

Pesticides (Amendment) Act, 2004

Act A 1226

1. Short title and commencement.

(1) This Act may be cited as the Pesticides (Amendment) Act 2004.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

2. Amendment of section 2.

The Pesticides Act 1974 [*Act 149*], which is referred to as the "principal Act" in this Act, is amended in subsection 2(1)—

(a) in the definition of "label", by substituting for paragraph (a) the following paragraph:

"(a) fixed, secured or embossed, whether immediate or otherwise, on the package of a pesticide; or";

(b) by inserting after the definition of "package" the following definition:

‘ "pest" includes bacteria, virus, fungi, weeds, insects, rodents, birds, or any other plant or animal that adversely affects or attacks animals, plants, fruits or property;’;

(c) in the definition of "manufacture", by inserting after the words "pack," the words "re-pack,";

(d) by substituting for the definition of "sell" the following definition:

‘ "sell" includes offer for sale, exhibit for sale, or possess for sale any pesticide, or offer for reward any service relating to the usage of pesticides.’;

(e) by substituting for the definition of "authorized officer" the following definition:

‘ "authorized officer" means—

(a) a Pesticides Licensing Officer; or

(b) a public officer designated as an authorized officer by the Minister by notification in the *Gazette*;’;

(f) by inserting before the definition of "Analyst" the following definition:

‘ "active ingredient" means an ingredient, as listed in the First Schedule, which has pesticidal properties and gives pesticidal properties to a substance, material, preparation or mixture, of which the ingredient is one of the constituents of the substance, material, preparation or mixture;’;

(g) by inserting after the definition of "Analyst" the following definition:

‘ "analytical standard" means a substance containing an active ingredient and is used as a reference standard in the analysis of a pesticide;’; and

(h) by substituting for the definition of "pesticide" the following definition:

' "pesticide" means, subject to subsection (2)-

(a) any substance that contains an active ingredient; or

(b) any preparation, mixture or material that contains any one or more of the active ingredients as one of its constituents, but does not include contaminated food or any article listed in the Second Schedule;'

3. Amendment of section 3.

Section 3 of the principal Act is amended-

(a) by substituting for paragraph (c) the following paragraph:

"(c) the Deputy Director General of Health (Public Health);";

(b) in paragraph (e), by inserting after the word "Director" the word "General";

(c) by substituting for paragraph (f) the following paragraph:

"(f) the Director General of the Malaysian Rubber Board;";

(d) in paragraph (g), by substituting for the words "Standards and Industrial Research Institute of" the words "Department of Standards,";

(e) by substituting for paragraph (i) the following paragraph:

"(i) the Director of Pharmaceutical Services of the Ministry of Health;";

(f) in paragraph (k), by deleting the word "and" at the end of the paragraph;

(g) in paragraph (l), by substituting for the full stop appearing at the end of the paragraph a semicolon; and

(h) by inserting after paragraph (l) the following paragraphs:

"(m) the Director General of Environmental Quality; and

(n) the Director General of the Malaysian Palm Oil Board."

4. Amendment of section 6.

Subsection 6(4) of the principal Act is amended by substituting for the word "six" the word "seven".

5. Amendment of section 7.

Section 7 of the principal Act is amended—

(a) in subsection (1), by substituting for the word "may" the word "shall";

(b) in subsection (2)—

(i) in paragraph (d), by substituting for the words "and the claims made for it" the words "the claims made for it and the proposed class of pesticide";

(ii) in paragraph (i), by deleting the word "and" at the end of the paragraph;

(iii) in paragraph (j), by substituting for the full stop at the end of the paragraph the words "; and"; and

(iv) by inserting after paragraph (j) the following paragraph:

"(k) a prescribed amount of a sample of the pesticide which the applicant intends to register."; and

(c) by inserting after subsection (4) the following subsection:

"(5) Every application made to the Board under subsection (1) shall be accompanied by the prescribed application fee."

6. Amendment of section 8.

Section 8 of the principal Act is amended—

(a) in subsection (1)—

(i) by inserting after the words "of the prescribed" the word "registration"; and

(ii) by inserting after the words "thinks fit to impose," the words "state the class of pesticide,"; and

(b) by inserting after subsection (3) the following subsection:

"(3A) For the purposes of subsection (1), the Board shall issue guidelines regarding the classification of pesticides."

7. Amendment of section 9.

Subsection 9(1) of the principal Act is amended—

(a) by substituting for the words "three years" the words "five years";

(b) by deleting the word "originally";

(c) by inserting after the words "of the prescribed" the word "registration"; and

(d) by substituting for the words "three-year period" the words "five-year period".

8. Amendment of section 10.

Section 10 of the principal Act is amended—

(a) in paragraph (1)(b), by substituting for the words "or inefficacy" the words ", inefficacy or adverse effects on human beings, animals, plants, fruits or property"; and

(b) in subsection (2)—

(i) by inserting after the words ", the Board shall" the words ", by notice in writing, "; and

(ii) by substituting for the words "making the order" the words "the making of the order, and pending the making of such order all sales, import or manufacture of the pesticide by that person shall be suspended from the date of the receipt of the notice by him".

9. New section 10A.

The principal Act is amended by inserting after section 10 the following section:

"10A. Registrant shall inform Board about adverse effects of pesticide.

(1) Without prejudice to the power conferred upon the Board under section 10, the person on whose application the pesticide was registered shall inform the Board upon discovering any adverse effects of the pesticide on human beings, animals, plants, fruits or property, within sixty days from such discovery.

(2) Any person who contravenes subsection (1) commits an offence."

10. Amendment of section 12.

Section 12 of the principal Act is amended by substituting for the words "removed from the register by cancellation, re-registered, or refused registration or re-registration" the words "re-registered or removed from the register by cancellation".

11. Amendment of section 13.

Section 13 of the principal Act is amended—

(a) in subsection (1), by substituting for the words "section 14" the words "sections 14 and 14A"; and

(b) in subsection (2)—

- (i) by substituting for the words "three years" the words "five years";
- (ii) by substituting for the words "ten thousand" the words "fifty thousand";
- (iii) by substituting for the words "five years" the words "ten years"; and
- (iv) by substituting for the words "twenty thousand" the words "one hundred thousand".

12. Amendment of section 14.

Section 14 of the principal Act is amended—

(a) in the shoulder note, by inserting after the word "purposes" the words "or as registration sample or analytical standard";

(b) in subsection (1)—

(i) by inserting after the words "research purposes" the words "or as a registration sample or an analytical standard,";

(ii) by substituting for the word "may" the word "shall"; and

(iii) by inserting after the words "prescribed manner" the words ", and accompanied with the prescribed application fee,";

(c) in subsection (2), by substituting for the words "and on payment of the prescribed fee" the words "or as a

registration sample or an analytical standard"; and

(d) in subsection (7)—

(i) by inserting after the words "research purposes" the words "or as a registration sample or an analytical standard"; and

(ii) by substituting for the words "ten thousand" the words "fifty thousand".

13. New section 14A.

Part III of the principal Act is amended by inserting after section 14 the following section:

"14A. Research or experiment on unregistered pesticides synthesized in Malaysia.

(1) A person desiring to carry out any research or experiment outside the laboratory on an unregistered pesticide synthesized in Malaysia shall apply to the Board in the prescribed manner, and accompanied with the prescribed application fee, for a permit to carry out the research or experiment.

(2) Upon receipt of an application under subsection (1), the Board may, if it is satisfied that the pesticide desired to be researched or experimented on is intended solely for the purpose of research or experiment, issue to the applicant a permit in the prescribed form subject to such conditions as the

Board thinks fit to impose, including conditions as to the disposal of any unused surplus of the pesticide.

(3) If an applicant for a permit under this section is dissatisfied with the refusal of the Board to issue to him the permit, he may appeal to the Minister whose decision shall be final and shall not be called into question in any court.

(4) The person to whom a permit is issued under this section may, subject to the conditions of the permit, research or experiment on the pesticide named in the permit, notwithstanding that the pesticide is not for the time being registered under this Act and notwithstanding the prohibitions in section 53A against the possession or use of unregistered pesticides.

(5) A person who researches or experiments on a pesticide under a permit issued to him under this section, but contrary to or in breach of any of the conditions of the permit, commits an offence.

(6) A person who researches or experiments on an unregistered pesticide without a permit issued to him under this section commits an offence and is liable to imprisonment for six years or to a fine of fifty thousand ringgit.

(7) The Board may delegate its functions under this section to any of its members."

14. Amendment of section 15.

Section 15 of the principal Act is amended—

(a) in subsection (1)—

(i) by substituting for the word "may" the word "shall"; and

(ii) by inserting after the words "prescribed manner"

the words ", and accompanied with the prescribed application fee,";

(b) in subsection (2), by deleting the words ", on payment of the prescribed fee,"; and

(c) in subsection (3), by inserting after the word "prescribed" the word "application".

15. Amendment of section 17.

Section 17 of the principal Act is amended—

(a) in subsection (1)—

(i) by substituting for the word "may" the word "shall"; and

(ii) by inserting after the words "prescribed manner,"

the words "and accompanied with the prescribed application fee,";

(b) in subsection (2), by deleting the words ", on payment of the prescribed fee,"; and

(c) in subsection (3)—

(i) in paragraph (c), by inserting after the words "one or more pesticides" the words ", that may be of the same class or different classes of pesticides,"; and

(ii) in paragraph (d)—

(A) by substituting for the words "one year" the words "three years";

(B) by deleting the words "from year to year"; and

(C) by inserting after the word "prescribed" the word "application".

16. Amendment of section 20.

Section 20 of the principal Act is amended—

(a) in subsection (3), by inserting after the words "a pesticide that is" the words "misbranded or is"; and

(b) in subsection (4)—

(i) by substituting for the words "one year" the words "three years";

(ii) by substituting for the words "five thousand" the words "ten thousand";

(iii) by substituting for the words "three years" the words "six years"; and

(iv) by substituting for the words "ten thousand" the words "twenty thousand".

17. Amendment of section 33.

Section 33 of the principal Act is amended—

(a) by substituting for subsection (1) the following subsection:

"(1) An authorized officer must, if not in uniform,

on demand declare his office and produce to the person against whom he is acting, the prescribed certificate of identity."; and

(b) in subsection (2), by substituting for the words "appointment, authority or identity card, or certificate of identity, as the case may be" the word "identity".

18. Amendment of section 35.

Subsection 35(3) of the principal Act is amended by substituting for the words "or by registered post" the words ", by registered post or courier service".

19. New section 35A.

The principal Act is amended by inserting after section 35 the following section:

"35A. Time to commence analysis.

Where any substance has been purchased, taken or obtained from a person under this Act for the purpose of analysis, the analysis of that substance shall be commenced within sixty days from the time of purchasing, taking or obtaining the substance."

20. Deletion of section 44.

The principal Act is amended by deleting section 44.

21. New sections 45A and 45B.

The principal Act is amended by inserting after section 45 the following sections:

"45A. Label as evidence of substance being a pesticide.

For the purpose of a prosecution for an offence against this Act or the rules or regulations in respect of a substance found in a package, the label on the package describing the substance to be a pesticide shall be *prima facie* evidence that the substance is a pesticide, unless the contrary is proved.

45B. Presumption for sale or storage for sale.

For the purpose of a prosecution for an offence against this Act or the rules or regulations in respect of a pesticide not registered under this Act that is found in any premises which have been licensed for the sale or storage for sale of pesticides, such pesticide shall, unless the contrary is proved, be deemed to be intended for sale or is being stored for sale."

22. Amendment of section 49.

Subsection 49(1) of the principal Act is amended by inserting after the words "the Minister" the words ", and in the case of disposal upon the conviction of a person for an offence against this Act or the rules or regulations, the cost of such disposal shall be borne by the person convicted of the offence".

23. Amendment of section 50.

Section 50 of the principal Act is amended by substituting for the words "Sessions Court" the words "Court of a First Class Magistrate".

24. Amendment of section 53.

Section 53 of the principal Act is amended—

- (a) by inserting after the words "or store" the words "for sale";
- (b) by deleting the word "an" appearing before the word "information"; and
- (c) by substituting for the words "five thousand" the words "twenty-five thousand".

25. New section 53A.

The principal Act is amended by inserting after section 53 the following section:

"53A. Possession or use of unregistered pesticides and unapproved use of pesticides.

(1) Except as provided in sections 14 and 14A, no person shall—

- (a) possess or use a pesticide that is not for the time being registered under this Act; or
- (b) use a pesticide otherwise than in accordance with the uses stipulated on the label, as approved by the Board.

(2) Any person who contravenes subsection (1) commits an offence and is liable on a first conviction, to imprisonment for one year or to a fine of ten thousand ringgit and, on a second or subsequent conviction, to imprisonment for three years or to a fine of twenty thousand ringgit or to both."

26. Amendment of section 56.

Section 56 of the principal Act is amended—

- (a) by substituting for the words "one thousand" the words "five thousand"; and
- (b) by substituting for the words "two thousand" the words "ten thousand".

27. Amendment of section 57.

Subsection 57(1) of the principal Act is amended—

- (a) in paragraph (o), by deleting the word "and" at the end of the paragraph; and
- (b) by inserting after paragraph (o) the following paragraph:

"(oa) regulate the export of pesticides; and".

28. Amendment of First Schedule.

The First Schedule of the principal Act is amended—

- (a) by substituting for the words "LIST OF PESTICIDES" appearing immediately after the words "[Section 2]" the words "LIST OF ACTIVE INGREDIENTS"; and

(b) under the heading "EXPLANATION" in paragraph 1, by substituting for the words "a pesticide" the words "an active ingredient".