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MALAWI GOVERNMENT

(Published 27th May, 1988)

Act

No. 5 of 1988

I assent

H. KAMUZU BANDA

LIFE PRESIDENT

18th May, 1988

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An Act to provide for the regulation and control of the production, sale, importation and exportation of seed for sowing, and for the testing and minimum standards of germination and purity thereof, and further to provide for the certification of seed and for matters incidental to or connected therewith

ENACTED by the Parliament of Malaŵi as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Seed Act, 1988, and shall come into operation on such date as the Minister may appoint by notice in the *Gazette*. Short title and commencement
2. In this Act, unless the context otherwise requires— Interpretation
 - “advertisement” includes any statement, picture, design or device—
 - (a) published in any newspaper 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;

“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;

“licensed seed seller” means any seed seller licensed under Part VI;

“Malawi certified seed” means any prescribed seed produced in Malawi and certified as such under the provisions of Part IX;

“official seed-tester” means any public officer 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;

“prescribed seed” means any seed declared as such by an order made under section 33;

“purity” means analytical purity expressed as a percentage by weight;

“registered seed cleaner” means any person registered as such under Part III;

“registered seed producer” means any seed producer registered as such under Part IX;

“restricted seed” means any seed restricted or otherwise controlled under section 37,

“seed” means the part of any plant, customarily referred to as seed, intended for planting and includes seed potatoes;

“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 or business, sells seed for sowing;

“seed-testing station” 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 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 subdivision of any kind which can be differentiated from other subdivisions of that kind by growth, plant, fruit or other characteristics and any uniform group which is a first generation hybrid reconstituted on each occasion by crossing two or more breeding stocks maintained by inbreeding.

PART II—ADMINISTRATION

3.—(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.

Controller
of Seeds

(2) The Controller of Seeds may, subject to the general or special directions of the Minister, delegate any of his powers or functions under this Act to any officer in the public service.

4. The Controller of Seeds shall keep and maintain—

Registers

(a) a register of seed importers which shall contain—

(i) the names and addresses, and the principal business addresses in Malaŵi, of all seed importers registered under this Act;

(ii) such other particulars as may be prescribed;

(b) a register of seed cleaners which shall contain—

(i) the names and addresses, and the principal business addresses in Malaŵi, of all seed cleaners registered under this Act;

(ii) such other particulars as may be prescribed;

(c) a register of seed sellers which shall contain—

(i) the names and addresses, and the principal business addresses in Malaŵi, of all seed sellers registered under this Act;

(ii) such other particulars as may be prescribed.

(d) all other registers prescribed or required under this Act, each of which shall contain such particulars as are prescribed in respect of such register.

PART III—REGISTRATION OF SEED IMPORTERS, SEED CLEANERS AND SEED SELLERS

Registration of seed importers, seed cleaners and seed sellers

5. No person shall carry on or engage in the business of an importer, cleaner or seller of any prescribed seed unless he has been registered under this Act.

Application for registration of seed importer, seed cleaner or seed seller

6.—(1) An application for registration as a seed importer, seed cleaner or seed seller shall be made to the Controller of Seeds in the prescribed form and shall be accompanied with the prescribed fees.

(2) As soon as practicable after receipt of an application for registration, the Controller of Seeds shall—

(a) if he is satisfied that the applicant has complied with the prescribed requirements, enter the name and address and the principal business address of the applicant in the appropriate register as a registered seed importer or registered seed cleaner or registered seed seller, as the case may be;

(b) if he is not satisfied that the applicant has complied with the prescribed requirements, refuse to register the applicant.

(3) A registration under this section shall be valid until cancelled under the provisions of this Act, but shall be subject to payment of such fees as may be prescribed to be payable annually.

(4) The Controller of Seeds may impose such conditions with regard to any application for registration under this section as he deems necessary to ensure that the applicant complies with the provisions of this Act or with any prescribed requirements.

(5) The refusal of an application for registration as a seed importer, seed cleaner or seed seller shall not preclude the applicant from making a fresh application for the same registration at any subsequent time.

(6) A person registered under this section who fails to comply with any condition or requirement imposed under this Act shall be guilty of an offence.

Registration in cases of partnership business

7.—(1) Where an application is made under this Part for registration and the business sought to be registered is a partnership, the partners shall nominate one member of the firm who shall, upon the application being granted by the Controller of Seeds, be registered under this Act in respect of the partnership business.

(2) Registration of any person under this Part shall not be construed as affecting or limiting any liability present or future existing or arising between such partners or between them and any third person.

Inspection on application for registration

8. For the purpose of considering an application for registration as a seed importer, seed cleaner or seed seller the Controller of Seeds may at any reasonable time enter upon and inspect the

warehousing, storage and other facilities which the applicant proposes to use in and about his business.

9.—(1) A certificate of registration under this Act shall be in such form as may be prescribed and the person to whom the certificate is issued shall cause it to be displayed in a prominent place within his principal place of business in Malaŵi and shall keep it so displayed during the continuance of his registration. Certificate of registration

(2) A person who fails to display a certificate of registration in accordance with subsection (1) shall be guilty of an offence.

10.—(1) Where a registered person who is an individual dies, the following provisions shall apply— Devolution and transfer of business of registered person

(a) the death of the registered person shall not of itself render unlawful the carrying on, during the period of six months from the date of his death, of the business carried on by the deceased;

(b) the personal representative of the deceased or, with the consent of such personal representative, any other person shall, subject to the provisions of this section, be entitled, on application to the Controller of Seeds in the form and manner prescribed, to be registered under this Act in respect of the business formerly carried on by the deceased;

(c) the surviving partner or joint owner, or the nominee of the surviving partner or joint owner, as the case may be, shall, subject to the provisions of this section, be entitled, on application to the Controller of Seeds in the form and manner prescribed, to be registered under this Act in respect of the business formerly registered in the name of the deceased;

(d) from the date of the death of the registered person until the registration of another person, the person actually carrying on the business of the deceased shall be deemed to be the registered person for the purposes of this Act.

(2) Where a registered person (hereinafter referred to as the “transferor”) transfers on sale or otherwise the business carried on by him in respect of which he is registered to another person (hereinafter referred to as the “transferee”), then—

(a) the transferee shall be entitled, on application to the Controller of Seeds in the form and manner prescribed and on satisfying the Controller of Seeds that he has become the proprietor of the business, to be registered under this Act in respect of the transferred business;

(b) until the transferee has been registered pursuant to paragraph (a), the transferor shall, for all purposes of this Act, continue to be the registered person.

(3) Where an application is made to the Controller of Seeds for registration under this section, the following provisions shall apply—

(a) where the applicant is the personal representative of a deceased registered person and is applying under subsection

- (1) for registration solely in his capacity as a personal representative, the Controller of Seeds shall not refuse the application;
- (b) in every other case the Controller of Seeds may, if he think it proper, refuse the application on—
- (i) the ground that the applicant has previously had his registration under this Act cancelled; or
 - (ii) any other reasonable ground.
- Cancellation of registration** 11. The Controller of Seeds may cancel the registration of any registered person if he is satisfied that the registered person—
- (a) has failed or fails in any respect whatsoever to comply with any provision of this Act or with any condition or requirement imposed or prescribed under this Act;
 - (b) that a registered person—
 - (i) has ceased to carry on business for which he is registered;
 - (ii) has been convicted of an offence under this Act;
 - (iii) has been adjudicated, or is an undischarged, bankrupt;
 or
 - (iv) if an incorporated body, has been wound-up;
 - (c) being individual, has died and, within six months after such death, no other person has been registered in his stead;
 - (d) being an incorporated body, has been dissolved and within three months after such dissolution no other person or body has been registered under this Act in respect of the business concerned.
- Appeal to Minister** 12.—(1) Any person whose application has been refused under section 6 (2) (b) may appeal to the Minister in writing against the decision of the Controller of Seeds.
- (2) In determining an appeal made to him under subsection (1) the Minister may call for the views of the Controller of Seeds to be made in writing or orally and may thereafter make such decision as he considers appropriate.
- Alteration of particulars of registration** 13.—(1) The Controller of Seeds may, at any time, alter any particulars of registration of any registered person upon application—
- (a) by the registered person;
 - (b) by the personal representative of a deceased registered person;
 - (c) in the case of an incorporated body, by the managing director or the liquidator thereof.
- (2) In addition to the circumstances specified in subsection (1), the Controller of Seeds may alter any registration of any registered person in any respect in which such registration appears to him to be erroneous or misleading and, in such case, the following provisions shall apply—
- (a) the Controller of Seeds shall not make any such alteration unless he has given to the registered person or his personal

representative or its managing director or liquidator, as the case may be, at least fourteen days notice in writing that the Controller of Seeds is considering making alteration and shall state the grounds on which such alteration is based;

(b) the Controller of Seeds shall consider any representations, in relation to such alteration, made to him by a person to whom notice under paragraph (a) was given or any other person with *bona fide* interest in the matter of such alteration;

(c) the Controller of Seeds may, if he thinks fit, cause an inquiry to be held in relation to such alteration;

(d) such alteration shall be made within three months after the expiration of the notice given under paragraph (a).

14.—(1) The Minister may exempt any registered person from any or all of the provisions of this Part. Exemption from registration

PART IV—SEED TESTS

15. The Minister may establish and maintain one or more seed-testing stations in Malawi. Establishment of seed-testing stations

16. Upon the establishment of a seed-testing station, and from time to time thereafter as occasion may require, the Minister shall, by a notice published in the *Gazette*, designate public officers to be official seed-testers. Designation of official seed-testers

17. The Controller of Seeds shall keep and maintain the following registers— Registers of seed-testers and seed-testing stations

(a) a register of official seed-testers, which shall contain—

(i) the name and address of each official seed-tester appointed under this Act;

(ii) such other particulars as may be prescribed;

(b) a register of seed-testing stations, which stations shall contain—

(i) the name and address of each seed-testing station established under this Act; and

(ii) such other particulars as may be prescribed.

18.—(1) Any person who, in any place which is not a seed-testing station, tests or purports to test for the purposes of this Act any prescribed seed shall be guilty of an offence. Prohibition against testing of prescribed seed except in seed-testing stations

(2) Upon the 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) Every person who has produced or acquired any prescribed seed which has not been tested for the purposes of this Act and intends to sell such seed for sowing shall, prior to offering it for sale, take a sample thereof in the manner prescribed and deliver the sample to a seed-testing station together with a Delivery of samples for official test

(c) for such other purposes as may be deemed necessary by the seed inspector in relation to the exercise of his powers under this Act.

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

Powers to
search
premises and
seize certain
goods

(a) any land, building, premises or plant, not being the land, building, premises or plant of a registered seed cleaner, which he has reasonable cause to believe is being used in the cleaning of prescribed seed in contravention of this Act, and inspect the same and any machinery and equipment found therein and may seize and remove therefrom and detain any such machinery or equipment, or any prescribed seed, or any book, record or document found therein, which would afford evidence of a contravention of this Act;

(b) any land, building, premises or plant, being used by a registered seed cleaner as a seed cleaning plant, for the purposes of inspecting the same; and if, upon such inspection, he has reasonable cause to believe that the seed cleaning plant, or any machinery or equipment found therein—

(i) is being maintained, operated or used in contravention of this Act, he may seize and remove therefrom and detain any such machinery or equipment or any prescribed seed or any book, record or document found therein, which would afford evidence of a contravention of this Act; or

(ii) is, because of a mechanical or operational defect, contributing to the distribution from the plant of any prescribed seed which is not cleaned to the standards prescribed therefor, he may by notice in writing require the registered seed cleaner to rectify the machinery or equipment within seven days of the receipt of such notice, and in the event of the registered seed cleaner failing to comply with such notice, the seed inspector shall notify the Controller of Seeds of such failure to comply;

(c) any land, building, premises or vehicle at or in which he has reasonable cause to believe that any prescribed seed or restricted seed is being stored, sold or transported for sale in contravention of this Act, or is being packed in packages or other containers which are marked or labelled, or are being marked or labelled, with any description, mark or date in contravention of this Act, and may, without liability for any payment to any person whosoever, take samples of the seed found therein and 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, further, may seize and remove therefrom and detain any prescribed seed or restricted seed or any package or container or any label, stamp or device

for marking, stamping or labelling, 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 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.

Prohibition
against
obstruction,
etc., of seed
inspectors

25. Any person who—

(a) obstructs or impedes a seed inspector in the due exercise of his powers under this Act; or

(b) refuses to furnish to a seed inspector, on request, any particulars or information to which the seed inspector is entitled under this Act; or

(c) wilfully 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—LICENSING OF SEED SELLERS

Seed seller's
licence

26. A licence, to be known as a seed seller's licence, issued under this Part shall entitle the licensee to sell for sowing prescribed seed in accordance with the terms and conditions of the licence.

Classification
of the seed
seller's
licence

27. A seed seller's licence shall be classified as either—

(a) an *unrestricted general licence*, which shall authorize the licensee to sell prescribed seed by wholesale or retail or both and to carry on his business throughout Malaŵi; or

(b) a *restricted general licence*, which shall authorize the licensee to sell prescribed seed by wholesale only or by retail only and to carry on his business throughout Malaŵi;

(c) an *unrestricted limited licence*, which shall authorize the licensee to sell prescribed seed by wholesale or retail or both and to carry on his business in such place or places or on such premises as may be specified in the licence; or

(d) a *restricted limited licence*, which shall authorize the licensee to sell prescribed seed by wholesale only or by retail only and to carry on his business in such place or places or on such premises as may be specified in the licence.

28.—(1) An application for a seed seller's licence shall be made to the Controller of Seeds in the prescribed manner and shall be accompanied with the prescribed fee.

Application
for seed
seller's
licence

(2) The Controller of Seeds may impose such conditions with regard to the granting of any application for a seed licence as he may deem to be necessary in order to ensure that the applicant complies with the provisions of this Act or any requirements prescribed under this Act.

29. The Controller of Seeds may refuse to issue a seed seller's licence on the following grounds—

Refusal to
issue seed
seller's
licence

(a) if the applicant has failed to comply with any condition precedent to the granting of his application imposed under section 28 (2);

(b) if the applicant, having formerly been a licensed seed seller or a registered seed importer under this Act, has been convicted of an offence under this Act; or

(c) if the Controller of Seeds considers the applicant not to be a fit or proper person to hold a seed seller's licence.

30.—(1) A seed seller's licence shall become revoked upon the death of the licensee or, where the licensee is an incorporated body, upon the winding-up or dissolution of that body.

Revocation
of
seed seller's
licence

(2) The Controller of Seeds may at any time revoke a seed seller's licence—

(a) if the licensee has failed or fails to comply with the terms and conditions of the licence; or

(b) if the licensee has been convicted of more than one offence under this Act; or

(c) if the licensee has failed or refused to comply with any reasonable direction as regards the sale or storage of any prescribed seed given to him in writing by a seed inspector or by the Controller of Seeds.

(3) The Controller of Seeds shall notify the licensee in writing of the revocation of his licence under subsection (2).

Appeal to Minister where seed seller's licence is refused or revoked or condition is imposed on the applicant

31.—(1) Any applicant for a seed seller's licence whose application has been refused or upon whom any condition has been imposed under section 28 (2) and any former licensee whose licence has been revoked may, within one month after receipt of notice of such refusal, imposition of the condition or revocation, appeal to the Minister against the decision of the Controller of Seeds, and the appeal shall be made in writing and shall specify the grounds thereof.

(2) In determining an appeal made to him under subsection (1) the Minister may call for the views of the Controller of Seeds to be made in writing or orally and may, as he deems appropriate, either—

(a) uphold in whole or in part the decision of the Controller of Seeds; or

(b) direct the Controller of Seeds to—

(i) issue the licence as applied for;

(ii) strike out all or any of the conditions imposed by the Controller of Seeds, or amend or alter such conditions in such manner as the Minister may direct; or

(iii) cancel the revocation of the licence and restore the licence to the former licensee.

Application for new licence

32.—(1) Subject to subsection (2), where a seed seller's licence has been revoked in accordance with this Part the former licensee may apply to the Controller of Seeds for a new seed seller's licence,

(2) A licence issued pursuant to an application under subsection (1) shall not operate as a renewal of the revoked seed seller's licence formerly held by the licensee.

PART VII—PRESCRIBED SEED

Power of Minister to declare seed to be prescribed seed

33. The Minister may from time to time, by order published in the *Gazette*, declare any seed to be a prescribed seed.

Treating and cleaning of prescribed seed

34.—(1) If, upon test made under Part IV, it is found and reported by an official seed-tester that any prescribed 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 prescribed seed has been treated or cleaned pursuant to subsection (1), the owner may request a seed inspector to take, and the seed inspector thereupon shall take, a further sample thereof as required under this Act, which sample shall be sent by the seed inspector to a seed-testing station for further test, and the owner may, as often as he so desires, cause further treatments or cleanings of such prescribed seed to be effected and further tests to be made in like manner until such time as the

prescribed seed is found and reported by the official seed-tester to conform to the standards of germination and purity prescribed therefor.

35.—(1) Subject to the provisions of this Act, any person who sells, for sowing, any prescribed seed which has been tested in accordance with the provisions of this Act and found to conform to the standards prescribed shall—

Duties of seller on sale of prescribed seed

(a) if the prescribed 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”; and
- (ii) the date upon which the prescribed seed was tested; and
- (iii) such other particulars as may be prescribed;

(b) if the prescribed 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 station where the test was made, the date of the test, and a declaration by the seller that the bulk quantity sold by him 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 the 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 by him is all or a part of that to which such statement was related at the time he procured the prescribed seed.

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

(3) The validity of a contract for the sale of prescribed 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 prescribed seed is, upon test, found and reported by an official seed-tester not to conform to the standards of germination and purity prescribed for such prescribed seed, the Controller of Seeds may—

Disposal of sub-standard prescribed seed

(a) if such prescribed seed has been seized and detained in accordance with the provisions of this Act—

(i) subject to such conditions as to its sale and use as he may impose, direct its return either to the owner thereof or to the person from whose custody or control it was taken and in so directing the Controller of Seeds may impose such conditions as to its sale or use as he may consider necessary; or

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

(b) if the prescribed seed has not been seized or detained in accordance with the provisions of this Act—

(i) permit the owner thereof to retain the prescribed 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, he 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

Restriction on importation and exportation of certain seed

37.—(1) The Minister may, from time to time by order published in the *Gazette* restrict, limit, make subject to conditions, or prohibit the importation into Malaŵi or exportation from Malaŵi of any particular variety or class of seed, in this Act referred to as “restricted seed”.

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

Seed imports to be registered

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

(2) A person who contravenes subsection (1) shall be guilty of an offence.

Conditions for importation of prescribed seed

39.—(1) No registered seed importer shall import any prescribed seed into Malaŵi unless—

(a) such seed is not restricted seed;

(b) such seed conforms to the standards of germination and purity and other requirements prescribed therefor;

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

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

(2) The Minister may exempt any registered 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 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 Malaŵi of any prescribed seed, the registered seed importer to whom the prescribed seed is consigned shall, within seven days of its delivery to him, cause a sample thereof to be taken in the manner prescribed and sent for test to a seed-testing station. Testing of imported prescribed seed

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

(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 registered seed importer, by post, of a sample of any prescribed seed not exceeding one kilogram and which is being imported into Malaŵi solely as a trade sample and its quantity is of no commercial value. Importation of trade samples

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 offence to be forfeited and may order it to be destroyed without compensation. Court may order forfeiture and disposal of illicit prescribed seed

PART IX—CERTIFICATION OF SEED AND PRODUCTION OF SEED FOR CERTIFICATION

43. Subject to the provisions of this Part, prescribed seed may be certified by the Controller of Seeds— Certification of prescribed seed

(a) in the case of seed produced in Malaŵi, as “Malaŵi 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 prescribed seed which may be cultivated for the purpose of producing seed for certification as Malaŵi Certified Seed or as Imported Certified Seed. Variety of certified seed

Registration
of seed
producers

45.—(1) Every producer of prescribed seed shall apply to the Controller of Seeds for registration as a registered seed producer.

(2) An application for registration as a registered seed producer shall be made in the prescribed manner and shall be accompanied with the prescribed registration fee.

(3) As soon as practicable after receipt of an application for registration as a registered seed producer, the Controller of Seeds may—

(a) refuse for good cause to register the applicant; or

(b) register the applicant as a seed producer if he is satisfied that—

(i) the applicant is a person suitably qualified and experienced in seed production and capable of producing to the prescribed requirement, prescribed seed which may qualify for certification as Malawi Certified Seed, using variety or varieties specified in his application; and

(ii) the land proposed to be used for the production of such specified variety or varieties is reasonably suited to the production of such crop.

(4) The Controller of Seeds may impose such conditions and limitations upon any registration under this section as he may deem necessary, including limitations as to the hectareage to be used in the cultivation of any particular prescribed variety by the applicant and also including limitations as to the specified variety or varieties to be produced by such applicant upon his registration as a registered seed producer.

(5) Registration under this section shall be valid for the production of one crop only of the particular specified variety or varieties to which it relates.

Register of
seed
producers

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 registered seed producers;

(b) particulars of the specified variety or varieties to be grown by each registered seed producer;

(c) particulars of the location and area of the land where each such specified variety is to be grown by each registered seed producer;

(d) the duration of the registration;

(e) such other particulars as may be prescribed.

Cancellation
of
registration
of registered
seed producer

47.—(1) Where any registered seed producer, during the continuance of his registration as such—

(a) fails or ceases to comply with any provision of this Part or with any requirement or condition prescribed under this Part in respect of the production of any specified variety intended for certification as Malawi Certified Seed; or

(b) parts with the possession of, or is dispossessed from, the lands upon which a specified variety intended for certification as Malaŵi Certified Seed is in course of production, the Controller of Seeds shall forthwith cancel the registration of such registered seed producer in respect of the production of the specified variety.

(2) Where any registered seed producer, during the continuation of his registration as such—

(a) is convicted of an offence under this Act; or

(b) dies or, being an incorporated body, is wound-up or dissolved,

the Controller of Seeds shall forthwith cancel the registration of such registered seed producer.

(3) In the event of a cancellation under subsection (1) or (2), the successor in interest to the registered seed producer may apply under this Part for registration as a registered seed producer in respect of the crop in course of production at the time of such cancellation.

48.—(1) A seed producer whose application for registration as a registered seed producer has been refused or made subject to any condition or limitation by the Controller of Seeds, or any registered seed producer whose registration has been cancelled may, within twenty-one days after such refusal, imposition of conditions or limitations or cancellation, in writing request the Controller of Seeds to furnish his reasons for refusing to register the applicant or for imposing conditions or limitations upon the registration of the applicant or for the cancellation of the registration of the registered producer.

Reasons for refusal to register or for cancellation

(2) Within fourteen days after receipt of such request, the Controller of Seeds shall furnish in writing to the applicant the reasons as requested.

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 twenty-one days after his receipt of the reasons or after the expiry of the prescribed time, appeal to the Minister in writing against the decision of the Controller of Seeds.

Appeal to Minister by a seed producer

(2) In determining the appeal made to him under subsection (1), the Minister may call for the views of the Controller of Seeds to be made in writing or orally and may, as he deems appropriate, either—

(a) uphold in whole or in part the decision of the Controller of Seeds; or

(b) direct the Controller of Seeds to—

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

(ii) to strike out all or 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) to restore the registration.

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

(a) is of a specified variety;

(b) is of known derivation;

(c) has been produced by a registered seed producer;

(d) has been produced on the land designated in the register;

(e) has been sown, cultivated and produced as prescribed;

(f) has been inspected during cultivation as prescribed; and

(g) has been tested in accordance with the provisions of this Act and found to conform to the standards of germination and purity,

the Controller of Seeds may certify such seed as Malaŵi Certified Seed.

(2) Having certified any seed as Malaŵi Certified Seed the Controller of Seeds shall issue to the registered 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 registered seed producer concerned.

51. No registered seed producer shall use for the production of Malaŵi 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 Malaŵi Certified Seed by any registered seed producer, he 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 him as the producer of such Malaŵi Certified Seed.

(2) A registered 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 registered seed importer, certify as Imported Certified Seed any prescribed seed of specified variety which—

(a) has been imported into Malaŵi by the applicant; and

(b) has been tested in accordance with the provisions of this Act; and

Certification
of seed by the
Controller
Seeds

Certified
seed of
Malaŵi to be
produced
from
approved
seed

Certificate
to be
produced on
sale of
Malaŵi
Certified
Seed

Certification
of imported
prescribed
seed as
Imported
Certified
Seed

(c) has been certified as certified seed under the laws of the country of its origin; and

(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) Having certified any imported prescribed seed as Imported Certified Seed, the Controller of Seeds shall issue to the registered seed importer a certificate in the prescribed form in respect of such certification in the register of seed importers in relation to the registered seed importer concerned.

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—

Duties of seller on sale of certified seed in sealed containers

(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;

(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} sell, uses, in the description or name of any seed, the word "certified" or any cognate word in relation to seed which is not certified under this Act,

Prohibition against sale of uncertified seed.

shall be guilty of an offence.

Prohibition
against sale
of certified
seed without
possession of
appropriate
certificate

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

(a) any Malaŵi 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 Malaŵi-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.

PART X—OFFENCES AND MISCELLANEOUS PROVISIONS

Failure to
comply with
Act or
regulations

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

Prohibition
against
tampering
with samples

58. Any person who—

(a) tampers with any prescribed seed so as to procure that any samples of such prescribed 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 seed-testing station to be tested, for the purposes of this Act, a sample of any prescribed seed which to his knowledge does not represent the bulk from which it was taken,

shall be guilty of an offence.

Prohibition
against
altering,
defacing or
removing
official
records, etc

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 thereunder; 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—

Prohibition against altering, etc., documents and marks

(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 thereunder; or

(b) any label, note, docket or mark placed upon any container under this Act or under any order, requirement or condition made thereunder, or who removes any such label, note, docket or mark from any such container,

shall be guilty of an offence.

61. Any person who—

Secrecy

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

(b) is in possession of any information which to his 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 five hundred Kwacha or to imprisonment not exceeding one year.

62. Any person, not being a seed producer or a registered seed importer, who, without a seed seller's licence, sells, by wholesale or retail, for sowing, any prescribed seed shall be guilty of an offence.

Prohibition against sale of prescribed seed without seed seller's licence

63.—(1) 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 to be of the standards of germination and purity prescribed for such seed.

Prohibition against sale of untested prescribed seed

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

(3) Upon the conviction of any person of an offence under this section, the court may, in addition to any other penalty imposed, declare any such untested 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.

64.—(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-tester, 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.

Prohibition against sale of sub-standard prescribed seed

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

(3) 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.

Prohibition against sale of prescribed seed under name other than varietal name 65.—(1) Any person who sells, for sowing, any prescribed seed under a description other than its varietal name shall be guilty of an offence.

(2) In this section, “varietal name” means the name given to a specific variety of seed by its originator or discoverer.

Penalty 66.—(1) A person guilty of an offence under this Act for which a penalty has not been specified shall be liable to a fine of K2,000 and to imprisonment for one year.

Cap. 1:01 (2) Any regulations made under this Act may, notwithstanding the provisions of section 21 (e) of the General Interpretation Act, prescribe a fine of up to K1,000 and imprisonment for up to six months for an offence committed against any provision of such regulations.

Inspection of registers 67. All registers maintained by the Controller of Seeds under this Act shall, at all reasonable times, be open to the inspection by any person applying to the Controller of Seeds on payment of the prescribed fee.

When Act not applicable to sale of prescribed seed 68. The provisions of this Act shall not apply—
(a) to any sale of prescribed seed, which is not Malaŵi 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 re-sale; or

(ii) to a registered seed cleaner in order that it may be cleaned before being sold for sowing; or

Provided that it is sold in a container or containers, upon which, or upon the label or labels attached to which, appear 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.

Exemptions from the provisions of this Act 69. 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.

70. 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.

Minister's
decision
upon appeal
to be final

71. 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—

Regulations

(a) the forms of registers, applications, certificates, licences 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 forms of records to be kept and returns to be made by registered seed importers, registered seed cleaners, registered seed sellers, registered seed producers and licensed seed sellers for the purposes of this Act;

(d) the qualifications of official seed-testers 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 station;

(f) the operation and management of seed-testing stations, including the number of official seed-testers to be attached to each such seed-testing station and the forms of records to be kept by seed-testing stations for the purposes 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 stations and official seed-testers 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, registered seed cleaner or licensed seed seller;

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

(l) the prevention of the use of false or misleading statements in advertising any prescribed seed for sale;

(m) the prohibition or restriction of the disposal, acquisition or use of any prescribed seed as farm feed or fertilizer;

(n) standards of quality and performance of equipment and the variety of such equipment to be maintained at any registered seed cleaning plant;

(o) the methods to be employed by registered seed cleaners in and about the cleaning of prescribed seed;

(p) the inspection of land designated by any registered producer as land on which he intends to produce seed for certification as Malaŵi Certified Seed;

(q) the examination and testing of any seed intended for use by a registered seed producer in the production of seed for certification as Malaŵi Certified Seed and the methods to be employed by registered seed producers in and about the cultivation and production of seed for such certification and further for the periodic inspection of growing crops intended for the production of seed for certification as Malaŵi Certified Seed;

(r) the control, limitation or prohibition of the cultivation by a registered seed producer of any specified crops on land contiguous or adjacent to lands upon which seed intended for certification as Malaŵi Certified Seed is being grown by the registered seed producer;

(s) the control of weeds on the land of any registered seed producer which is being used for the production of seed intended for certification as Malaŵi Certified Seed or on any other land of the registered seed producer adjacent or contiguous to such land;

(t) the country or countries of origin of imported seed of any specified variety, and the certifying authority in such country or countries whose certificate thereof as certified seed may form the basis of an application by a registered seed importer for the certification of such seed as Imported Certified Seed under Part IX;

(u) the control of the prices at which seed certified under Part IX, whether as Malaŵi Certified Seed or as Imported Certified Seed, may be sold;

(v) any fees payable under this Act;

(w) any thing or matter which this Act requires to be prescribed.

Passed in Parliament this seventh day of April, one thousand, nine hundred and eighty-eight.

R. L. GONDWE
Acting Clerk of Parliament