

MALAWI GOVERNMENT

(Published 9th February 2018)

Act

No. 8 of 2018

I assent

PROF. ARTHUR PETER MUTHARIKA

PRESIDENT

1st February, 2018

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An Act to amend the Pesticides Act.

ENACTED by the Parliament of Malawi as follows —

Short title and
commencement

1. This Act may be cited as the Pesticides (Amendment) Act, 2017, and shall come into force on a date appointed by the Minister by notice published in the *Gazette*.

Amendment
of s. 2 of
Cap.35:03

2. The Pesticides Act (hereinafter referred to as the “principal Act”) is amended in section 2 by inserting, in the correct alphabetical order, the following new definitions—

“banned pesticide” means a pesticide for which all uses have been prohibited by the Pesticides Control Board in order to protect human or animal health, or the environment; and includes a pesticide that has been refused approval for the first time use or has been withdrawn from use by the Pesticides Control Board where there is clear evidence that such action has been taken in order to protect human or animal health or the environment;

“commercial pesticide applicator” means a person who applies pesticides to crops, plants, soil, water, animals or the environment at large as a trade or for gain as licensed by the Board under section 11 of the Act;

“container” means any portable device in which material can be stored, handled, treated, transported, recycled, or disposed of;

“disposal” means any operation to recycle, neutralise, destroy or isolate pesticide waste, used container and contaminated materials;

“distribution” means the process by which pesticides are supplied through trade channels to local or international markets;

“distributor” means any natural or legal person who makes a pesticide available on the market, including wholesalers, retailers, vendors and suppliers;

“manufacturer” means a corporation or other entity in the public or private sector or any individual engaged in the business or function (whether directly or through an agent or entity controlled by or under contract with it) of manufacturing a pesticide ingredient or preparing its formulation or product;

“marketing” means the overall process of product promotion including advertising product, public relations and information

services as well as the distribution and sale on local or international markets;

“minister” means the minister responsible for Agriculture;

“packaging” means the container together with the protective wrapping used to carry pesticide products via wholesale or retail distribution to users;

“personal protective equipment” means all equipment, which is intended to be worn or held by a person at work, which protects him against one or more risks to his health or safety and any addition or accessory designed to meet the objective;

“product or pesticide product” means the pesticide active ingredient and other components, in the form in which it is packaged and sold;

“registration” means the process by which the Pesticides Control Board approves the sale and use of a pesticide following the evaluation of comprehensive scientific data demonstrating that the product is effective for the intended purpose and does not pose an unacceptable risk to human or animal health or the environment;

“repackaging” means the authorized transfer of a pesticide from any commercial package into any other, usually smaller, container for subsequent sale;

“residue” means any specified substances in or on food, agricultural commodities or animal feed resulting from the use of a pesticide; and includes any derivatives of a pesticide, such as conversion products, metabolites, reaction products and impurities considered to be of toxicological significance;

“severe restricted pesticides” means a pesticide for which virtually all registered uses have been prohibited by final government regulatory action, but for which certain specified registered use or uses remain authorized;

“toxicity” means a physiological or biological property which determines the capacity of a chemical to do harm or produce injury to a living organism by other than mechanical means; and

“vendor” means any person who sells or offers pesticides or empty or used pesticide containers to the public for sale by display at any form of market or by advertisement in any form of media or by tender, auction or private treaty”.

3. Section 4 of the principal Act is amended by deleting subsection (1), and substituting therefor the following new subsection (1)—

Amendment
of s. 4 of the
principal Act

“(1) The Board shall consist of —

(a) the Secretary responsible for Agriculture or his designate;

(b) the Director of Agricultural Research Services;

(c) the Secretary responsible for Industry and Trade;

(d) the Director General of the Environmental Protection Authority;

(e) a Principal of any tertiary public agriculture institution to be appointed by the Minister, on recommendation of the Registrar;

(f) a representative of the pesticide industry appointed by the Minister, on the recommendation of the Registrar;

(g) member of any non-governmental organization involved in consumer rights protection to be appointed by the Minister, on the recommendation of the Registrar;

(h) the Director-General of the Malawi Bureau of Standards;

(i) the Registrar of the Pharmacy, Medicines and Poisons Board;

(j) a public health officer, from Ministry of Health; and

(k) A farmer representative from a commodity specific farmer organization, appointed by the Minister.”

Amendment
of s. 11 of the
principal Act

4. Section 11 of the principal Act is amended by deleting subsection (2) and substituting therefor the following new subsections (2) and (3)—

“(2) Without prejudice to the generality of subsection (1), the Board—

(a) shall register pesticides and issue certificates, licenses and permits in accordance with this Act;

(b) shall monitor and control the import, export, manufacture, distribution, sale, storage, use and disposal of pesticides in Malawi;

(c) shall issue guidelines and conduct public educational campaigns on the handling and use of pesticides after consultation with such persons or bodies as seem to the Board to be broadly representative of the interests concerned;

(d) may, in consultation with the relevant authorities, conduct public educational campaigns on the safe handling and use of pesticides;

(e) may advise the Minister on whether or not the Minister

should use the power granted under section 23 (3) to exempt a pesticide or class of pesticides from the licensing requirements under the Act, taking into consideration the potential implication for humans, animals and the environment;

(f) shall issue temporary ban on the importation or manufacturing of a particular pesticide to control stockpiling;

(g) shall prevent smuggling of pesticides into Malawi;

(h) shall monitor disposal of empty or used pesticide containers and decontamination of sites contaminated with pesticides;

(i) shall if the Board is satisfied, in case of contamination, issue declarations in a prescribed form against importers, distributors, manufacturers, vendors or storage facilities, as the case may be, declaring them as having caused or contributed to such contamination;

(j) shall if the Board is satisfied, in case of stockpiling, issue declarations in a prescribed form against importers, distributors, manufacturers, vendors or storage facilities, declaring them as having caused or contributed to the stockpiling of pesticides;

(k) shall prevent pollution due to pesticide use or abuse by ordering a particular importer, manufacturer or distributor, farmer or owner of any storage facility to—

(i) dispose of any quantities of any pesticides or pesticide containers;

(ii) clean any pesticide contaminated farms or sites or storage facilities in a prescribed manner; or

(iii) appoint any waste management company or organization registered under section 37(4) to dispose of a pesticide;

(l) may advise the Minister on any matters relating to pesticides and the performance of functions assigned to the Minister under this Act;

(m) may propose regulations to be made by the Minister under this Act; and

(3) The Minister may by regulation, provide remedial procedures to be followed for disposal of pesticides, or empty or used containers and for decontamination of contaminated farms or sites and clearing of stockpiles giving effect to declarations made by the Board under paragraph (i) and (j)."

Amendment of
s. 12 of the
principal Act

5. Section 12 of the principal Act is amended, in subsection (1),
by—

(a) renumbering paragraph (e) as paragraph (f); and

(b) inserting a new paragraph (e) as follows—

“(e) cess, which is imposed on pesticides under this Act or under any written law.”

Amendment
of s. 17 of the
principal Act

6. Section 17 of the principal Act is amended, by inserting a new subsection (3) as follows—

“(3) No pesticide either registered or unregistered shall be imported or exported without a permit issued by the Board.”

Amendment
of s. 18 of the
principal Act

7. Section 18 of the principal Act is amended—

(a) by deleting subsection (2) and substituting therefor the following new subsection (2) —

“(2) An application to the Board under subsection (1) shall contain the following information in order for the Board to satisfy itself in respect of the matters set out in section 19 (3)—

(a) the proposed distinguishing name of the formulation;

(b) a statement of the composition, including all ingredients, and the chemical identities of the active ingredients, and methods of analysis of the formulation;

(c) adequate toxicological data concerning the active ingredients;

(d) reports of efficacy trials to support the proposed uses;

(e) reports of residue trials following the proposed use on crops intended for human or animal consumption, and the methods of analysis for determining residues on these crops;

(f) reports of environmental effects following the use of the proposed formulation at the proposed rates;

(g) information on disposal methods for the used container and any surplus pesticide;

(h) a copy of the proposed packaging material or container and the label in the national language or languages, specifying the product content information, hazard and safety information, directions for use, supplier identification and contact number; and

(i) any other information that the Board may reasonably demand.

(b) by inserting the following new subsections (6) and (7) —

“(6) The Board shall only grant a registration for a pesticide to a person permanently resident in Malawi or to a business entity which is constituted and registered in Malawi.

(7) The Board shall, where it deems it necessary for the processing of an application for registration, inspect the source of the pesticide sought to be registered at the applicant's expense or cost."

8. Section 19 of the principal Act is amended by deleting subsection (7) the words and substituting therefor the following new subsection (7)—

Amendment
of s.19 of the
principal Act.

"(7) The Board shall cause to be published in the *Gazette* and in a newspaper of wide circulation, bi-annually, a list of all pesticides registered under this section."

9. Section 20 of the principal Act is amended—

Amendment
of s. 20 of the
principal Act

(a) by deleting subsection (3) and substituting therefor the following new subsection (3)—

"(3) A permit issued under subsection (1) shall state—

(a) the period of validity, which shall not exceed one year;

(b) the maximum quantity of the pesticide covered by the permit;

(c) the active ingredient, formulation and purpose or use of the product;

(d) the name and address of person or entity permitted to import the pesticide; and

(e) any conditions which the Board considers appropriate to impose in order to protect human and animal health and the environment, and to give effect to this Act."

(b) by deleting subsection (4) and substituting therefor the following new subsection (4)—

"(4) A permit issued under subsection (1) shall only authorize the importation of a single consignment, which may contain more than one product, and shall not exceed—

(a) two litres, in the case of a liquid pesticide;

(b) one kilogram, in the case of a solid pesticide; and

(c) on receipt of the product in subsection (a) or (b) the permit shall be surrendered by the permit holder to an inspector at the place of importation."

(c) by inserting the following new subsection (5)—

"(5) Any unregistered pesticide imported under section 20(4) (a) or (b) must be clearly identified with a label that complies with this Act."

Replacement
of s. 21 of the
principal Act

10. Section 21 of the principal Act is repealed, and replaced with the following new section 21—

“Duration of
registration and
renewal of
registration

21.—(1) The registration of a pesticide shall be valid for a period of five years.

(2) The Board may, renew a registration upon application by the registration holder for a further period of five years if the Board is satisfied in respect of the matters referred to in section 19 (3).

(3) The application for renewal must be made at least two months prior to the expiration of the previous registration period by completing the prescribed form and paying the prescribed fee.

(4) The registration of a pesticide shall be terminated where no application for renewal is received by the Board in accordance with subsection (3), but the Board may consider the re-instatement of a lapsed registration on receipt of the necessary documentation and payment of the fee within fourteen (14) days of the expiry date, where-after a lapsed registration shall be regarded as a new application should the registration holder wish to renew the registration.

(5) If the Board refuses to renew the registration of the pesticide in accordance with subsection (2), it shall give its reasons in writing to the applicant.”

Amendment
of s. 24 of the
principal Act

11. Section 24 of the principal Act is amended, in subsection (2), by adding a new paragraph (f) as follows —

“(f) shall be terminated in the event that no application for the renewal of the licence is received by the Board by the expiry date, but the Board may consider the re-instatement of a lapsed licence on receipt of the necessary documentation and payment of the fee within fourteen (14) days of the expiry date, where-after a lapsed licence shall be regarded as a new application should the licence holder wish to renew the licence.”

Insertion of
s. 25A and
25B into the
principal Act

12. The principal Act is amended by inserting, immediately after section 25, the following new sections as sections 25A and 25B—

“Pesticide
storage

25A.—(1) A pesticide shall be stored separately from food intended for human or animal consumption, and in a storage facility that is—

(a) ventilated so that pesticide vapours are vented to the outside;

(b) not used for the storage of food intended for human or animal consumption;

(c) locked when unattended; and

(d) accessible only to persons authorized by the person storing the pesticide.

(2) Each door providing access to a facility used for storage shall bear a sign that—

(a) has the words “warning: chemical storage, authorized persons only”, written in English, in Chichewa and in a local language or local dialect of the area in block letters; and

(b) is clearly visible to a person approaching the door.

(3) Fumigants and other pesticides that release vapour, and bear a “poison” symbol or any pictogram depicting harmfulness on the label must be stored in a storage facility that is not attached to or within a building used for living accommodation.

“Containment, storage and transportation of pesticides and requirement to notify the Fire Department and the Board

25B.—(1) Thirty days prior to commencement of the storage of pesticides at a location, the owner or person responsible for or in-charge of the storage facility shall provide notice of the presence of the storage facility and would be contents to the Board and the Fire Department or Emergency Services responsible for fire protection and emergency response in that location.

(2) The Board shall designate Fire Departments or Emergency Services responsible for particular locations.

(3) (a) A person who stores a pesticide shall store it in a manner that minimizes hazards to human or animal health and the environment.

(b) A person who transports or causes or allows the transport of a pesticide shall ensure that the pesticide is secured and transported in accordance with the applicable standards prescribed under this Act, especially to prevent—

(i) the escape, discharge or unauthorized removal of the pesticide from the transport vehicle; and

(ii) contamination of food or drink intended for animal or human consumption, household furnishings, toiletries, clothing, bedding or similar items that are transported with the pesticide.

(4) A person who uses a pesticide shall use it in a manner that—

(a) minimizes hazards to human or animal health and the environment; and

(b) is in accordance with the applicable standards in relation to the—

(i) handling, mixing, applying or disposing of pesticides; and

(ii) handling and disposal of containers used for pesticide.”

Amendment
of s. 26 of the
principal Act

13. Section 26 of the principal Act is amended—

(a) in subsection (3) by inserting, immediately after paragraph (c), a new paragraph as paragraph (d) as follows—

“(d) the applicant has the capacity to keep up to date records in connection with the pesticides.”

(b) by deleting subsection (4) and substituting therefor the following new subsection (4)—

“(4) The Board shall publish a list of all registered commercial applicators licensed under this Act in the *Gazette* at least once a year.”

(c) by inserting immediately after subsection (4), the following new subsection (5)—

“(5) A licence under this section shall—

(a) be valid for a maximum period of one year and is renewable on or before the expiry date on application and on payment of the prescribed fee; and

(b) be terminated where the Board does not receive an application for its renewal by the expiry date, but the Board may consider the reinstatement of a lapsed licence on receipt of the necessary documentation and payment of the fee within fourteen (14) days of the expiry date, where after a lapsed licence will be regarded as a new application should the licence holder wish to renew the licence.”

Amendment
of s. 28 of the
principal Act

14. Section 28 of the principal Act is amended, by inserting a new subsection (3) as follows—

“(3) All pesticides shall be stored or offered for sale in the original container with an approved label as supplied by the registration holder and the decanting of pesticides into alternate packaging for storage or for sale is hereby prohibited.”.

15. Section 29 of the principal Act is amended by inserting a new subsection (4) as follows—

Amendment
of s. 29 of the
principal Act

“(4) A pesticide shall be kept, handled, stored or transported—

(a) in the container in which it was originally packaged and with the label originally affixed by the manufacturer; or

(b) in a container designed for containing the pesticide and which is properly labeled in line with this Act.”.

16. Section 30 of the principal Act is repealed and replaced with the following new section as section 30—

Replacement
of s. 30 of the
principal Act

“Advertising
of pesticides” 30.—(1) A person shall not advertise any pesticide which has not been registered under this Act.

(2) A person shall not advertise any pesticide in a manner that—

(a) is false or misleading in any material particular or is intended to deceive;

(b) promotes the use of pesticides that have not been approved by the Board;

(c) is inconsistent with the statement required under section 29 to be included in the label;

(d) employs any false or misleading comparisons with other pesticides; and

(e) is contrary to the conditions of registration of the pesticide and with such other requirements as may be prescribed.

(3) Subject to subsection (2), a person shall not—

(a) use statements in advertising that are not technically justified;

(b) make advertising statement or visual presentation which directly or by implication, omission, ambiguity or exaggeration claim, is likely to mislead the buyer, in particular with regard to the safety of the product, its nature, composition or suitability for use, official recognition or approval;

(c) publicly advertise pesticides which are legally restricted to use by trained or registered operators except through media that is available to those possessing the skills and competence to use the pesticide;

(d) simultaneously market different pesticide active ingredients or combinations of ingredients under a single brand name;

(e) advertise pesticides in a manner that encourages uses other than those specified on the approved label;

(f) use promotional material that includes recommendations at variance with those of the recognized research and advisory agencies;

(g) make advertisement that misuse research results, quotations from technical and scientific literature or scientific jargon to make claims appear to have a scientific basis they do not possess;

(h) make misleading statements concerning the effectiveness of the product;

(i) make advertisement that include statements comparing the risk, hazard or safety of different pesticides or other substances;

(j) make advertisement that does not encourage purchasers and users to read the label carefully and at all times a seller or distributor of pesticides to end users has a duty to have the label read to them if they cannot read;

(k) engage in promotional activities using inappropriate incentives or gifts to encourage the purchase of pesticides; or

(l) advertise pesticides in a manner that does not draw attention to the appropriate warning phrases and symbols as laid down in international labeling guidelines.”.

Amendment
of s. 31 of the
principal Act

17. Section 31 of the principal Act is amended, in subsection (2) by inserting a new paragraph (d) as follows—

“(d) establish standards for withholding periods or pre-harvest intervals after pesticide application to food crops.”.

Amendment of
s. 33 of the
principal Act

18. Section 33 of the principal Act is amended, in the marginal note, by deleting the word “Imposition”, and substituting therefor the word “Inspection”.

19. Section 34 of the principal Act is amended by inserting new subsections (5) and (6) as follows—

Amendment
of s. 34 of the
principal Act

“(5) A person shall not handle pesticides without using or improvising the use of personal protective equipment.

(6) Personal protective equipment shall be designed to, among other things, protect the user from inhalation or absorption of hazardous material.”

20. Section 37 of the principal Act is repealed and replaced by the following new section 37—

Replacement
of s. 37 of the
principal Act

“Disposal of
pesticides
and use of
used
pesticide
containers

37.—(1) A person shall not dispose of any pesticide or pesticide container or packaging in a manner that is unduly hazardous to human or animal health or the environment or is contrary to any written law.

(2) A person shall not store food or anything intended for human or animal consumption in an empty or used pesticide container.

(3) A person or vendor shall not package pesticides for sale in a container not specifically manufactured to contain that type of pesticide.

(4) A person or vendor shall not offer an empty or used pesticide container for sale to be used for the containment of any material other than the pesticide for which the container was originally manufactured.

(5) The Minister shall make regulations prescribing the manner of disposal of pesticides and pesticide containers.

(6) The Board shall licence private organizations registered under the Companies Act or the Trustees Incorporation Act, specialized in waste management, to carry out the business of disposal of pesticides, empty or used containers and decontamination of sites contaminated with pesticides in Malawi.”

Cap. 46:03
Cap. 5:03

21. Section 39 of the principal Act is repealed and replaced by the following new section 39—

Replacement
of s. 39 of the
principal Act

“Powers and
duties of
inspectors

39.—(1) An inspector may—

(a) enter on any land, premises, aircraft, vessel or vehicle, at or in which any pesticide is or may be reasonably suspected to be manufactured, stored, transported, sold, distributed or used to determine whether the provisions of this Act are being complied with;

(b) require the production of, inspect, examine and copy licenses, registers, records and other documents relating to this Act;

(c) make examinations and inquiries to discover whether this Act is complied with;

(d) take samples of any articles and substances to which this Act relates and, as may be prescribed, submit such samples for tests and analysis;

(e) carry out periodic inspections of all establishments which manufacture, import, export, store, sell, distribute or use pesticides to determine whether the provision of this Act are being complied with;

(f) enter and inspect farmers' fields to ensure that only the recommended pesticides are used on specific crops and according to the prescribed procedures;

(g) seize any equipment, pesticide, document, record, empty or used pesticide container or other things which the inspector believes has been used in, or which appears to afford evidence of, a contravention of this Act;

(h) require any person whom the inspector suspects of having committed, or of having knowledge of, an offence under this Act, to state his name and residential address; and

(i) cause a police officer to investigate any person whom the inspector on reasonable grounds suspects of having committed an offence against this Act.

(2) Notwithstanding subsection (1), any inspector shall—

(a) require a warrant to enter any private dwelling place without the consent of the occupier; and

(b) on request produce their authority to enter upon any premises, place, aircraft, vessel or vehicle.

(3) The inspector shall give a seizure notice to the person from whose custody anything has been seized under subsection (1) (g), and the thing shall be returned to that person immediately if it is decided that no prosecution will be instituted or if the trial of the person has been concluded, unless the thing was declared forfeited under sections 48 or 49."

22. Section 40 of the principal Act is repealed and replaced by the following new section 40—

Replacement
of s. 40 of the
principal Act

"Record
keeping

40.—(1) The Board shall cause to be kept records of all pesticides manufactured in, imported into, and exported from, Malawi.

(2) Every person who manufactures, imports, or exports pesticides, or is a commercial applicator of pesticides, shall keep a record of the quantities of pesticides manufactured, imported, exported, or used by the commercial applicator, and of any other information that may be prescribed.

(3) Every person who sells pesticides shall—

(a) keep a record of each sale of a commercial or restricted pesticide; and

(b) prepare and submit to the Board, a summary of the licensee's sales within the calendar year, in which that licensee was licensed.

(4) The record required under subsection (1) shall include the following in relation to each sale—

(a) the date of sale;

(b) the purchaser's name, address, telephone number and, for sales of restricted pesticides, the purchaser's applicator certificate number;

(c) the certified dispenser's name and certificate number;

(d) the pesticide sold including its trade name and registration number under the Act; and

(e) the size of the container the pesticide was sold in, and the number of containers sold.

(5) The annual summary of pesticide sales required under subsection (2) shall include the following in relation to each commercial or restricted pesticide sold by the licensee in the calendar year to which it relates—

(a) trade name;

(b) registration number under the Act;

(c) active ingredient; and

(d) total litres or kilograms sold.

(6) The records kept in accordance with subsection (2) shall be made available to the Board or the Registrar

upon request, and the Minister may by regulation require that the records be transmitted periodically to the Board.

(7) The Board and the Registrar shall keep confidential all information disclosed under subsection (3)."

Replacement
of s. 41 of the
principal Act

23. Section 41 of the principal Act is repealed and replaced by the following new section 41—

"Procedures for
taking samples
of pesticides

41.—(1) Any sample of a pesticide taken under this Act shall be taken into three parts each of which shall immediately be sealed and suitably labeled or marked in the presence of the person in charge of or in possession of the pesticide, or their representative as follows—

(a) first part, shall be sent to an accredited analyst together with a certificate in the prescribed form signed by the inspector or officer;

(b) the second part, together with a copy of the certificate shall be delivered or posted in accordance with guidelines issued by the Board to the person in possession of the pesticide; and

(c) the third part, shall be retained by the Registrar.

(2) In the event of a dispute relating to a sample, the Board or the court may have both the sample delivered to the Registrar and the sample delivered to the person in possession of the pesticide, sent to a laboratory for analysis.

(3) A person shall not be entitled to charge or claim compensation for any pesticide taken as a sample under this section.

(4) For purposes of this section "sample" means a quantity of pesticide not exceeding—

(a) two litres in the case of a liquid pesticide; and

(b) one kilogram in the case of a solid pesticide."

Amendment of
section 44 of
the principal
Act

24. Section 44 of the principal Act is amended by deleting the words—

(a) "is guilty of an offence" wherever those words appear in that section and substituting therefor the words "commits an offence";

(b) "K100,000" and substituting them with the words "K5,000,000";

(c) "K150,000" and substituting them with the words "K3,000,000";

(d) "K20,000" and substituting them with the words "K2,000,000";

(e) "K10,000" and substituting them with the words "K1,500,000"; and

(f) "K1,000," and substituting them with the words "K1,000,000".

25. Section 45 (1) of the principal Act is amended, in paragraph (b) by deleting the words "K2,000" and replacing them with the words "K2,000,000".

Amendment
of section 45
of the
Principal Act

26. Section 53 of the principal Act is amended, in paragraph (q) by deleting the words "K2,000" and replacing them with the words "K2,000,000".

Amendment
of section 53
of the
principal Act

Passed in Parliament this eleventh day of December, two thousand and seventeen.

FIONA KALEMBA
Clerk of Parliament