

[Chap3503]CHAPTER 35:03

## PESTICIDES

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12 of 2000

G.N. 14/2002

An Act to provide for the control and management of the import, export, manufacture, distribution, storage, disposal and use of pesticides; the establishment of a Pesticides Control Board; and further to provide for matters incidental thereto or connected therewith

[1ST MAY 2002]

## PART I

### PRELIMINARY

[Ch3503s1]1. Short title

This Act may be cited as the Pesticides Act.

[Ch3503s2]2. Interpretation

In this Act, unless the context otherwise requires—

“active ingredient” means the biologically and chemically active part of a pesticide present in a formulation;

"advertising" means the promotion of the sale and use of pesticides by print and electronic media, signs, displays, gift, demonstration or word of mouth;

"Board" means the Pesticides Control Board established under section 3;

"common name" means the name assigned to a pesticide active ingredient by the International Standards Organization to be used as a generic or non-proprietary name for that particular active ingredient only;

"environment" means the physical factors of the surroundings of the human being, including land, water, atmosphere, climate, sound, odour, taste and the biological factors of fauna and flora, and includes the cultural, social and economic aspects of human activity and the natural and built environment;

"formulation" means the combination of various ingredients designed to render the product useful and effective for the purpose claimed;

"inspector" means an inspector designated as such under section 38;

"label" means the written, printed or graphic matter on, or attached to a pesticide, or its immediate container and the outside container or wrapper of the retail package of the pesticide;

"manufacture", in relation to a pesticide, means to prepare, compound, formulate, mix, make, pack, label, or otherwise treat the pesticide with a view to its sale, but does not include the carrying out of bona fide research relating to the pesticide or any act incidental to such research;

"pest" means unwanted species of animals or plants, including vectors of human or animal disease, causing harm during or otherwise interfering with, the production, processing, storage, transportation or marketing of food, agricultural commodities, wood and wood products or animal feedstuffs;

“pesticide” means any substance or mixture of substances intended to be administered on animals, plants or humans for preventing, destroying or controlling any pest, and includes any substance intended for use as a plant growth regulator, defoliant, desiccant, or agent for thinning fruit or preventing the premature fall of fruit, and substances applied to crops either before or after harvest to protect the commodity from deterioration during storage and transport; and for purposes of this Act, any two pesticides which do not have the same manufacturer, formulation and trade name shall be treated as different pesticides;

"pictogram" means a symbol which conveys a message without words;

"Prior Informed Consent Procedure" means the procedure, provided for in the International Code of Conduct on the Distribution and Use of Pesticides, for formally obtaining and disseminating the decisions of importing countries as to whether they wish to receive future shipments of pesticides that have been banned or severely restricted in order to protect human health or the environment, in any other country;

"Registrar" means the Registrar of Pesticides appointed under section 10;

"restricted pesticide" means a pesticide registered for certain specific use or to be used only under stipulated conditions;

"sell" includes offer for sale and offer to provide goods as part of a service of pest control even if the goods are described as free or included in the service;

"trade name" means that name under which the pesticide is labelled, registered and promoted by the manufacturer and which can be used exclusively by the manufacturer to distinguish the product from other pesticides containing the same active ingredient;

"technical committee" means any committee established under section 8.

## PART II

### ESTABLISHMENT, FUNCTIONS AND POWERS OF THE PESTICIDES CONTROL BOARD

#### [Ch3503s3]3. Establishment of Pesticides Control Board

There is hereby established a body to be known as the Pesticides Control Board (in this Act otherwise referred to as the "Board"), which shall be responsible for the control and management of all pesticides in Malawi and perform the functions assigned to it by this Act, and which shall be—

- (a) a body corporate with perpetual succession and a common seal;
- (b) in its corporate name, capable of suing and being sued;
- (c) capable of holding, purchasing and otherwise acquiring and disposing of any property, moveable or immoveable, for the purposes of or in the course of carrying out its functions; and
- (d) capable of doing and performing all acts and things as bodies corporate may by law do and perform.

#### [Ch3503s4]4. Composition of the Board

- (1) The Board shall consist of—
  - (a) the Secretary for Agriculture;

- (b) the Director of Agricultural Research;
- (c) the Secretary for Commerce and Industry;
- (d) the Director of Environmental Affairs;
- (e) the Principal of Bunda College of Agriculture;
- (f) the Chairman of the Pesticides Suppliers Association of Malawi;
- (g) the Executive Secretary of the Consumers Association of Malawi;
- (h) the Director of the Malawi Bureau of Standards;
- (i) the Registrar of the Pharmacy, Medicines and Poisons Board;
- (j) a public health officer, appointed by the Minister; and
- (k) four other members representing the private sector, appointed by the Minister.

(2) The Minister shall designate the Chairperson of the Board from among members of the Board appointed under subsection (1) (j), and the term of office of the Chairperson shall be three years.

(3) A member of the Board appointed under subsection (1) (j) shall hold office for a period of not longer than three years, and may be removed from office by the Minister at any time.

(4) Each member of the Board may nominate a person by name from the same institution for appointment by the Minister as an alternate member, and if a member is unable to attend a meeting of the Board the appointed alternate member may attend, participate and vote in place of the absent member.

(5) The Board may invite any person to assist the Board in dealing with any matter, and the person invited may participate in the proceedings of the Board concerning that matter but shall not be entitled to vote.

#### [Ch3503s5]5. Meetings of the Board

(1) Subject to subsection (2), the Board shall hold ordinary meetings for the dispatch of business at least four times a year.

(2) An extraordinary meeting of the Board—

- (a) may be convened by the Chairperson at anytime;
- (b) shall be convened within twenty-one days of receipt by the Chairperson of a request in writing signed by at least four members and specifying the purpose for which the meeting is being convened.

(3) The Chairperson shall decide where and when the Board shall meet.

(4) At any meeting of the Board—

(a) the Chairperson shall preside;

(b) if the Chairperson is absent, the members present shall elect one of their number to preside at the meeting;

(c) five members, including the Chairperson or other member chairing the meeting, shall form a quorum; and

(d) all questions raised at the meeting shall be determined by the decision of the majority of members present and entitled to vote, but if there is a tie the matter shall be put to the vote and the Chairperson or other member presiding shall have a casting vote.

(5) The Registrar shall serve as secretary to the Board.

(6) Subject to this section, the Board may regulate its own procedure.

[Ch3503s6]6. Allowances of members of the Board

A member of the Board shall be paid out of the funds of the Board, such allowances as the Minister may determine.

[Ch3503s7]7. Non-liability of members of the Board, etc.

No member of the Board or any technical committee of the Board shall be liable for any act or default of his, or of the Board done in the exercise in good faith of the functions or powers of the Board.

[Ch3503s8]8. Technical committees

The Board may establish one or more technical committees, to advise it in implementing the provisions of this Act.

[Ch3503s9]9. Secretariat of the Board

There shall be a secretariat of the Board which shall consist of a Registrar of Pesticides (in this Act otherwise referred to as the "Registrar") and such other staff of the Board, subordinate to the Registrar, appointed in accordance with section 10.

[Ch3503s10]10. Appointment of Registrar and other staff

(1) The Board shall appoint, on such terms and conditions as it may determine, the Registrar who shall be the chief executive officer of the Board and shall in addition perform such duties as the Board may assign to his office and ensure the effective administration and implementation of this Act.

(2) Without prejudice to the generality of subsection (1), the Registrar shall—

- (a) issue licences, permits and other authorizations required under the Act as directed by the Board;
- (b) issue certificates of registration as directed by the Board;
- (c) maintain a public register of registered pesticides;
- (d) maintain registers of manufacturers, importers and commercial applicators of pesticides.

(3) The Board may appoint, on such terms and conditions as it may determine, such other staff, subordinate to the Registrar, as it considers necessary for the performance of its functions and to assist the Registrar in discharging his functions and responsibilities.

[Ch3503s11]11. Functions of the Board

(1) The Board shall be responsible for the registration, control and management of all pesticides in Malawi and perform such other functions assigned to it under this Act.

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

- (a) shall register pesticides and issue certificates 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) may issue guidelines on the environmentally sound 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 human and animal health and the environment;
- (f) may advise the Minister in connexion with all matters relating to pesticides and the performance of functions assigned to the Minister under this Act;
- (g) may propose regulations to be made under this Act by the Minister; and
- (h) may, subject to the approval of the Minister, delegate any of its powers to any government officer.

PART III

## FINANCIAL PROVISIONS

### [Ch3503s12]12. Funds of the Board

(1) The funds of the Board shall consist of—

- (a) such money as may be appropriated by Parliament for the purposes of the Board;
- (b) registration and licence fees prescribed under Parts IV and V;
- (c) any levy imposed pursuant to section 13;
- (d) such moneys as may be received by the Board under subsection (2); and
- (e) such moneys as may otherwise vest in or accrue to the Board.

(2) The Board may—

- (a) accept money by way of grants or donations from any source in or outside Malawi;
- (b) with the approval of the Minister, raise by way of loans from any source in or outside Malawi, such money as it may require for the discharge of its functions; and
- (c) charge and collect fees in respect of programmes, publications, documents and other services provided by the Board.

(3) The Board may invest in such manner as it thinks fit, such of its funds as it does not immediately require for the performance of its functions.

### [Ch3503s13]13. Levy

The Minister, acting on the advice of the Board, and in consultation with the Minister responsible for finance, may by order published in the Gazette, impose a levy on the importation into, or manufacturing in, Malawi of pesticides and the levy shall be appropriated for the general operations of the Board or for certain operations of the Board specified in the Order.

### [Ch3503s14]14. Books and other records of accounts and audit

(1) The Board shall cause to be kept proper books of accounts and other records relating to its accounts.

(2) The accounts of the Board shall—

- (a) be audited annually by independent auditors appointed by the Board; and
- (b) be examined by the Auditor General before being presented to the Minister in accordance with section 15.

### [Ch3503s15]15. Annual reports

(1) The Board shall as soon as practicable, but not later than three months after the expiry of each financial year, submit to the Minister a report concerning its activities during that financial year.

(2) The report referred to in subsection (1) shall be in such form as the Minister shall approve, and shall include information on the financial affairs of the Board, and there shall be appended to the report—

(a) an audited balance sheet;

(b) an audited statement of income and expenditure; and

(c) such other information relating to the Board as the Board may consider appropriate or as the Minister may require.

(3) The Minister shall, during the meeting of the National Assembly next following receipt by him of the report referred to in subsection (1), lay the report before the National Assembly, and the Board may publish the report for sale to the public.

#### [Ch3503s16]16. Financial year

The financial year of the Board shall be a period of twelve months commencing on 1st July in each year, and ending on 30th June in the following year, or such other dates the Minister may specify by Order published in the Gazette:

Provided that the first financial year of the Board may be such shorter or longer period than twelve months as the Minister shall determine, but being not less than six months nor more than eighteen months.

### PART IV

#### REGISTRATION OF PESTICIDES

#### [Ch3503s17]17. Registration of pesticides

(1) Subject to subsection (2), no person shall import, manufacture or sell a pesticide which has not been registered under this Act.

(2) An unregistered pesticide may be—

(a) imported under an import permit issued under section 20 for the purpose of analysis, registration or research, or under a pest emergency permit issued under section 52; and

(b) manufactured for export in accordance with a licence to manufacture issued under section 24.

#### [Ch3503s18]18. Application for registration of pesticides

(1) An application for the registration of a pesticide shall be made to the Board in the prescribed manner and form and shall be accompanied by the prescribed fee.

(2) An application under subsection (1) shall furnish whatever information the Board may require in order to satisfy itself in respect of each of the matters set out in section 19 (3).

(3) Subject to subsection (4), the Board shall not disclose any confidential information submitted to it in connexion with an application for registration.

(4) For the purpose of subsection (3) "confidential information" shall not include—

- (a) trade names or other commonly used names;
- (b) broad or general descriptions on use;
- (c) safe handling precautions to be observed in the manufacture, storage, transport and use of chemicals;
- (d) recommended methods of disposal and elimination;
- (e) safety measures in case of accident;
- (f) physical and chemical data with the exception of data revealing the chemical identity of a pesticide;
- (g) summaries of health, safety and environmental data, including precise figures and interpretations.

(5) The Board shall give the applicant a reasonable opportunity of participating in the preparation of the summaries referred to in subsection (4) (g).

#### [Ch3503s19]19. Consideration of applications

(1) The Board shall consider each application as soon as reasonably practicable and shall—

- (a) register the pesticide, subject to any condition which the Board may consider appropriate; or
- (b) refuse to register the pesticide; or
- (c) direct that the applicant furnish additional information or undertake further investigations, tests, trials or analysis in connexion with the pesticide, and communicate its decision to the applicant in writing.

(2) If the Board gives directions to an applicant under subsection (1) (c), the Board shall reconsider the application in accordance with the procedure in subsection (1) after the Board has received the additional information required and evidence that the applicant has complied with directions.

(3) Subject to subsection (4), the Board shall register a pesticide if the Board is satisfied that the pesticide—

- (a) is suitable and effective for the purposes for which it is intended;
- (b) does not pose a significant danger to human or animal health or the environment;
- (c) is desirable in that overall the effects of the pesticide are likely to be more beneficial than detrimental to Malawi, its people and the environment; and
- (d) will be properly packaged and labelled in accordance with this Act.

(4) The Board shall not register a pesticide if the Board has reason to believe that information furnished or any representation made in, or in connexion with, the application is false or incorrect in a material respect.

(5) If the Board decides not to register a pesticide, it shall promptly notify the applicant in writing giving reason for its decision.

(6) If the Board decides to register a pesticide it shall—

- (a) assign a registration number to the pesticide;
- (b) enter the purchase in the register of pesticides; and
- (c) issue a certificate of registration to the applicant.

(7) The Board shall cause to be published in the Gazette periodically a list of all pesticides registered under this section.

#### [Ch3503s20]20. Importation of unregistered pesticides

(1) The Board may issue a permit authorizing the importation of a pesticide which has not been registered if the Board is satisfied that the pesticide will be used solely for the purposes of analysis, registration or research.

(2) An application for a permit under subsection (1) shall be made to the Board in the prescribed manner and form and shall be accompanied by the prescribed fee.

(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; and
- (c) any conditions which the Board considers appropriate to impose to protect human and animal health and the environment, and to give effect to this Act.

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

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

(b) in the case of a powder pesticide, one kilogram, and the permit shall be surrendered to an inspector at the place of importation.

[Ch3503s21]21. Duration of registration and renewal of registration

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

(2) The Board may, upon the application of a person desiring to renew the registration of a pesticide, renew the registration for further period of five years if the Board continues to be satisfied in respect of the matters referred to in section 19 (3).

(3) 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.

[Ch3503s22]22. Cancellation and suspension of registration and permits

(1) The Board may suspend or cancel the registration of a pesticide or a permit to import an unregistered pesticide if—

(a) the registration or permit was secured in contravention of any of the provisions of this Act;

(b) the Board considers that continued registration or authorization under a permit is undesirable on the ground that the pesticide is harmful to human and animal health or the environment or is not effective for the intended use;

(c) the conditions subject to which the registration or permit was granted have not been complied with;

(d) the pesticide has fallen into disuse, or the pesticide is no longer required for the purpose for which the permit was granted;

(e) the pesticide has been withdrawn from the market and use and the person upon whose application the pesticide was registered has notified the Board in writing of such withdrawal;

(f) the Board is no longer satisfied in respect of any matter referred to in section 19 (3) as a result of the becoming aware new facts or of an unforeseen change in circumstances.

(2) Before cancelling the registration of a pesticide or a permit, the Board shall give the party to whom the registration or permit was granted an opportunity to make representations as to why the registration or permit should not be cancelled.

(3) The Board shall give reasons in writing for the cancellation of a registration or permit to the party to whom the registration or permit had been granted.

## PART V

### LICENSING OF MANUFACTURE, EXPORT, STORAGE FOR SALE AND DISTRIBUTION OF PESTICIDES

#### [Ch3503s23]23. Prohibition on manufacture, sale, etc., of pesticides without a licence

(1) Subject to subsection (3), no person shall manufacture, export, distribute, store for sale, or sell a pesticide without a licence issued by the Board and in accordance with any conditions prescribed by the Board.

(2) An application for a licence under subsection (1) shall be made in the prescribed manner and form to the Board and shall be accompanied by the prescribed fee.

(3) The Minister, acting on the advice of the Board, may by order published in the Gazette, prescribe that a pesticide or class of pesticides may be manufactured, exported, distributed, stored for sale, or sold without a licence.

#### [Ch3503s24]24. Licence to manufacture pesticide

(1) An application for a licence to manufacture a pesticide shall be made in the prescribed manner to the Board which, on payment of the prescribed fee, may issue a licence if the Board is satisfied that—

- (a) the applicant is technically competent to manufacture the pesticide;
- (b) the applicant is aware of the toxicity of the pesticide and of the risks involved in using and handling it, and is equipped and able to effectively avoid or minimize the risks; and
- (c) the premises and manner in which, and conditions under which, the pesticide will be manufactured are appropriate for the purpose and will not endanger human or animal health or the environment and are in accordance with such conditions as may be prescribed.

(2) A licence under this section—

- (a) shall specify the specific location and premises at which the manufacture of the pesticide is authorized and shall not apply to more than one premises;
- (b) shall be valid for five years from the date of issue, but may be renewed on payment of the prescribed fee;
- (c) may require the licensee to monitor the health of employees who may be exposed to the pesticide;
- (d) may authorize the manufacture of more than one pesticide; and

(e) shall contain whatever terms and conditions the Board considers appropriate to achieve the purpose of this Act.

(3) The Board shall consider every application under this section as soon as practicable and shall promptly notify the applicant in writing of the grant or refusal of application, and where the Board refuses to grant an application it shall give reasons in writing for the refusal.

[Ch3503s25]25. Licensing of premises to store for sale and sell pesticides

(1) An application for a licence to store for sale or sell a pesticide at specified premises shall be made in the prescribed manner to the Board which shall, on payment of the prescribed fee, issue a licence if the Board is satisfied that—

- (a) the application relates to a pesticide which is currently registered under the Act;
- (b) the applicant is aware of the toxicity of the pesticide and of the risks involved in using and handling it;
- (c) the premises and manner in which, and the conditions under which, the pesticide will be stored or offered for sale are appropriate for the intended purpose, and will not endanger human or animal health or the environment, and are in accordance with such conditions as may be prescribed; and
- (d) the applicant is a proper person to be granted a licence.

(2) A licence under this section—

- (a) shall specify the location and premises at which the sale or storage for sale of the pesticide is authorized, and shall not apply to more than one premises;
- (b) may authorize both the sale and storage for sale of one or more pesticides;
- (c) shall be valid for the period specified in the licence which may not exceed three years from the date of issue but may be renewed on payment of the prescribed fee; and
- (d) shall contain whatever terms and conditions the Board considers appropriate to achieve the purpose of this Act.

(3) The Board shall consider every application under this section as soon as practicable and shall promptly notify the applicant in writing of the grant or refusal of the application, and where the Board refuses to grant an application it shall give reasons in writing for the refusal.

[Ch3503s26]26. Licensing of commercial applicators

(1) No person shall apply pesticides for gain except in accordance with a commercial applicator's licence issued by the Board.

(2) An application for a licence under subsection (1) shall be made in the prescribed manner and form to the Board and shall be accompanied by the prescribed fee.

(3) The Board may issue a commercial applicator's licence if the Board is satisfied that—

(a) the applicant is aware of the beneficial uses and potential effects of the pesticides and of the risks involved in using and handling it and is equipped and able to effectively avoid or minimize the risks;

(b) the applicant and any employees who will be involved in handling or applying pesticides have been adequately trained in the safe handling and use of pesticides;

(c) the applicant has insurance which is adequate to cover any reasonably foreseeable legal liability which the applicant may incur in respect of death, injury or loss arising from the use, transportation or storage of pesticides by the applicant.

(4) The Board shall cause to be published in the Gazette periodically a list of the names of all commercial applicators licensed under this section.

#### [Ch3503s27]27. Suspension and cancellation of licence

(1) The Board may suspend, cancel or refuse to renew a licence issued under sections 24, 25 or 26 if the Board is satisfied that—

(a) the application for the licence contained a material misrepresentation;

(b) the conditions in the licence have not been complied with; or

(c) it is necessary to do so to protect human or animal health or the environment.

(2) Before taking any action under subsection (1), the Board shall give the licensee an opportunity to make representations as to why the contemplated action should not be taken.

(3) Where the Board has delegated its powers to issue a licence then the delegate may exercise the powers in subsection (1) and shall comply with subsection (2).

## PART VI

### PRESENTATION OF PESTICIDES

#### [Ch3503s28]28. Pesticide containers

(1) No person shall manufacture, import, export, sell, distribute or store any pesticide which is packed in a container which—

(a) is unsafe for storage, handling or use in that it is inadequate to prevent harm to human and animal health or to the environment; or

(b) does not meet any standards which may be prescribed under this Act; or

(c) is required to be approved under this Act and has not been approved.

(2) No person shall, contrary to any directions given by the Registrar, or an inspector, use a pesticide container for any purpose other than to contain pesticides.

#### [Ch3503s29]29. Labels

(1) No person shall distribute, sell, offer for sale, or hold in stock for sale, any pesticide unless it is in a container which prominently displays a clearly legible label which has been approved by the Board and is firmly attached to the container.

(2) The text of the label and of any publication relating to a pesticide which is intended to be distributed or displayed with the pesticide shall be in English and in any other language or languages spoken in Malawi which the Board may require, and shall comply with such other requirements as may be prescribed.

(3) No person shall alter or deface the label of any pesticide or of any publication referred to in subsection (2) in such a way as to cause it to contravene the Act.

#### [Ch3503s30]30. Advertising of pesticides

(1) No person shall advertise any pesticide which has not been registered under this Act.

(2) No person shall advertise any pesticide in a manner that—

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

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

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

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

### PART VII

#### HEALTH ENVIRONMENTAL MATTERS

#### [Ch3503s31]31. Control of pesticide residues in food

(1) No person shall manufacture, export, sell or distribute any food or feed for human or animal consumption if a pesticide has been applied to it, or to the crops from which it was made, in contravention of this Act.

(2) The Minister, acting on the advice of the Board and in consultation with the Minister responsible for health and the Minister responsible for environmental affairs, may by regulation—

- (a) prohibit or restrict the use of certain pesticides in any food products, feedstuffs or food by-products;
- (b) prohibit or restrict the use of certain pesticides at any period in the growth of food crops; or
- (c) establish standards of maximum residue limits of pesticides in food, food products, feedstuffs and food by-products.

[Ch3503s32]32. Duty of care when selling food and animal feeds

(1) Any person who sells food or animal feed and who has reason to suspect that the food or animal feed may contain an excessive level of pesticide shall not sell or dispose of the food or feed for human or animal consumption without taking all reasonable steps to ensure that it does not contain an excessive level of pesticide.

(2) If any person or domestic animal suffers ill-health or dies after consuming food or animal feed which contains an excessive level of pesticide, for the purposes of a prosecution under this Act, the seller of the food or animal feed shall be presumed to have contravened subsection (1) unless the seller satisfies the court that, on a balance of probabilities, the food or animal feed did not contain an excessive level of pesticides when sold.

(3) The Minister may by regulation prescribe steps which shall be taken to comply with the duty imposed by subsection (1) and if a person charged with contravening subsection (1) proves that all the relevant steps prescribed by regulation were complied with, that person shall be presumed to have complied with subsection (1).

(4) For the purposes of this section “an excessive level of pesticide” means a level of pesticide in food or animal feed which—

- (a) exceeds the maximum pesticide residue limits prescribed by law regardless of the cause of the excessive level of pesticide; and
- (b) is proved to have caused actual injury or death to any person or domestic animal.

[Ch3503s33]33. Imposition and sampling

(1) An inspector shall have power—

- (a) to enter and inspect premises where food or animal feeds are stored or sold;
- (b) to seize, detain, remove and take samples of any food or animal feed which the inspector reasonably believes may be contaminated by pesticides, wherever found; and
- (c) to submit such samples for analysis.

(2) No person shall be entitled to charge or claim compensation for any reasonable amount of food or animal feed taken as a sample under this section.

(3) The Minister may by regulation prescribe procedures to be followed in taking samples and for analysis of food and animal feeds.

[Ch3503s34]34. Duties of employers

(1) No person shall use or require an employee to use a pesticide in a manner or for a purpose contrary to the manner or purpose permitted by the Board on the registration of the pesticide or as may be prescribed.

(2) No person shall compel an employee to use any pesticide in a manner or for a purpose contrary to the provisions of this Act.

(3) Every employer who requires or permits an employee to use a pesticide shall provide and require the employee to use facilities, equipment and clothing conducive to the safe handling of the pesticide.

(4) The Registrar may by written notice require any employer to take steps to reduce the risks to the health of employees from pesticides, including requiring the employer to monitor the health of employees exposed to pesticides.

[Ch3503s35]35. Notification of death, ill-health or injury

(1) If a person dies, becomes ill or is injured and there are grounds for believing that this was wholly or partially caused by exposure to a pesticide, the Registrar shall be notified immediately by—

(a) the owner or person in charge of premises, land, or a vessel, aircraft, vehicle or other mode of transport, where the exposure occurred;

(b) the employer of a person who was or may have been exposed to the pesticide in the course of his employment;

(c) any registered medical practitioner who, upon examination of a person, has reason to believe that such a person has died or suffered injury as a result of exposure to pesticide; or

(d) any public health officer who has reason to believe that exposure to a pesticide may be linked to any death or detrimental effects on human health in an area for which the officer is responsible.

(2) Any person responsible for livestock, wildlife or fisheries who has reason to believe that exposure to a pesticide may have caused the death of any mammal, bird, fish or reptile which is not a pest, whether domestic or wild, or may be harming animal health or the environment shall notify the Registrar as soon as possible.

[Ch3503s36]36. Inquiries

(1) If the Board has reason to believe that any pesticide or pesticides may be having a detrimental effect on human or animal health or the environment, the Board may appoint a suitably qualified person or persons to hold an inquiry into the matter.

(2) The person or persons appointed to hold the inquiry shall have the power of a magistrate to summon witnesses and compel the production of documents and material objects.

(3) The Registrar shall report to the Board on the findings and recommendations of the inquiry and the measures taken pursuant to them.

#### [Ch3503s37]37. Disposal of pesticides and pesticide containers

No person shall dispose of any pesticide or pesticide container of or packaging in a manner that is unduly hazardous to human or animal health or the environment or is contrary to any written law.

### PART VIII

#### ENFORCEMENT

#### [Ch3503s38]38. Designation of inspectors

The Board may by notification in the Gazette designate any duly qualified person to be an inspector for the purposes of this Act.

#### [Ch3503s39]39. Powers and duties of inspectors

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 licences, 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 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 or her 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 receipt to the person from whose custody any thing 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 section 48.

#### [Ch3503s40]40. Record keeping

(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) 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.

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

## PART IX

### ANALYSIS

#### [Ch3503s41]41. Procedure for taking samples of pesticides

(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 labelled or marked in the presence of the person in charge of or in possession of the pesticide, or their representative; one part shall be sent to an analyst together

with a certificate in the prescribed form signed by the inspector or officer; 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; the third part shall be retained by the Register.

(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) No person shall 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) in the case of a liquid pesticide, two litres; and
- (b) in the case of a powder pesticide, one kilogram.

#### [Ch3503s42]42. Analysis

(1) The Minister may by notice published in the Gazette appoint any competent person to be a designated analyst and any suitable laboratory to be a designated laboratory for the purposes of this Act.

(2) Any analyst of a laboratory designated under section (1) may analyse any pesticide sample, food, water, air, or soil submitted by any court, the Board or an inspector for any purpose which they may consider necessary to implement the provisions of this Act.

#### [Ch3503s43]43. Certificate of analysis

After conducting any analysis under this Act the designated analyst or laboratory shall issue a certificate of analysis in the prescribed form; and the certificate of analysis shall state the method of analysis used and shall be signed by either the designated analyst or the chief chemist of the laboratory, as the case may be.

### PART X

#### OFFENCES AND PENALTIES

#### [Ch3503s44]44. Offences

- (1) Any person who—
  - (a) give false information in an application for the registration of a pesticide;
  - (b) imports, manufactures, stores for sale, sells or advertises, an unregistered pesticide contrary to section 17;

(c) manufactures, exports, distributes, stores for sale, or sells a pesticides contrary to section 23;

(d) carries on the business of a commercial pesticides applicator without a licence contrary to section 26;

(e) manufactures, imports, exports, stores for sale, sells, or distributes a pesticide in contravention of section 28 or 29; and

(f) sells any food or feedstuff or human or animal consumption which that person knows to contain pesticides residue levels in excess of any limits prescribed by law or in contravention of section 30,

is guilty of an offence and is liable to imprisonment for two years and to a fine of K100,000.

(2) Any person who—

(a) manufactures, exports, distributes, stores for sale, sells or uses any pesticides, in contravention of the provisions of a licence issued under section 23, 24, 25 or 26;

(b) advertises a pesticide in contravention of section 30;

(c) manufactures, imports, exports, sells, distributes or stores any pesticide which has been adulterated, or which has decomposed or deteriorated so as to be ineffective, or is hazardous to human health or the environment or which is packed in containers which have deteriorated or have been damaged rendering them dangerous to store, handle or use safely,

is guilty of an offence and is liable to imprisonment for three years and to a fine of K150,000.

(3) Any person who—

(a) sells or disposes of any food or animal feed for human or animal consumption in contravention of section 32 (2);

(b) obstructs an inspector in the course of his or her duties contrary to section 38 or 41; or

(c) alters a sample or the seals placed on such a sample by an inspector or the Board under section 38 or 41,

is guilty of an offence and is liable to imprisonment for six months and to a fine of K20,000.

(4) Any person who contravenes any provision of this Act for which no other penalty is specifically provided is liable—

(a) on first conviction to imprisonment for three months and to a fine of K10,000; and

(b) on any subsequent conviction for the same offence to imprisonment for six months and to a fine of K20,000.

(5) If a person convicted of an offence under this Act continues to commit the offence after the conviction the person commits a further offence is liable to a fine of K1,000 for every day on which the offence is committed.

[Ch3503s45]45. Fixed penalties

(1) The Minister may by regulation—

- (a) prescribe offences under this Act in respect of which a fixed penalty may be paid;
- (b) prescribe the fixed penalty applicable to each such offence which may not exceed K2,000; and
- (c) authorize government officers, other than inspectors under this Act, to receive payment of fixed penalties.

(2) An inspector who has reason to believe that a person has committed an offence prescribed by the Minister under subsection (1) may, as soon as reasonably possible after the alleged commission of the offence, give an infringement notice to the alleged offender.

(3) An infringement notice shall—

- (a) describe the alleged offence; and
- (b) state that if the alleged offender pays the fixed penalty specified in the notice to an authorized person identified in the notice within 30 days of the giving of the notice, the alleged offender will not be charged for the alleged offence before a court.

(4) An authorized person may, at any time—

- (a) extend the period of 30 days for payment of the fixed payment in any particular case;
- (b) send a letter to the alleged offender withdrawing the infringement notice in which case any amount paid in response to the infringement notice shall be refunded.

(5) If the prescribed fixed penalty is paid within the period allowed and the infringement notice is not withdrawn, the alleged offender shall not be prosecuted and if a person charged with committing an offence under this Act proves that a fixed penalty has been paid in respect of the offence in response to an infringement notice which has not been withdrawn, the accused shall be acquitted of the alleged offence.

(6) Any sum of money received under this section shall be dealt with as if it were a fine imposed by a court.

[Ch3503s46]46. Personal liability of directors, partners and managers

If an offence under this Act that is committed by a corporation is proved to have been committed with the consent or connivance, or to be attributable to any neglect on the part of any director, partner or manager of the corporation, that person as well as the corporation, commits the offence.

[Ch3503s47]47. Evidence

(1) In any criminal proceedings under this Act—

(a) any quantity of pesticides in or upon any premises, place, aircraft, vessel or vehicle at the same time a sample of it is taken under this Act shall, unless the contrary is proven, be deemed to be of the same composition, to have the same degree of efficacy and to possess in all other respects the same properties as that sample;

(b) any person who is proved to have tampered with any sample or to have made a written statement falsely indicating that food or feedstuff did not contain pesticide residues in excess of any limits prescribed, shall be deemed to have acted with fraudulent intent unless the contrary is proved;

(c) any person who is proved to have sold food or feedstuffs for human or animal consumption which contains pesticide residues in excess of any limits prescribed shall be deemed to have known that the food or feedstuff contained excessive pesticide residues unless the contrary is proved;

(d) where a person is charged with having committed an offence under which a licence or the authorization of any person is required for the doing of any act, the burden shall be on the accused person to prove that at the time to which the charge relates, the requisite licence or authorization was duly held.

(2) Subject to subsection (3), in any prosecution under this Act the following documents shall be admissible in evidence and in the absence of evidence to the contrary, shall be sufficient proof of the facts stated in the document—

(a) a certificate stating the result of an analysis or test carried out under section 43 and purporting to be signed by the analyst who carried out the analysis or test: Provided that a copy of the certificate of analysis has been transmitted to the person to be charged at least twenty-one days before the prosecution is instituted and the analyst shall be summoned to give oral evidence at the request of the accused made not less than ten days before the hearing; or

(b) any document kept by any pesticide dealer or by the owner of a pesticide or his employee or agent, around, on, in or upon any premises occupied by, or aircraft, vessel or vehicle used in the business of such person.

(3) Any document referred to in subsection (2) shall not be admissible unless the accused has been given ten days' written notice that it will be tendered as evidence and an opportunity to inspect and copy it and the court has not, on the application of the accused person brought before the trial,

ruled the document inadmissible on the basis that there are reasonable grounds for doubting its accuracy or validity.

[Ch3503s48]48. Closure of premises and seizure of pesticides, etc.

Where the Board believes, on reasonable grounds, that this Act or any regulations made thereunder have been contravened, the Board may, subject to subsection (2), order—

- (a) the closure of any premises; and
- (b) the seizure of any pesticide, equipment, instrument or any other thing,

by means of, or in relation to which, the Board reasonably believes the contravention was committed.

(2) The closure of any premises shall cease, and any pesticide, equipment, instrument or any other thing shall not be detained, after the provisions of this Act or any regulations made thereunder have, in the opinion of the Board, been complied with, unless before that time court proceedings have been instituted in respect of the contravention, in which event the premises shall remain closed and the pesticide, equipment, instrument or other thing may be detained until the proceedings are finally concluded.

(3) Where a person has been found guilty of an offence under this Act or regulations made thereunder, any pesticide, equipment, instrument or other thing by means of or in relation to which the offence was committed may, in addition to any other penalty imposed by the court, be forfeited to such person, and may be disposed of in such manner and at time and place, as the court may direct; but no such pesticide, equipment, instrument or other thing shall be disposed of pending an appeal against the decision of the court or before the time within which the appeal may be taken has expired.

[Ch3503s49]49. Forfeiture, cancellation and other orders

(1) Where a court convicts a person for an offence under this Act the court may, in addition to any other sentence, or that—

- (a) any substance or equipment used in the commission of the offence be forfeited to the State and be disposed of as the court directs;
- (b) the costs of disposing of any such substance or equipment be borne by the accused person;
- (c) some or all of the reasonable costs of and incidental to any testing or analysis or other steps undertaken by or on behalf of the prosecution to investigate the alleged offence and obtain evidence, be borne by the accused person; or
- (d) the registration of a pesticide, or a licence or permit granted to the person convicted under this Act be cancelled.

(2) If a person is convicted for a second or subsequent time of an offence under this Act the court may, in addition to any other sentence, order that the person convicted be disqualified from holding a licence or permit under this Act for a period not exceeding two years.

(3) If at the conclusion of the trial the court is satisfied that an offence was committed even though no person has been convicted of it, the court may, in addition to any other order, make one or more of the orders referred to in paragraphs (a), (b) and (c) of subsection (1).

## PART XI

### MISCELLANEOUS PROVISIONS

#### [Ch3503s50]50. Appeals

(1) An applicant for, or holder of, a pesticide registration or a licence or permit under this Act may appeal to the Minister against—

- (a) the refusal of the Board to grant the registration, licence or permit;
- (b) any conditions attached to the registration, licence or permit;
- (c) the deregistration of a pesticide or the cancellation of a licence or permit.

(2) Every appeal under subsection (1) shall be made in writing within sixty days from the date the applicant or holder receives the reasons for the decision of the Board.

(3) Any person may appeal to the Minister against any decision of the Board on the basis that the decision of the Board does not adequately protect human or animal health or the environment as required by this Act.

(4) Every appeal under subsection (3) shall be made in writing within sixty days from the date the decision is made or the date the appellant receives notification of the decision of the Board, whichever is the later.

(5) The High Court in the exercise of its supervisory jurisdiction may review any decision made under this Act on matters of law.

#### [Ch3503s51]51. Exemptions for Government activities

The Board may exempt any pesticide imported and distributed in Malawi by the Government from fees levied under this Act.

#### [Ch3503s52]52. Pest emergencies

(1) The Board may issue pest emergency permits if it is necessary—

(a) to deal effectively with a pest emergency which has been declared by the Minister [or any authorized organ of Government]; or

(b) to maintain stocks of pesticides held by the Government to deal with pest emergencies.

(2) An application for a pest emergency permit shall be made to the Board in the manner and form prescribed by the Board and shall be accompanied by the prescribed fee.

(3) A pest emergency permit—

(a) shall specify details of the pesticide concerned, the maximum quantity of pesticide to which it relates, and measures for dealing with unused pesticides after the expiry or lapsing of the permit;

(b) shall lapse when the pest emergency is terminated;

(c) may authorize the importation and use of an unregistered pesticide;

(d) may authorize a registered pesticide to be used for uses other than those for which it has been registered;

(e) may exempt any pesticide from the requirements under this Act to be licensed, labelled, or to have fees levied on it;

(f) may restrict the use of a pesticide to specified geographical areas or crops; and

(g) shall contain whatever terms and conditions the Board considers appropriate to protect human and animal health and the environment and to achieve the purpose of this Act.

(4) The Board shall only authorize the importation of a registered pesticide under a pest emergency permit if, and only to the extent that, it is not possible to obtain the pesticide in adequate quantities or sufficiently, quickly from the party who has registered the pesticide in Malawi.

#### [Ch3503s53]53. Regulations

The Minister, on the advice of the Board, may make regulations for carrying out or giving effect to this Act and, without prejudice to the generality of this provision, the regulations may—

(a) prescribe the forms and contents of applications, certificates of registration, licences, permits, authorizations, labels, registers and other documents and records required for the purposes of this Act;

(b) prescribe the procedure and information to be given in connexion with applications or documents required under this Act and the evidence to be supplied in support;

(c) regulate commercial applicators of pesticides and the manufacture, import, export, storage, transportation, distribution and sale of pesticides;

(d) regulate the advertising of pesticides;

(e) regulate the maximum residue limits of pesticides in food and measures to minimize such residues such as dose rates, pre-harvest intervals and frequency of application;

(f) prescribe the requirements for pesticide containers and packaging and the procedures for approving pesticide containers and packaging;

(g) regulate the environmentally sound disposal of pesticides and their containers;

(h) prescribe the qualifications required and duties of inspectors and analysts;

(i) prescribe the qualifications required by persons involved in the commercial applications of pesticides;

(j) prescribe the methods of sampling and analysis to be followed;

(k) prescribe methods for field evaluation of pesticides;

(l) prescribe measures to be taken by employers to protect the health of employees who are or may be exposed to pesticides;

(m) provide for measures for the compensation of persons injured by pesticides;

(n) provide for the implementation of the Prior Informed Consent Procedure, including control over the export of, and notification procedures for, pesticides which are banned or severely restricted in other countries;

(o) prescribe measures to ensure that the confidentiality of information submitted to the Board is maintained;

(p) prescribe the fees or charges payable in respect of any application, registration, licence, permit, or document under this Act; and

(q) provide, that the contravention of any provision of the regulations constitutes an offence and may prescribe penalties for any offence not exceeding a fine of K2,000.