

**PESTICIDES ORDINANCE
- CHAPTER 133**

LONG TITLE

Long title VerDate:30/06/1997

To provide for the registration and control of pesticides and for matters connected therewith.
(Amended 79 of 1990 s. 2)

[15 July 1977] L.N. 166 of 1977

(Originally 38 of 1977)

I

PRELIMINARY VerDate:30/06/1997

SECT 1

Short title VerDate:30/06/1997

This Ordinance may be cited as the Pesticides Ordinance.
(Amended 79 of 1990 s. 3)

SECT 2

Interpretation VerDate:01/01/2000

In this Ordinance, unless the context otherwise requires-

"active ingredient", in relation to a pesticide, means any substance, mixture of substances or biological agent in the pesticide which is the biologically active part of the pesticide; (Added 79 of 1990 s. 4)

"agricultural pesticide" means any insecticide, fungicide, herbicide, nematocide, molluscicide or any substance (whether organic or inorganic) having any of the properties of-

(a) destroying or repelling any insect, mite, mollusc, nematode, fungus, bacterium, virus or other pest capable of destroying or damaging plants;

(b) directly or indirectly controlling the activity of, or preventing or mitigating the harmful effect on plants of, any such pest;

(c) destroying weeds;

(d) acting as a bird or animal repellent, plant growth regulator, defoliant or desiccant; [cf. 1967 c. 50 s. 2 U.K.]

"Director" means the Director of Agriculture, Fisheries and Conservation and the Deputy Director of Agriculture, Fisheries and Conservation; (Amended L.N. 331 of 1999)

"inert ingredient", in relation to a pesticide, means any ingredient of the pesticide which is not an active ingredient; (Added 79 of 1990 s. 4)

"inspector" means any public officer authorized to be an inspector under section 14;

"licence" means a licence to import, sell or supply registered pesticides issued under section 9; (Amended 79 of 1990 s. 4)

"member of the Customs and Excise Service" means any person holding an office specified in Schedule 1 to the Customs and Excise Service Ordinance (Cap 342); (Amended 46 of 1977 s. 18; 68 of 1995 s. 2)

"permit" means a permit to import, be in possession of, sell or supply an unregistered pesticide issued under section 9; (Amended 79 of 1990 s. 4)

"pesticide" means-

(a) any insecticide, fungicide, herbicide, acaricide or any substance (whether organic or inorganic) or mixture of substances used or intended to be used for preventing, destroying, repelling, attracting, inhibiting or controlling any insect, rodent, bird, nematode, bacterium, fungus, weed or other form of plant or animal life or any virus, which is a pest; or

(b) any substance or mixture of substances used or intended to be used as a plant growth regulator, defoliant or desiccant, but does not include-

(i) any purely mechanical device for trapping or catching insects, rodents or other animals;

(ii) any purely electromagnetic or ultrasonic device for the control of mosquitoes, rodents or other pests;

(iii) any antiseptic, disinfecting solution or preparation in clinical or sanitary applications; and

(iv) any pharmaceutical product within the meaning of section 2 of the Pharmacy and Poisons Ordinance (Cap 138); (Added 79 of 1990 s. 4)

"plants" include trees, bushes and seeds;

"register" means the register of pesticides maintained under section 4; (Amended 79 of 1990 s. 4)

"registered pesticide" means a pesticide which is registered in the register; (Added 79 of 1990 s. 4)

"unregistered pesticide" means a pesticide which is not registered in the register. (Added 79 of 1990 s. 4) (Amended 79 of 1990 s. 4)

SECT 3

Application VerDate:30/06/1997

(1) This Ordinance shall not apply to a pesticide which-

(a) (Repealed 79 of 1990 s. 5)

(b) (Repealed 79 of 1990 s. 5)

(c) is in transit; or

- (d) is transhipped in Hong Kong.
- (2) (Repealed 79 of 1990 s. 5)
- (3) For the purposes of subsection (1)(c), a pesticide is in transit if it is destined for a place outside Hong Kong and is passing through Hong Kong on the same ship, aircraft or vehicle without transshipment.
- (4) For the purposes of subsections (1)(d) and (3), a pesticide is in transshipment if it is consigned on a through bill of lading or air waybill from a place outside Hong Kong to another place outside Hong Kong and is or is to be removed from the ship, vehicle, train or aircraft in which it was imported and either returned to the same ship, vehicle, train or aircraft or transferred to another ship, vehicle, train or aircraft before being exported, whether it is or is to be transferred directly between such ships, vehicles, trains or aircraft or whether it is to be landed in Hong Kong after its importation and stored, pending exportation.(Amended 79 of 1990 s. 5)

II REGISTRATION OF PESTICIDES VerDate:30/06/1997

SECT 4 Register of pesticides VerDate:30/06/1997

The Director shall maintain a register of pesticides in which-

- (a) Part I shall contain a list of all pesticides which are in a form ready for immediate use without going through any treatment or process and which are for general domestic use; and
- (b) Part II shall contain a list of all other pesticides.
(Replaced 79 of 1990 s. 6)

SECT 5 Registration VerDate:30/06/1997

- (1) Any person may apply to the Director for registration of a pesticide.
- (2) An application under subsection (1) shall be made in writing in the prescribed manner.
- (3) After considering an application under subsection (1) the Director may-
 - (a) register the pesticide in Part I or II of the register; or
 - (b) refuse to register it.
- (4) The Director may register a pesticide in Part I or Part II of the register although an application for registration of the pesticide has not been made under subsection (1).
- (5) The Director may register a pesticide subject to such conditions as he may think fit.
(Amended 79 of 1990 s. 7)

SECT 6

Power of Director to cancel or modify registration VerDate:30/06/1997

The Director may at any time-

- (a) cancel the registration of a pesticide in Part I of the register and register it in Part II of the register;
- (b) modify or add to, or cancel, any condition imposed by him under this Part in respect of the registration of a pesticide; or
- (c) cancel or suspend the registration of a pesticide if it appears to him to be necessary in the interests of public safety.
(Amended 79 of 1990 s. 8)

III

CONTROL OF PESTICIDES VerDate:30/06/1997

SECT 7

Control of registered pesticides VerDate:30/06/1997

- (1) Save under and in accordance with a licence, no person shall-
 - (a) import into or cause to be imported into Hong Kong;
 - (aa) manufacture; (Added 79 of 1990 s. 9)
 - (b) sell or offer or expose for sale; or
 - (c) supply or offer to supply,any registered pesticide.
- (2) Subsection (1)(b) and (c) shall not apply to any person who-
 - (a) is not engaged in the trade or business, whether for wholesale, retail or otherwise, of selling, offering or exposing for sale, supplying or offering to supply pesticides; and
 - (b) sells, offers or exposes for sale, supplies or offers to supply any pesticide which he acquired for his own use.
(Amended 79 of 1990 s. 9)

SECT 8

Control of unregistered pesticides VerDate:30/06/1997

- (1) Save under and in accordance with a permit, no person shall-
 - (a) import into or cause to be imported into Hong Kong;

- (aa) manufacture; (Added 79 of 1990 s. 10)
- (b) sell or offer or expose for sale;
- (c) supply or offer to supply; or
- (d) have in his possession,

any unregistered pesticide. (Amended 79 of 1990 s. 10)

(2) Subsection (1)(d) shall not apply in relation to a person to whom the unregistered pesticide is sold or supplied by a holder of a permit in accordance with the permit conditions. (Added 79 of 1990 s. 10)

SECT 9

Licence or permit for pesticides VerDate:30/06/1997

- (1) An application for a licence or permit shall be made in writing to the Director in the prescribed manner.
- (2) After considering an application under subsection (1) the Director may-
 - (a) issue to the applicant a licence or a permit, as the case may be; or
 - (b) refuse to issue a licence or permit.
- (3) Where the Director refuses to issue a licence or a permit he shall send to the applicant a notice of the refusal and state in the notice the reasons for the refusal.
- (4) A licence may authorize the holder in respect of-
 - (a) registered pesticides generally;
 - (b) all pesticides registered in Part I of the register or any such pesticides as may be specified in the licence; or
 - (c) all pesticides registered in Part II of the register or any such pesticides as may be specified in the licence. (Amended 79 of 1990 s. 11)
- (5) Subject to subsection (6), the Director may issue a licence subject to such conditions as he may think fit. (Amended 79 of 1990 s. 11)
- (6) A licence authorizing the sale of a pesticide shall be subject to the conditions of registration of that pesticide. (Replaced 79 of 1990 s. 11)
- (7) The Director may issue a permit subject to such conditions as he may think fit and any permit issued shall specify the unregistered pesticide to which it relates. (Amended 79 of 1990 s. 11)

(8) The Director may at any time vary the particulars of a licence or permit or modify, add to, or cancel, the conditions of a licence or permit.

SECT 10

Cancellation or suspension of licence VerDate:30/06/1997

Subject to section 12, the Director may cancel, or suspend for such period as he may think fit, a licence-

- (a) for breach of this Ordinance;
- (b) for breach of any of the conditions of the licence; or
- (c) if it appears to him to be necessary in the interests of public safety.

SECT 11

Cancellation of permit VerDate:30/06/1997

Subject to section 12, the Director may cancel a permit-

- (a) for breach of this Ordinance;
- (b) for breach of any of the conditions of the permit; or
- (c) if it appears to him to be necessary in the interests of public safety.

SECT 12

Notice of intention to cancel or suspend VerDate:30/06/1997

(1) Where the Director intends to cancel or suspend a licence under section 10 or cancel a permit under section 11, he shall give to the holder of the licence or permit 14 days' notice in writing of his intention to cancel or suspend the licence or cancel the permit as the case may be and the notice shall specify the grounds for the intended cancellation or suspension.

(2) The holder of a licence or permit may, within the 14 day period referred to in subsection (1), make written submissions to the Director as to why his licence or permit should not be cancelled or his licence suspended as the case may be.

SECT 13

Directions on disposal of pesticide where licence or permit cancelled VerDate:01/07/1997

Adaptation amendments retroactively made - see 60 of 2000 s. 3

(1) Where the Director cancels a licence or a permit under section 10 or 11 he may give to the licence holder or permit holder such directions as he thinks fit for the disposal of the pesticide to which the licence or permit relates and for the disposal of any container containing that pesticide. (Amended 79 of 1990 s. 12)

(2) A licence holder or permit holder referred to in subsection (1) may apply in writing to the Director for a variation of any direction given under that subsection, stating the grounds of the application and the facts and circumstances relied upon in support of those grounds.

(3) The Director shall consider every application under subsection (2) and shall within 14 days from the receipt of any such application advise the licence holder or permit holder in writing of his decision to confirm or vary the directions given under subsection (1).

(4) Where any licence holder or permit holder referred to in subsection (2) appeals pursuant to section 16 against a decision under subsection (3), any period for compliance embodied in such direction shall be extended by the period between presentation of the appeal and notification of the Chief Executive's decision. (Amended 60 of 2000 s. 3)

(5) Any act done or omitted to be done in the carrying out of any direction given under this section shall not constitute an offence under this Ordinance.

SECT 13A

Prohibited or controlled inert ingredients VerDate:30/06/1997

Where the Director is of the opinion that the use of a particular inert ingredient in the manufacture of pesticides, or that the import, sale or supply of pesticides containing a particular inert ingredient should, in the interest of public safety, be prohibited or controlled, he may, by notice in the Gazette-

- (a) prohibit the use of the inert ingredient in the manufacture of pesticides;
- (b) prohibit for all or any purposes the import, sale or supply of pesticides containing the inert ingredient;
- (c) control the use of the inert ingredient in the manufacture of pesticides by imposing such conditions on such use as he thinks fit and specifies in the notice;
- (d) control the import, sale or supply of pesticides containing the inert ingredient by imposing such conditions on such import, sale or supply as he thinks fit and specifies in the notice.
(Added 79 of 1990 s. 13)

IV

MISCELLANEOUS VerDate:30/06/1997

SECT 14

Appointment of inspectors VerDate:30/06/1997

The Director may appoint in writing any public officer to be an inspector for the purposes of this Ordinance.

SECT 15

Powers of entry, seizure, etc. VerDate:30/06/1997

(1) If it appears to a magistrate upon the oath of any person that there is reasonable cause to suspect that there is in any place or premises any pesticide in respect of which an offence under this Ordinance is being or has been committed, the magistrate may by warrant authorize any inspector or member of the Customs and Excise Service with such assistants as may be necessary to enter the place or premises, by force if necessary, and search the place or premises named in the warrant.

(2) In any premises or place entered pursuant to subsection (1) an inspector or member of the Customs and Excise Service may-

(a) seize and detain any article, document or thing which appears to him to be or to contain evidence of an offence under this Ordinance;

(b) open and examine any article, document or thing specified in paragraph (a).

(3) An inspector upon production of his authority as an inspector or any member of the Customs and Excise Service may, at any time between the hours of 9 a.m. and 6 p.m., without a warrant enter any premises or place in or upon which he reasonably suspects any pesticide is kept, stored, sold or offered or exposed for sale and may-

(a) require the production of-

(i) any licence or permit; or

(ii) any document which relates to the origin or nature of any pesticide or which he suspects to be relevant to an offence under this Ordinance;

(b) examine and take copies of any licence or permit or of any document referred to in paragraph (a); and

(c) require such other information and take, on payment therefor, such samples as may be necessary for the purposes of the inspection.(Amended 46 of 1977 s. 18; 79 of 1990 s. 14)

SECT 16

Appeals VerDate:01/07/1997

Adaptation amendments retroactively made - see 60 of 2000 s. 3

Any person who is aggrieved by any decision of the Director under this Ordinance may, within 28 days after the receipt of the notification of the decision, appeal therefrom to the Chief Executive and on any such appeal the Chief Executive may confirm, vary or revoke the decision of the Director.

(Amended 60 of 2000 s. 3)

SECT 17

Offences and penalties VerDate:30/06/1997

(1) Any person who contravenes section 7 or 8 commits an offence and is liable on conviction to a fine of \$50000 and to imprisonment for 1 year.

(2) Any holder of a licence who contravenes any of the conditions of his licence or any holder of a permit who contravenes any of the conditions of his permit commits an offence and is liable on conviction to a fine of \$25000 and to imprisonment for 6 months.

(3) Any person who-

(a) wilfully obstructs an inspector or member of the Customs and Excise Service in the exercise of any power under section 15; (Amended 46 of 1977 s. 18)

(b) refuses to allow any sample to be taken in accordance with section 15(3);

(c) fails without reasonable excuse to produce any licence, permit or document, or to give any information, when required to do so under section 15(3); or

(d) fails without reasonable excuse to obey a direction given by the Director under section 13, commits an offence and is liable on conviction to a fine of \$10000 and to imprisonment for 6 months.

(4) A holder of a licence or permit who, in the manufacture of pesticides,-

(a) uses any inert ingredient the use of which is prohibited by notice under section 13A(a); or

(b) uses any inert ingredient the use of which is subject to conditions specified by notice under section 13A(c) in contravention of any condition so specified,

commits an offence and is liable to a fine of \$2000 and to imprisonment for 6 months. (Added 79 of 1990 s. 15)

(5) A holder of a licence or permit who imports or causes to be imported, sells or offers or exposes for sale, supplies or offers to supply for use in Hong Kong-

(a) any pesticide the import, sale or supply of which, as may be appropriate, is prohibited by notice under section 13A(b); or

(b) any pesticide the import, sale or supply of which, as may be appropriate, is subject to conditions specified by notice under section 13A(d) in contravention of any condition so specified,

commits an offence and is liable to a fine of \$2000 and to imprisonment for 6 months. (Added 79 of 1990 s. 15)

SECT 18

Forfeiture VerDate:01/07/1997

Adaptation amendments retroactively made - see 60 of 2000 s. 3

(1) A magistrate may, on application by the Government, order to be forfeited any pesticide, or any container containing any pesticide, with respect to which any offence under this Ordinance has been committed, whether or not any person has been convicted of such offence and upon the making of an order of forfeiture such pesticide or container shall be deemed to be the property of the Government free from all rights of any person. (Amended 60 of 2000 s. 3)

(2) In any proceedings under subsection (1), any statement or other indication of the nature of any pesticide written upon or indicated on the container, or on any box or other covering of whatever nature enclosing the pesticide or the container, shall, until the contrary is proved, be deemed to be a true description of the pesticide or of the contents of the container, as the case may be.
(Amended 79 of 1990 s. 16)

SECT 19
Regulations VerDate:01/07/2007

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

(1) The Director of Agriculture, Fisheries and Conservation may by regulation provide for-
(Amended 80 of 1997 s. 4; L.N. 331 of 1999)

(a) applications for registration of pesticides including the information to be supplied by applicants therefor; (Amended 79 of 1990 s. 17)

(b) the imposition of conditions on registration; (Amended 79 of 1990 s. 17)

(c) (Repealed 80 of 1997 s. 4)

(d) the form and contents of the register;

(e) the proof of matters relating to registration by the production of certificates;

(f) the issue of licences and permits including-

(i) the information to be supplied by applicants therefor;

(ii) the imposition of conditions thereof;

(iii) the cancellation and suspension for any period thereof;

(g) the duration of licences and permits and the renewal of licences;

(h) the surrender of licences and permits;

(i) the issue of duplicate licences and permits;

(j) the containers for pesticides or classes or types of pesticides including- (Amended 79 of 1990 s. 17)

(i) the shape and size;

(ii) the design and colour;

(iii) the composition; and

(iv) the labelling and marking,

of such containers;

(k) the storage of pesticides and conditions under which they are to be kept; (Amended 79 of 1990 s. 17)

(l) the approval of premises for the storage, repackaging or sale of pesticides; (Amended 79 of 1990 s. 17)

(m) the sale and supply of pesticides; (Amended 79 of 1990 s. 17)

(n) the advertisement of pesticides; (Amended 79 of 1990 s. 17)

(o) the forms to be used. (Amended 80 of 1997 s. 4)

(p)-(r) (Repealed 80 of 1997 s. 4)

(1A) The Chief Executive in Council may by regulation provide for- (Amended 60 of 2000 s. 3)

(a) fees and charges;

(b) exemption by the Director from compliance with any regulation made under this Ordinance, either generally or in a particular case. (Added 80 of 1997 s. 4)

(1B) The Secretary for Food and Health may by regulation provide for- (Amended 78 of 1999 s. 7; L.N. 106 of 2002; L.N. 130 of 2007)

(a) the cancellation and suspension for any period of registration of a pesticide;

(b) generally, the better carrying out of the provisions of this Ordinance. (Added 80 of 1997 s. 4)

(1C) Subsection (1B) shall not be construed as enabling the Secretary for Food and Health to make regulations as regards any matter in relation to which regulations may be made under subsection (1) or (1A). (Added 80 of 1997 s. 4. Amended 78 of 1999 s. 7; L.N. 106 of 2002; L.N. 130 of 2007)

(2) Regulations made under this section may provide that a contravention of specified provisions thereof shall be an offence and may provide penalties therefor not exceeding a fine of \$10000 and imprisonment for 1 year.

SECT 20

Trade marks, trade descriptions, patents and copyright not affected VerDate:04/04/2003

The registration of, or issue of any licence or permit in respect of, a pesticide by the Director under section 5 or 9 respectively shall not grant to any person any proprietary right in respect of that pesticide and shall not confer or affect any rights under the Trade Marks Ordinance (Cap 559), the Trade Descriptions Ordinance (Cap 362), the Patents Ordinance (Cap 514) or the Copyright Ordinance (Cap 528).

(Amended 25 of 1979 s. 12; 69 of 1980 s. 37; 79 of 1990 s. 18; 52 of 1997 s. 161; 92 of 1997 s. 280; 35 of 2000 s. 98)

SECT 21

Pharmacy and Poisons Ordinance not to apply to pesticides VerDate:30/06/1997

The Pharmacy and Poisons Ordinance (Cap 138) shall not apply to any pesticide to which this Ordinance applies.

(Amended 79 of 1990 s. 19)

SECT 22

Dangerous Goods Ordinance to apply VerDate:30/06/1997

Nothing in this Ordinance shall derogate from the provisions of the Dangerous Goods Ordinance (Cap 295).

SECT 23

Transitional and savings provisions VerDate:30/06/1997

(1) Notwithstanding anything in this Ordinance a person who, immediately before the commencement date-

(a) had in his possession any pesticide other than agricultural pesticide; or

(b) carried on a business of manufacturing, selling, offering or exposing for sale or supplying or offering to supply any pesticide other than agricultural pesticide,

shall be entitled to have in his possession that pesticide or to continue to carry on that business without a licence or permit-

(i) for a period of 6 months from the commencement date; and

(ii) if before the expiry of that period he applies for a licence or permit, until the licence or permit is issued, or finally refused.

(2) A person may import into Hong Kong any pesticide other than agricultural pesticide without a licence or permit during a period of 6 months immediately following the commencement date if that pesticide was ordered not less than 2 months before the commencement date.

(3) Notwithstanding anything in this Ordinance, the Pharmacy and Poisons Ordinance (Cap 138) in force at the commencement date shall continue to apply to any pesticide other than agricultural pesticide imported before the commencement date or imported under subsection (2) if such pesticide is or contains a poison within the meaning of the Pharmacy and Poisons Ordinance (Cap 138).

(4) A licence or permit granted under this Ordinance which was in force immediately before the commencement date shall remain in force, subject to the provisions of this Ordinance, for so much of the period for which the licence or permit was granted as falls after the commencement date.

(5) In this section-
"commencement date"* means the day appointed for the commencement of the Agricultural Pesticides
(Amendment) Ordinance 1990 (79 of 1990).
(Replaced 79 of 1990 s. 20)

Note:

* Commencement date-25 February 1991 (see L.N. 25 of 1991).