association or organisation representing seed producers, to represent the interests of seed producers; and
- (f) one person, nominated by an association or organisation representing seed dealers, to represent the interests of seed dealers.

(3) The Minister must in writing invite the relevant Ministers and the associations or organisations referred to in subsection (2) to nominate, within the period stated in the notice, persons as members of the Council as contemplated therein.

(4) If an association or organisation referred to in subsection (2)(c) to (f) does not exist or fails or is unable to nominate a candidate within a reasonable time after being requested to do so, the Minister may appoint to the Council, a person who, the Minister reasonably believes, would be able to represent the interests of the relevant group of persons.

(5) The Minister must as soon as possible after the appointment of a member of the Council, give notice in the *Gazette* of that appointment.

(6) The Minister may appoint for each member of the Council a person to be the alternate of the member concerned.

(7) The alternate to a member of the Council may, in the event of the member's absence from a meeting of the Council, attend the meeting in the capacity of a member.

- (8) A person is not eligible for appointment to the Council if he or she -
 - (a) is a member of the National Assembly or a regional council;
 - (b) is an unrehabilitated insolvent;
 - (c) has been convicted of an offence of which dishonesty is an element and sentenced to imprisonment without the option of a fine; or
 - (d) has been declared by a competent court to be of unsound mind.

Powers, duties and functions of the Council

14. The functions of the Council are -

- (a) to make recommendations to the Minister in relation to the application of this Act, any amendment to this Act and the making of regulations under this Act;
- (b) to advise the Minister on the duties and functions to be performed in terms of this Act and on matters referred to the Council by the Minister;
- (c) to inquire into, and advise the Minister on, matters relating to the seed and seed varieties and the seed industry in general;

[The article "the" before "seed and seed varieties" is superfluous.]

- (d) to monitor and coordinate the implementation of the national seed policy;

- (e) to supervise and provide policy guidelines to the Seed Varieties Committee or any other committee of the Council and to provide policy guidelines to the Service and to any other person or body involved in the implementation of the national seed policy;
- (f) to advise any person who, or an institution which, requires assistance or information on seed production or development or related matters; and
- (g) to perform any other function as may be directed by the Minister or as may be prescribed.

Tenure and vacation of office

15. (1) Subject to subsection (2) and (3), a member of the Council holds office for a period of three years, but may be re-appointed at the end of his or her term of office.

- (2) A member of the Council vacates office if he or she -
 - (a) ceases to hold the office by virtue of which he or she became a member;
 - (b) has, without the leave of the Council, absented himself or herself from three consecutive meetings of the Council;
 - (c) in writing, resigns from office;
 - (d) becomes subject to a disqualification referred to in section 13(8); or
 - (e) is removed from office under subsection (3).

(3) The Minister may, after affording a member an opportunity to make representations on the matter, remove a member from office if the Minister has reasonable cause to believe that the member is no longer fit or able to discharge the functions of his or her office or no longer represents the interest of the group whose interest he or she was appointed to represent.

(4) If a member of the Council vacates his or her office under the circumstances referred to in subsection (2) his or her successor must be appointed in the same manner in which he or she has been appointed.

(5) A member who is appointed under subsection (4) holds office for the unexpired portion of the term of office of the person in whose stead he or she is appointed.

Conduct of members and disclosure of interest

- 16.** (1) A member of the Council may not -
- (a) engage in an activity that may undermine the integrity of the Council;
 - (b) participate in any investigation or decision concerning a matter in respect of which the member has a financial or other personal interest; or
 - (c) use any confidential information obtained in the performance of his or her functions as a member to obtain, directly or indirectly, a financial or other advantage for himself or herself or any other person.

(2) A member who has or acquires any financial or other personal interest, either directly or indirectly, in any matter which is before the Council for discussion and determination must -

- (a) immediately and fully disclose the interest to the Council; and
- (b) withdraw from any further discussion or determination by the Council of that matter.

(3) Any person who contravenes or fails to comply with any provision of this section commits an offence and is liable on conviction to a fine not exceeding N\$10 000 or to imprisonment for a period not exceeding 12 months or to both such fine such and imprisonment.

Procedure and meetings of Council

17. (1) The first meeting of the Council must be held at a place and time that the chairperson determines and any meeting of the Council thereafter must be held at a place and time that the Council determines.

(2) If for any reason a meeting determined by the Council cannot take place, the secretary, with the concurrence of the chairperson, must convene the next meeting of the Council.

(3) The chairperson -

- (a) may at any time convene a special meeting of the Council;
- (b) must convene a special meeting of the Council if requested thereto by the Minister or at least three members of the Council.

(4) The chairperson must preside at all meetings of the Council at which he or she is present.

(5) The members of the Council must at the first meeting of the Council elect a vice-chairperson from their number.

(6) In the absence of the chairperson from a meeting, the vice-chairperson must preside or in the absence of both the chairperson and vice-chairperson, the members present must elect a member of the Council to preside at that meeting.

(7) At a meeting of the Council -

- (a) five members of the Council form a quorum;
- (b) all questions are decided by a majority of votes of the members present and voting; and
- (c) the member presiding has a deliberative vote and, in the event of an equality of votes, also a casting vote.

(8) The Council may invite any person who has expert knowledge of a matter being considered by the Council to attend a meeting of the Council and take part in discussions in relation to that matter, but such person has no right to vote.

(9) The secretary must keep or cause records to be kept of all the proceedings at meetings of the Council.

[The word “records” is misplaced in subsection (9). The provision was probably intended to read “The secretary must keep or cause to be kept records of all the proceedings at meetings of the Council.”]

(10) As soon as possible after a meeting of the Council has taken place, the chairperson must cause a copy of the minutes of that meeting to be submitted to the Minister.

(11) Subject to the provisions of this Act, the Council may determine the procedure at its meetings and at the meetings of any committee of the Council.

Committees

18. (1) There is established a committee of the Council known as the Seed Varieties Committee whose constitution and functions are as provided in Chapter 5.

(2) The Council may establish other committees -

(a) to advise the Council on the performance of its functions; and

(b) to exercise any power or perform any function of the Council which the Council may delegate or assign to that committee.

(3) At least two of the members of a committee referred to in subsection (2), must be members of the Council and the committee may have as many other members as the Council considers expedient.

(4) If the Council delegates any power to a committee or assigns any function to a committee, it must beforehand obtain the permission of the Minister for that delegation or assignment.

(5) The Council must designate a member of the Council to be the chairperson of a committee.

(6) A quorum of the Seed Varieties Committee is four members.

(7) A quorum of any other committee is at least half the number of positions on that committee or a larger number if the Council decides that a larger number must be a quorum.

(8) Subject to subsections (6) and (7), the provisions of sections 13(4) to (8), 15, 16, 17, and 19 apply to the Committee, or to a member of the Committee, as if he or she were a member of the Council.

Administration and finance

19. (1) The Minister -

(a) must designate a staff member in the Ministry to act as the secretary of the Council; and

(b) may designate such other staff members in the Ministry to assist the secretary in the implementation and performance of the administrative and secretarial duties and functions of the Council.

(2) A member of the Council or of any committee who is not in the full time employment of the State is entitled to be paid such remuneration or allowances, as well as such other benefits, as the Minister, with the concurrence of the Minister responsible for Finance, may determine.

(3) A member of the Council or of a committee may be reimbursed for any expenses incurred while rendering any service to the Council or a committee.

CHAPTER 5 SEED VARIETIES COMMITTEE AND NATIONAL SEED VARIETIES REGISTER

Seed Varieties Committee

20. (1) The Seed Varieties Committee consists of the following six members appointed by the Council after consultation with the Minister -

- (a) at least two members of the Council, one of whom is appointed chairperson by the Council;
- (b) one person not being a member of the Council, nominated by an association or organisation representing farmers, to represent the interests of farmers;
- (c) one person not being a member of the Council, nominated by an association or organisation representing seed producers, to represent the interests of seed producers;
- (d) one person not being a member of the Council, nominated by an association or organisation representing seed dealers, to represent the interests of seed dealers;
- (e) one person who is not a member of the Council and who, in the opinion of the Council, is a specialist or has expertise in the field of seed development.

(2) When appointing a member of the Seed Varieties Committee in terms of paragraph (b), (c) or (d) the Council must follow the procedure outlined in section 13(4) as if the member being appointed were a member of the Council and the provisions of section 13(8) apply.

Functions of Seed Varieties Committee

21. (1) The Seed Varieties Committee must perform the functions entrusted to it by or under this Act subject to the overall policy directives of the Minister and the Council.

(2) Without derogating from the generality of subsection (1), the functions of the Seed Varieties Committee are -

- (a) to review proposals for release of new seed varieties;
- (b) to register seed varieties and to define eligibility requirements for registration of varieties;
- (c) to arrange for reciprocal recognition of seed varieties with other countries;
- (d) to exercise control over the preparation of the register;
- (e) to authorise deletions from or additions to the register; and
- (f) to perform such other functions as may be assigned to it by the Minister or the Council or under any other law or as may be prescribed.

Powers to specify minimum standards for seed

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22. (1) The Minister may -
- (a) prescribe minimum standards relating to limits of germination, genetic and physical purity, and seed health, with respect to any seed of a specified kind or variety;
 - (b) prescribe the use of a mark or label to indicate that the seed in question conforms to the minimum limits of germination, genetic and physical purity, and seed health specified under paragraph (a), and other particulars relating to the use of such mark or label, including -
 - (i) what information must be indicated on such mark or label;
 - (ii) a prohibition of such mark or label, unless the seed complies with any specified requirement.

(2) Any person who sells any seed which does not conform to the standards or does not contain a mark or label prescribed under subsection (1), or use a mark or label in a manner prohibited by such notice, commits an offence and is liable on conviction to a fine not exceeding N\$10 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

[The verb “use” in subsection (2) should be “uses” to be grammatically correct: “Any person who sells ... or uses...”.]

National Seed Varieties Register

23. (1) For the purposes of this Act, the Registrar must keep and maintain a register of all kinds and varieties of seed to be called the National Seed Varieties Register specifying all the kinds and varieties of seed that may be sold in Namibia.

- (2) The Register must indicate -
- (a) the denomination by which a variety is generally known on the date on which the kind of plant to which the variety belongs, has been declared to be a kind of plant for the purposes of this Act in terms of section 2;
 - (b) the denomination of a variety recognised in terms of section 31;
 - (c) the denomination of a variety in respect of which any intellectual property right exists including plant breeder’s rights or trade marks;
 - (d) the denomination by which a variety is known internationally; and
 - (e) any prescribed specifications or information in respect of kinds and varieties referred to in paragraphs (a) to (d).

(3) The Registrar must keep and maintain the register under the general control and direction of the Seed Varieties Committee and the Registrar must make such entries in the register as may be directed by the Seed Varieties Committee.

(4) The Seed Varieties Committee may direct the Registrar to enter in the register such additional particulars regarding a variety that it considers appropriate.

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(5) The Seed Varieties Committee may on its own motion or on application of any person -

- (a) enter any variety in the Register that is available in Namibia or whose availability in Namibia is in its opinion desirable; or
- (b) may in the register specify a kind of plant whose seed may be sold without being of a specific variety: Provided that specified varieties may be excluded from such specification.

(6) The Seed Varieties Committee must, within such intervals and in such manner as it thinks appropriate, publish in the manner prescribed, the prescribed information relating to kinds and varieties which have been entered in the register during that interval.

(7) The Registrar must, subject to such conditions and other requirements as may be prescribed, during office hours or the prescribed times allow any member of the public to inspect the register or to make extracts from the register on payment of such fees as may be prescribed.

Prohibition of sale of unregistered seed and seed varieties

24. (1) No seed of any kind or variety as declared under section 2 may, for the purpose of cultivation, sowing or planting by any person, be sold unless that seed is of a variety specified in the Register or unless the seed is of a kind of plant specified as contemplated in section 23(5)(b) and that seed is not of a variety excluded as contemplated in the proviso thereto.

- (2) No person may, unless specially authorised by the Seed Varieties Committee -
 - (a) add to the registered variety name under which any seed is sold any qualifying term or reference whatsoever; or
 - (b) sell seed of any variety under a name other than the name under which it is registered.

(3) Any person who contravenes or fails to comply with subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding N\$10 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

Registration of seed and seed varieties

25. (1) The Seed Varieties Committee may, on application made to it in terms of section 26 (or on its own motion) grant registration, or refuse registration of any variety of seed on the basis of information furnished by the producer on the results of trials for such period as may be prescribed to establish the performance of that seed.

[The comma after “grant registration” appears to be misplaced. It should appear before that phrase instead of after it, to offset the preceding phrase properly.]

(2) The Seed Varieties Committee may grant provisional registration subject to the prescribed conditions and requirements to the varieties of seed which are available in the market on the date of commencement of this Act.

(3) Registration made as a result of an application under section 26 is valid for a period of 15 years in the case of annual and biennial crops, and 18 years for long duration perennials.

(4) At the expiry of the period referred to in subsection (3), the kind or variety of seed may be re-registered for a like period by the Committee on the basis of information furnished by

the producer on the results of such trials as may be prescribed under subsection (1) to re-establish performance of the kind or variety of seed.

Application for recognition and registration of variety

26. (1) An application for the recognition of a variety and for its subsequent entry in the register may be made by any person, but, if an applicant is not resident in Namibia or, in the case of a juristic person, where an applicant does not have a registered office in Namibia, the application must be submitted only by a person who is resident in Namibia.

(2) If an application in terms of subsection (1) relates to a variety bred or discovered by an identifiable person, that application must -

- (a) be made to the Seed Varieties Committee in the prescribed manner;
- (b) be accompanied by any prescribed particulars and the prescribed application fee; and
- (c) in the case of a variety bred or discovered by a person other than the applicant, be accompanied by the written authorisation of the breeder or discoverer.

(3) The Seed Varieties Committee may, on good cause shown by the applicant in writing, give written exemption from compliance with the requirements of subsection (2)(c) in which case, the State is not liable for any claim for damages as a result of an exemption granted.

**[The comma after the phrase “in which case” is superfluous.
It may have been intended to appear before that phrase.]**

Requirements for recognition of variety

27. (1) A variety may be recognised if -

- (a) it is clearly distinguishable from any other variety of the same kind of plant of which the existence is a matter of common knowledge at the time of the filing of the application;
- (b) it is, subject to the variation that may be expected from the particular features of the propagation of the variety, sufficiently uniform with regard to the characteristics thereof;
- (c) it is stable in that the characteristics of the variety remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle; and
- (d) it is identified by a denomination which complies with the provisions of section 28.

(2) A characteristic referred to in subsection (1)(a) must be of such a nature that it is clearly recognisable and describable.

Naming of variety

28. (1) The denomination of a variety for which an application for recognition is being considered must be proposed by the person who applies for such recognition and must -

- (a) be suitable to identify a variety;

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- (b) not be liable to mislead or to lead to confusion concerning the characteristics, value or identity of the variety in question or the identity of the breeder thereof;
- (c) be different from every denomination which designates existing varieties of the same or a closely related kind of plant;
- (d) not be offensive or contrary to morality; and
- (e) comply with such further requirements as may be prescribed or as the Registrar may determine.

(2) A denomination must, subject to the provisions of subsection (3), not be identical with or similar to or liable to lead to confusion with a designation which enjoys the protection accorded to a mark within the meaning of any law relating to the registration of trade marks in Namibia, and which applies to plants or seed or the use in connection therewith or in connection with a product thereof.

(3) If the denomination of a variety proposed by a person under subsection (1) is a designation in respect of which he or she enjoys the protection referred to in subsection (2), the Seed Varieties Committee may not approve such denomination unless such person in writing renounces his or her right to such mark as from the date on which the variety in question is recognised.

Consideration and examination of application

29. (1) The Seed Varieties Committee must consider every application for the recognition of a variety and all documents and any other proof submitted to it in connection therewith in order to ascertain whether the application complies with the requirements of this Act.

(2) The Seed Varieties Committee must, in order to enable it to determine whether a variety may be recognised -

- (a) undertake or cause to be undertaken such tests and trials as it may deem necessary with a variety in respect of which an application is being considered under subsection (1); or
- (b) use the results of tests and trials undertaken with that variety and obtained by it in terms of an agreement referred to in section 35.

(3) A person whose application is being considered must, for the purposes of such tests and trials and at the time and place determined by the Seed Varieties Committee -

- (a) subject to the provisions of subsection (4), pay the prescribed examination fee; and
- (b) furnish the Seed Varieties Committee -
 - (i) with such quantity or mass of seed of the variety as it may require;
 - (ii) with such specimens of plants of the variety or of such parts thereof as it may require; and
 - (iii) with such information in connection with the variety as it may require.

(4) If the Committee for the purposes of the consideration of an application in terms of subsection (1), decides to use results referred to in subsection (2)(b) -

- (a) the costs incurred in obtaining the results must be reimbursed to the Committee by the person whose application is being considered; and
- (b) the Committee may, before taking any steps relating to the consideration of the application, require the applicant to furnish a written undertaking or suitable guarantee for the reimbursement of such costs.

(5) The person whose application for the recognition of a variety is being considered must furnish the Registrar within 12 months from the filing of the application with everything required by the Seed Varieties Committee in terms of this section for the consideration of the application for the recognition of a variety.

(6) The Seed Varieties Committee may in writing on application grant an extension of the period provided for in subsection (5).

(7) An application for extension must be submitted to the Seed Varieties Committee in writing and must set out the reasons why extension should be granted.

Rejection of application

30. (1) The Seed Varieties Committee may reject an application for the recognition of a variety before considering it as contemplated in section 29, if it appears to it -

- (a) that the application does not comply with any provision of this Act;
- (b) that the variety in respect of which the application is made has previously been recognised in terms of this Act;
- (c) that it is clear from the application that the variety in question does not comply with the requirements provided for by this Act for the recognition thereof;
- (d) that the variety in question is not a variety of a plant to which this Act applies;
- (e) that the applicant is not under this Act entitled to make the application;
- (f) that the application contains a material misrepresentation;
- (g) that use of the variety or the denomination will infringe intellectual property rights of any person;
- (h) that the applicant refuses or has failed or is not able -
 - (i) to propose a denomination complying with the provisions of this Act; or
 - (ii) to furnish a written undertaking or suitable guarantee referred to in section 29(4)(b) after having been requested to do so;
- (i) that the applicant has failed to comply with the provisions of section 29(5) within the time referred to in that subsection or any extension granted in terms of section 29(6); or
- (j) that the description submitted with the application does not clearly describe the variety.

(2) If the Seed Varieties Committee rejects an application under subsection (1) or refuses an application under section 31(2), it must direct the Registrar to advise the person who applied for recognition in writing of its decision and of the grounds on which it is based.

Recognition of variety

31. (1) Subject to the provisions of subsection (2), the Seed Varieties Committee must, after considering an application in terms of section 30 and examining the results of any tests or trials conducted with a variety, recognise the variety and direct the Registrar to enter it in the register if -

- (a) the application complies with the requirements of this Act;
- (b) the variety complies with the requirements referred to in sections 28 and 29; and
- (c) all money payable in terms of this Act in respect of the application has been paid.

(2) The Seed Varieties Committee may refuse to recognise a variety if -

- (a) it is in the public interest to do so;
- (b) it, after an evaluation in terms of section 33, decides that the variety is undesirable for use.

(3) The Seed Varieties Committee may only recognise a variety after -

- (a) it has decided not to investigate the variety under section 33(2); or
- (b) the prescribed period from the date on which plants or seed was supplied to the Registrar as contemplated in section 33(3)(a), has expired.

[The verb “was” should be “were” to be grammatically correct.]

(4) The Registrar must in respect of each variety which is recognised by the Seed Varieties Committee -

- (a) enter the applicable particulars referred to in section 23 in the register; and
- (b) inform the applicant in writing of such recognition.

(5) If the Seed Varieties Committee refuses to recognise a variety in terms of this section, it must direct the Registrar to advise the applicant in writing of the decision and of the grounds on which it is based.

Alterations in and deletions from register

32. (1) A denomination of a variety entered in the register may be altered or supplemented by the Seed Varieties Committee -

- (a) on application made to it and on payment of the prescribed fees;
- (b) if an alteration becomes necessary, because a person holds intellectual property rights in respect of any variety or denomination.

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(2) The Seed Varieties Committee may direct the Registrar to delete the denomination of a variety entered in the register if -

- (a) any information submitted to it in the application for the recognition of such variety or in connection with such an application was incorrect and the variety would not have been recognised if it had known that the information was incorrect;
- (b) a fact comes to the knowledge of the Seed Varieties Committee which, if known earlier, would have resulted in the refusal of such application;
- (c) it is in the public interest to delete it;
- (d) seed of such variety capable of reproducing the variety in such a manner that the characteristics thereof correspond with the characteristics described at the time of the recognition thereof, cannot readily be obtained;
- (e) the variety no longer conforms to the requirements referred to in section 27 or the denomination no longer conforms to section 28; or
- (f) after an evaluation under section 33, it decides that the use of the variety is undesirable.

(3) Before an entry is removed from the register, the applicant must be informed in the prescribed manner or the intention must be made known in the prescribed manner and the applicant or another person having an interest in the matter must be given an opportunity to make representations to the Seed Varieties Committee.

(4) If the Registrar deletes the denomination of a variety from the register, he or she must in writing advise the person who applied for recognition of the variety of the decision and of the grounds on which it is based, unless that person's identity and address is unknown to the Registrar.

Evaluation of variety

33. (1) The Seed Varieties Committee may, if it deems it necessary, evaluate the usefulness of a variety for agricultural or industrial purposes.

(2) For the purposes of subsection (1), the Seed Varieties Committee may evaluate -

- (a) any variety in respect of which an application for recognition has been submitted in terms of section 26; or
- (b) any variety which has been entered in the register.

(3) The prescribed quantity or mass of plants or seed of the variety in question required for the purpose of the evaluation -

- (a) must, in the case of a variety referred to in subsection (2)(a), be supplied free of charge to the Seed Varieties Committee by the applicant at the prescribed time and place; and
- (b) may, in the case of a variety referred to in subsection (2)(b), be procured by the Seed Varieties Committee against payment from any person.

(4) The Seed Varieties Committee may, in order to enable it to evaluate a variety -

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- (a) investigate the variety in the manner which it deems expedient;
 - (b) cause the variety to be investigated by the Registrar or by any other person;
 - (c) use the results of tests and trials conducted with that variety and obtained by it in terms of an agreement referred to in section 35.
- (5) The Seed Varieties Committee may, as a result of the evaluation of a variety -
- (a) if an application for recognition has been filed with it, either recognise the variety or refuse the application; or
 - (b) if the variety has been entered in the register, either retain it in the register or cause it to be deleted.
- (6) If plants or seed cannot be supplied or procured as contemplated in subsection (3), the Seed Varieties Committee may -
- (a) in the case of a variety referred to in subsection (2)(a), refuse the application for the recognition of the variety; or
 - (b) in the case of a variety referred to in subsection (2)(b), cause the variety to be deleted from the register.
- (7) The Seed Varieties Committee may at any time after an evaluation in terms of this section has been undertaken, repeat the evaluation.

Compensation to farmers

34. (1) For the purposes of this section “farmer” means any person who cultivates crops either by cultivating the land himself or herself or through any other person but does not include any person who engages in the procurement or sale of seed on a commercial basis.

(2) Where the seed of any kind or variety of plant is sold to a farmer, the producer must disclose the expected performance of such kind or variety to the farmer under given conditions, and if, such registered seed fails to provide the expected performance under such given conditions, the farmer may claim compensation from the producer as if that seed had a hidden defect and the producer were an expert in the provision of seed.

[The comma after the word “if” is superfluous.]

Agreements with authorities of other countries

35. The Seed Varieties Committee may with the approval of the Minister, which must be granted with the concurrence of the Minister responsible for finance and of the Minister responsible for international relations and co-operation, enter into an agreement with the appropriate authority of another country in which agreement it is provided that the Seed Varieties Committee -

- (a) is, for the purposes of the consideration by it of an application for the recognition of a variety in terms of this Act, entitled to obtain the results of tests and trials conducted by that authority in respect of that variety; or

- (b) must render available to such authority the results of tests and trials conducted by the Seed Varieties Committee in respect of a variety,

against payment to or by that authority, as the case may be, of the amount specified in the agreement.

CHAPTER 6 SEED CERTIFICATION SERVICE

Establishment of Service

36. There is established a unit in the Ministry, to be known as the Seed Certification Service which consists of -

- (a) the Head of the Service;
- (b) the Central Seed Laboratory;
- (c) such other seed testing laboratories as may be necessary; and
- (d) the seed inspectorate.

Head of Service

37. (1) The Registrar is the Head of the Service, and is, subject to the overall policy direction of the Minister, responsible for the overall administration of the Service.

(2) The Head of the Service must -

- (a) supervise and oversee the activities of all components of the Service;
- (b) plan, co-ordinate and implement policies to promote accessibility to the Service's resources and facilities and use of the Service's resources and facilities; and
- (c) after consultation with the relevant component of the Service, and subject to the provisions of this Act and any other law, determine the conditions on which the services of the component are to be used.

(3) The Head of the Service may -

- (a) provide training or advisory and support services to any component of the Service;
- (b) cause research to be conducted on behalf of any component of the Service;
- (c) with the approval of the Minister and the Minister responsible for finance, determine the fees payable in respect of any services rendered by the Service.

(4) The Head of the Service may provide advice or training to staff of a seed testing laboratory which does not form part of the Service.

(5) The Head of the Service must -

- (a) submit to the Minister not later than 31 March of each year, a report on the activities of the Service during the preceding year; and

- (b) perform any other function connected with the Service which the Minister directs.

Central Seed Testing Laboratory

38. (1) The Minister may, after consultation with the Head of the Service, by notice in the *Gazette*, establish a Central Seed Testing Laboratory or declare any seed-testing laboratory which is part of the Public Service as the Central Seed Testing Laboratory to carry out the functions entrusted to the Central Seed Testing Laboratory by or under this Act or such functions as may be prescribed.

(2) Without derogating from the generality of subsection (1), the functions of the Central Seed Testing Laboratory are -

- (a) to conduct seed sampling, seed purity testing and identification of other seed, germination tests on seed, seed moisture tests, seed health tests and generally to conduct seed testing research;
- (b) to coordinate and to supervise the activities of seed testing laboratories in order to ensure uniformity in test results between all seed testing laboratories in Namibia;
- (c) to provide support and advisory services to all relevant stakeholders in the seed industry in Namibia;
- (d) to maintain a database and to act as a centre for national and international supply of information on seed production, testing, processing and distribution in Namibia;
- (e) to act as the central agency for the implementation of national and international standards relating to the seed industry; and
- (f) to perform any other function which is in accordance with the objectives of this Act and which is approved by the Head of the Service or as may be prescribed.

(3) Subject to the laws governing appointments in the Public Service, the Central Seed Testing Laboratory referred to in subsection (1) must be staffed by as many seed analysts as the Head of the Service considers necessary who are also official seed samplers.

Other seed testing laboratories

39. (1) The Minister may, after consultation with the Head of the Service, by notice in the *Gazette*, establish one or more seed testing laboratories or declare any seed testing laboratory in the Government or non-Government sector as a seed testing laboratory where analysis of seed of any kind or variety may be carried out under this Act.

(2) A declaration under subsection (1) may be withdrawn if the Minister is no longer satisfied that the laboratory has a sufficient number of seed analysts.

Seed inspectorate

- 40.** The seed inspectorate consists of seed analysts and seed inspectors.

Seed analysts

41. (1) The Minister may, in writing, appoint such persons as he or she thinks fit and having the prescribed qualifications to be seed analysts for the Central Seed Testing Laboratory and, when making such appointment define the geographic area of their jurisdiction.

(2) The Minister may, in writing, appoint such persons as he or she thinks fit and having the prescribed qualifications to be seed analysts for other seed testing laboratories and must, when appointing such persons, define the geographic area of their jurisdiction.

Seed inspectors

42. (1) The Minister may, in writing, appoint such persons as he or she thinks fit, having the prescribed qualifications, to be seed inspectors for the purposes of this Act and must, when appointing such persons, define the geographic areas within which they may exercise jurisdiction.

(2) Every seed inspector appointed in terms of subsection (1) must perform his or her duties and functions subject to the control and general or specific directions of the Head of the Service.

Powers of seed inspectors

43. (1) A seed inspector may -

- (a) take samples of any seed of any kind or variety from -
 - (i) any person selling such seed; or
 - (ii) any person who is in the course of conveying, delivering or preparing to deliver such seed to a purchaser or a consignee; or
 - (iii) a purchaser or a consignee after delivery of such seed to him or her;
- (b) send such sample for analysis or examination to the seed analyst of the area within which such sample has been taken;
- (c) enter and search, at all reasonable times, with such assistance, if any, as he or she considers necessary, any place that is not the home or residence of any person, in which he or she has reason to believe that an offence under this Act has been or is being committed and order in writing the person in possession of any seed in respect of which the offence has been or is being committed, not to dispose of any such seed for a specific period not exceeding 30 days or, unless the alleged offence is such that the defect may be removed by the possessor of the seed, seize such seed;
- (d) examine any record, register, document or any other material object found in any place mentioned in paragraph (c) and seize it if he or she has reason to believe that it may furnish evidence of the commission of an offence under this Act; and
- (e) exercise such other powers as may be necessary for carrying out the purposes of this Act or any regulation made thereunder.

(2) The power conferred by this section includes the power to break-open any container in which any seed of any kind or variety may be contained or to break-open the door of any premises where any such seed may be kept for sale except that the power to break-open the door may be exercised only after the owner or any other person in occupation of the premises, if he or she is present therein, refuses to open the door on being called upon to do so.

[The words “break open” should not be hyphenated.]

(3) Where a seed inspector takes any action under subsection (1)(a), he or she must, as far as possible, be accompanied by such number of persons as may be prescribed at the time when such action is taken and take their signatures on a memorandum to be prepared in such form and manner as may be prescribed.

(4) The Minister may prescribe the procedures to be followed by inspectors when taking samples or sending samples to the seed analysts, the manner in which examinations or analyses of samples are carried out or conducted, the procedures for return or disposal of samples as well as the form of identification documents which an inspector is required to carry or to produce on demand by a person in relation to whom the powers conferred by this Act may be exercised, or the apparel which an inspector is required to wear while executing his or her functions under this Act.

Accreditation of seed certification bodies

44. (1) The Minister may, on the recommendation of the Head of the Service, accredit a person or body to certify that a consignment of seed or seed produced by a certain producer complies with the requirements prescribed for a specific purpose.

(2) The accreditation may be withdrawn by the Minister, for reasons to be recorded in writing and after giving to the concerned person, body or producer a reasonable opportunity of being heard.

(3) When seed is sold in Namibia, the packaging or any advertisement, or any other promotional or informational material distributed or used in connection with such seed, may indicate in the prescribed manner that the seed has been certified, if it has been certified by an accredited person or body or may display, attach to, or use on or in connection with a container, advertisement or promotional material a prescribed mark or indication which indicates that the seed in question has been certified.

[There should be a comma after the phrase “if it has been certified by an accredited person or body” to offset that phrase properly.]

(4) No person may -

(a) sell, display for sale, export or import seed in packaging; or

(b) produce, distribute or display (whether for sale or distribution or for information only) any advertisement or promotional or informational material in respect of seed which is sold, displayed for sale, imported into, or exported from Namibia,

if such packaging, advertisement or material contains the word “certified” or in any other manner implies or suggests that the seed in question has been certified or if it contains a mark which so closely resembles an indication prescribed under subsection (3) or which is likely to be confused with such indication.

(5) Any person who contravenes subsection (4) commits an offence and is liable on conviction to a fine not exceeding N\$10 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

CHAPTER 7 GENERAL PROVISIONS

Application of Act to State

45. This Act binds the State: provided that no fees payable under this Act are payable by the State.

Preservation, inspection and proof of documents

46. (1) All documents lodged in terms of this Act must, subject to the provisions of subsection (3), be preserved for the prescribed period.

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

(3) Where an application for the recognition of a variety has been withdrawn, the Registrar must return all the original documents submitted in connection with the application to the applicant at the address indicated in the application or, if this is not practical, destroy them after expiry of the prescribed period.

Secrecy

47. (1) No person may disclose any confidential information acquired by him or her in the carrying out of his or her duties or the performance of his or her functions under this Act and which relates to the business or affairs of another person, except -

- (a) for the purpose of carrying out his or her duties or performing his or her functions under this Act;
- (b) for the purposes of legal proceedings under this Act or any other law;
- (c) when required to do so by any court or under any law; or
- (d) with the written consent of the Minister.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding N\$10 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

Appeals

48. (1) A person who feels aggrieved by any decision or action taken by the Registrar in terms of this Act or the Seed Varieties Committee in terms of Chapter 5 may, within the period and in the manner prescribed and on payment of the prescribed fees, lodge an appeal with the Minister against the decision or action in question.

(2) The Minister must refer the appeal for investigation and decision to a board the members of which are appointed by the Minister and which consists of -

- (a) one person designated as chairperson on account of his or her knowledge of law; and
- (b) two persons who in the opinion of the Minister have expert knowledge of the subject of the appeal.

(3) A person is disqualified from appointment as a member of the board if he or she has any direct or indirect interest in the outcome of the appeal.

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(4) An appeal must be heard on the date and at the place and time fixed by the chairperson of the board, who must advise the appellant, the Registrar and the Seed Varieties Committee in writing thereof.

(5) The chairperson of the board may, for the purposes of the hearing of the appeal -

(a) summon any person who, in his or her opinion, may give material information concerning the subject of the hearing or who, he or she believes, has in his or her possession or custody or under his or her control any document which has any bearing upon the subject of the hearing, to appear before him or her at a time and place specified in the summons, to be interrogated or to produce that document, and the chairperson may retain for examination a copy of a document so produced;

(b) administer an oath to or accept an affirmation from any person called as a witness at the hearing; and

(c) call any person present at the hearing as a witness and interrogate him or her and require him or her to produce any document in his or her possession or custody or under his or her control.

(6) The procedure at the hearing of an appeal must be as prescribed.

(7) An appellant, if he or she appears before the board at the hearing of an appeal, and the Registrar or the Seed Varieties Committee may be represented by a legal practitioner duly admitted to practice in Namibia in terms of the Legal Practitioners' Act, 1995 (Act No. 15 of 1995).

(8) If a person appointed under subsection (2) -

(a) dies or otherwise becomes unable to act as such member, during the investigation of the appeal or so soon before the commencement of the investigation that the vacancy cannot be filled in time;

(b) is unable to act and another person cannot be appointed in time; or

(c) is, after the investigation has commenced, unable to continue therewith,

the parties may agree that the investigation be continued by the remaining members, in which event, where the member who has died or has become unable to act, is the chairperson of the board, the Minister must designate one of the remaining members to act as chairperson.

(9) If the parties do not agree as contemplated in subsection (8), the investigation may be adjourned in order that the Minister may appoint a member, in accordance with the requirements of subsection (2), in the place of the member who has died or has become unable to act as such member.

(10) Where an appointment has been made under subsection (9), the investigation must, if the parties so agree, be continued as from the stage at which the investigation was adjourned as contemplated in subsection (9), or must, if the parties do not so agree, be commenced afresh.

(11) The board may after investigation of the appeal -

(a) confirm, set aside or vary the relevant decision or action;

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- (b) order the Registrar or the Seed Varieties Committee to execute the decision of the board in connection therewith.

(12) A decision of the board is taken by majority vote: Provided that where there is an equality of votes, the chairperson has a casting vote in addition to his or her deliberative vote.

(13) The decision of the board must be in writing, and a copy thereof must be furnished to the Registrar or the Seed Varieties Committee, (as the case may be), as well as the appellant and any other party.

(14) If the board sets aside any decision or action by the Registrar or the Seed Varieties Committee, the prescribed fees paid by the appellant in respect of the appeal in question must be refunded to him or her, or, if the board varies any such decision or action, it may in its discretion direct that the whole or any part of such fees be refunded to the appellant.

- (15) Any person who -

- (a) having been duly summoned to appear at proceedings under this section, fails without lawful excuse so to appear;
- (b) having appeared as a witness at proceedings under this section, refuses without lawful excuse to be sworn or to make an affirmation or to produce any document or answer any question which he or she may be lawfully required to produce or answer,

commits an offence and is liable on conviction to a fine not exceeding N\$5 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(16) A member of a board (other than a person in the full time employ of the State) appointed under this section must be paid such remuneration as may be prescribed.

Publication or distribution of advertisements

49. (1) For the purposes of this section “advertisement” means any communication to the public or a portion of the public which appears to promote the sale of any plant or seed, or to encourage the use thereof or to draw attention to the nature, properties, advantages or uses thereof or to the manner in which or the conditions on which it may be purchased or otherwise acquired irrespective whether it purports to be scientific or educational material.

(2) No person may publish or distribute or cause or permit to be published or distributed any false or misleading advertisement concerning plants, seed or any business or premises used for cultivation, production, sale, processing or distribution of plants or seed.

(3) It is a sufficient defence for any person, other than the person selling the plants or seed to which the false or misleading advertisement relates, who is charged with a contravention of subsection (2), if he or she adduces evidence that creates a reasonable doubt that he or she did not know and could not reasonably be expected to have known that the advertisement was false or misleading in any respect, unless it is proved that the accused failed on demand by the Registrar or a member of the Namibian police to furnish the name and address of the person at whose instance the advertisement was published or distributed.

[There is a double negative in this provision which appears to create an unintended meaning.

The following phrase is not logical:

“...if he or she adduces evidence that creates a reasonable doubt that he or she did not know and could not reasonably be expected to have known that the advertisement was false or misleading in any respect..”.

It was probably intended to read as follows:

“...if he or she adduces evidence that creates a reasonable doubt that he or she knew or could reasonably be expected to have known that the advertisement was false or misleading in any respect...”.]

(4) Any person who contravenes subsection (2) commits an offence and is liable on conviction to a fine not exceeding N\$10 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

General offences and penalties

- 50.** (1) Any person who -
- (a) makes a false entry in the register or causes it to be made therein, or who makes a document or causes a document to be made which falsely purports to be a copy of or excerpt from the register;
 - (b) produces or tenders or causes to be produced or tendered as evidence any such entry, copy or excerpt;
 - (c) knowing it to be false offers, utters or puts out an entry, a copy or an excerpt referred to in paragraph (a) to the detriment or potential detriment of another person;
 - (d) makes a false statement or representation or furnishes false information knowing it to be false;
 - (e) makes a document or causes a document to be made which purports to be a certificate, authorisation or other document issued in terms of this Act; or
 - (f) fails to comply with the conditions of any certificate or other document issued in terms of this Act,

commits an offence and is liable on conviction to a fine not exceeding N\$10 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

- (2) Any person who -
- (a) obstructs or hinders the Registrar, a seed analyst, a seed inspector or any staff member or person authorised to perform any function or duty under this Act, in the exercise of his or her powers, the performance of his or her functions or the carrying out of his or her duties under this Act;
 - (b) falsely holds himself or herself out to be a person referred to in paragraph (a);
 - (c) fails or refuses to comply with any lawful instruction issued by a person referred to in paragraph (a) in the exercise of his or her powers, the performance of his or her functions or the carrying out of his or her duties under this Act;
 - (d) tampers with any sample taken or any plant, seed, substance or other article seized in terms of this Act;
 - (e) sells, removes or tampers with any plant, seed, substance or other article, or any book or document seized in terms of section 43, or who tampers with an identification mark or seal attached thereto in terms of that section,

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commits an offence and is liable on conviction to a fine not exceeding N\$10 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

(3) Where a person has been convicted of an offence under this Act, the court convicting that person may on the application of the prosecutor declare any plant or seed in respect of which the offence was committed and all other plants or seed of a similar nature of which such person is the owner or which is in his or her possession, to be forfeited to the State.

[The verb “is” should be “are” in the phrase
“all other plants or seed... which are in his or her possession...”.]

Presumptions

51. (1) In criminal proceedings where a person has been charged with an offence under this Act, unless admissible evidence is adduced to the contrary -

- (a) any plant, seed, substance or other article in or upon any premises, place or vehicle at the time a sample thereof is taken pursuant to the provisions of this Act, is presumed to possess the same properties as such sample;
- (b) any sample taken in terms of this Act is presumed to be representative of that plant, seed, substance or other article from which it has been taken;
- (c) any particulars entered on a form that has been completed in the prescribed manner as contemplated in section 43(3) is presumed to be correct.

[The verb “is” should be “are”: “any particulars ... are presumed to be correct”.
Alternatively, the plural subject “any particulars” may have been intended to be the singular subject “any particular”.]

(2) In criminal proceedings where a person has been charged with an offence under this Act, any statement or entry contained in any book or document kept by or purporting to be issued by any person, or by the manager, agent or employee of such a person, is admissible in evidence against such person as an admission of the facts set forth in that statement or entry, unless admissible evidence has been adduced that such statement or entry was not made by such person, or by the manager, agent or employee of such person in the course of his or her work as manager or in the course of his or her agency or employment.

(3) In criminal proceedings where a person has been charged with an offence under this Act, an excerpt from or a copy of the register certified as such by the Registrar, is *prima facie* proof of the information contained therein.

Limitation of liability

52. No compensation is payable in respect of any action performed by any person authorised thereto in writing by the Registrar, the Seed Varieties Committee or any official, in respect of any act done in good faith under this Act.

Regulations

- 53.** (1) The Minister may, after consultation with the Council, make regulations -
- (a) prescribing any certificate or other document or form to be issued or used for the purposes of this Act;
 - (b) prescribing the fees payable in respect of any application, matter or document;

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- (c) prescribing the scale of remuneration which are payable to any member of the board appointed in terms of section 48(2);

[The verb “are” should be “is” to be grammatically correct.]

- (d) prescribing the information and facilities to be provided to the Registrar or Seed Varieties Committee by a person applying for the recognition of a variety, and the plants or seed to be submitted at the time of an application and thereafter;
- (e) prescribing the tests, trials, examinations and other steps to be taken by an applicant or the Registrar or the Seed Varieties Committee before a variety may be recognised, and the time within which they are to be taken;
- (f) prescribing the records relating to plants and seed to be kept by any person who has such plants or seed in his or her possession or under his or her control, the form and manner in which they are to be kept, and in what manner and to whom they must be made available for inspection;
- (g) prescribing any matter which in terms of this Act is required or permitted to be prescribed; and
- (h) generally, prescribing any matter which is necessary or expedient to prescribe in order that the objects and purposes of this Act may be better achieved.

(2) Different regulations may be made in terms of this section in respect of different kinds of businesses or in respect of different kinds of plants or seed or in such other respects as the Minister thinks fit.

(3) Regulations made under subsection (1), may in respect of any contravention thereof or failure to comply therewith create an offence and the penalty for that offence is -

- (a) in the case of a first conviction, a fine not exceeding N\$5 000 or imprisonment for a period not exceeding six months; and
- (b) in the case of a second or subsequent conviction, a fine not exceeding N\$10 000 or imprisonment for a period not exceeding one year.

(4) A regulation prescribing any fees must be made only after consultation with the Minister responsible for finance.

Short title and commencement

54. (1) This Act is called the Seed and Seed Varieties Act, 2018, and it comes into operation on a date to be fixed by the Minister by notice in the *Gazette*.

- (2) Different dates may be fixed in respect of different provisions of this Act.