

Age of industrial hemp: New Plant Improvement Act and plant breeders' regulations

By [Thomas Schmidt](#)

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After a long period of anticipation, it seems as if the age of legal hemp cultivation in South Africa has finally dawned. Published on 10 June 2022 in the Government Gazette, the new regulations relating to the Plant Improvement Act 11 of 2018 (the PIA) now include rules and procedures for hemp cultivation in South Africa. This has followed a declaration, published in the 20 May 2022 edition of the Government Gazette, wherein hemp varieties have now been included as protectable varieties in terms of the Plant Breeder's Rights Act 15 of 1976.



Image source: Kindel Media from [Pexels](#)

Here, hemp is defined as

“ low THC plants or parts of plants of *Cannabis sativa* L. cultivated for agricultural or industrial purposes, of which the leaves and flowering heads do not contain more than 0.2% THC. ”

Persons who wish to cultivate hemp must obtain a permit from the Registrar to perform any of the activities specified in the regulations. These activities include the importation of plants or propagating material for breeding, research or cultivation; the propagation of plants by a breeder or researcher in relation to breeding or research to develop new hemp varieties; the sale of hemp seed, seedlings, plants or cuttings; the cultivation of hemp for seed production, seedling production, production of grain or material for industrial purposes; the cleaning or conditioning of seed for cultivation; or the export of plants or propagating material for cultivation purposes. The permit, if granted, is valid for five years and renewable for another five, after which a new permit must be applied for.



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Permit holders are bound by various requirements enumerated in the regulations, which impact facilities, business operations and reporting. The major effect is that permit holders are required to report plantings and changes in the business (contact details, location of premises, persons responsible for supervision and ownership), and can only undertake transactions with other parties who also have hemp permits. There are some limited exceptions in terms of the registration of tissue culture facilities, gene banks/seed banks, and molecular analysis laboratories set up to perform chemical analysis of plant material. However, the exemptions related to small-scale subsistence propagators, non-commercial propagation, nurseries and the like do not apply to hemp.

Extension of limitations

These limitations on cultivation also extend to seed propagation and sale. No sale of seed packets and the like are contemplated in the regulations where hemp is concerned, and seed can only be bought from, or sold to, people in possession of valid hemp permit. No seed mixtures containing hemp can be sold. Finally, hemp seed intended for export must include a copy of the hemp permit, proof of certification/confirmation of the source of the seed and a copy of the analysis of the THC content before the seed can be sold.



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For plant breeders, the declaration now allows hemp varieties to be protected in much the same way as other plant varieties, with a 20-year period being provided for rights-holders.

Taking all of the above together, it is clear that the intention of the present regulations and declaration is to enable large-scale industrial or agricultural production of hemp for the fibre, seed, oil and hemp flower markets. As with the present legal and legislative environment relating to medicinal cannabis, the process of hemp propagation, cultivation, processing and sale appears to be intended to be carefully monitored and fully traceable back to source. However, where the present legal environment around medicinal cannabis does not appear to contemplate the existence of an internal market at all, the regulations relating to hemp indicate that thought has been given to the entire hemp production value chain within South Africa.

Accordingly, it now appears to be possible for local business to research, propagate, cultivate, process, analyse, breed and sell hemp seeds, propagative material and plant material in South Africa. This alone is a massive step forward into a market that is projected to grow to \$4.7bn worldwide in 2022.



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