

Malawi

Fertilizers, Farm Feeds and Remedies Act Chapter 67:04

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Fertilizers, Farm Feeds and Remedies Act
 Contents

1. Short title 1

2. Interpretation 1

3. Restriction on sale, etc., of remedies 2

4. Use of sterilizing plant 2

4A. Security of supply 3

5. *** 3

6. Minister may exclude any fertilizer farm feed or remedy from the Act 3

7. Registrar 3

7A. Committees 3

7B. Composition of committees 3

7C. Committees may co-opt persons to attend meetings 4

7D. Tenure of office of committee members 4

7E. Allowances payable to members 5

7F. Meetings of the committee 5

7G. Non-liability of members of the committee 5

7H. Members to declare interests 5

8. Registration of remedies and sterilizing plants 5

9. Cancellation of registration 6

10. Appeal against decision of registering officer 6

11. Appointment of inspectors and analysts 6

12. Powers of inspector 7

13. Offences and penalties 7

14. Procedure and evidence 8

15. Special defences in case of prosecution 9

16. Regulations 9

17. Publication of returns 9

18. Compensation for injury arising from use of farm requisite 10

Malawi

Fertilizers, Farm Feeds and Remedies Act

Chapter 67:04

Assented to on 1 April 1970

Commenced on 1 April 1970

[This is the version of this document at 31 December 2014.]

[Note: This version of the Act was revised and consolidated in the Fifth Revised Edition of the Laws of Malawi (L.R.O. 1/2018), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]

An Act to provide for the registration of sterilizing plants and certain remedies; to provide for the establishment of committees for fertilizers, farm feeds and remedies; to regulate and restrict the sale of fertilizers, farm feeds and certain remedies, and substances of animal origin intended for the manufacture of fertilizers or farm feeds and to provide for matters incidental to the foregoing

1. Short title

This Act may be cited as the Fertilizers, Farm Feeds and Remedies Act.

2. Interpretation

In this Act, unless the context otherwise requires—

“**advertisement**” includes any statement, picture, design or device—

- (a) published in any newspaper or public print; or
- (b) contained in any handbill, circular or other matter which is distributed to members of the public through the post or brought to the notice of the public in any other manner whatsoever;

“**analyst**” means a person appointed to be an analyst under [section 11](#);

“**brand**” means the impression or representation of any letter, number, geometrical figure, mark, sign or symbol and includes any combination of such impressions or representations;

“**committee**” means any committee established under [section 7A](#);

[9 of 1991]

“**compost**” means vegetable matter or mixed vegetable and animal matter so decomposed as to form an organic manure;

“**farm feed**” means—

- (a)
 - (i) any substance obtained by a process of crushing gristing or grinding or by the addition to any substance the removal therefrom of any ingredient;
 - (ii) any condimental feed or mineral substance which possesses or is alleged to possess nutritive properties; or
 - (iii) any substance of animal origin, which is intended or offered for the feeding of poultry, domestic animals or livestock;
- (b) any stock lick or substance which can be used and is used as a stock lick, whether or not such stock lick or substance possesses medicinal properties;
- (c) any substance declared by the Minister, by notice published in the *Gazette*, to be a farm feed for the purposes of this Act,

but does not include straw, chaff, unground hay, silage, cereal in the grain, or any substance which falls within this definition but which has been crushed, gristed or ground for a farmer in accordance with his directions for own use, unless such substance has been declared to be a farm feed under paragraph (c);

“**farmer**” means a person who devotes his attention to farming in Malawi, either exclusively or together with some profession, business or other occupation;

“**farming requisite**” means any fertilizer, farm feed or remedy, or any substance used in the manufacture of a fertilizer, farm feed or remedy;

“**fertilizer**” means any substance which is intended or offered for improving or maintaining the growth of plants or the productivity of the soil, but does not include farmyard or stable manure, kraal manure, compost, wood ash, gypsum, town refuse or night soil when sold in its original condition and under its name;

“**inspector**” means a person appointed an inspector under [section 11](#);

“**registrar**” means the person appointed under [section 7](#);

[9 of 1991]

“**remedy**” means any substance which is intended or offered—

- (a) for the destruction of any noxious plant or insect; or
- (b) in regard to poultry, domestic animals, livestock or plants for the prevention, treatment or cure of any disease, infestation or other unhealthy or unfavourable condition, or for the maintenance of health, but does not include any substance prescribed by a veterinarian for a specific patient or group of patients;

“**sell**” includes to offer, advertise, keep, expose, transmit, convey, deliver or prepare for sale or exchange, or to dispose of for any consideration whatever, or to transmit, convey or deliver in pursuance of a sale, exchange or disposal as aforesaid;

“**sterilizing plant**” means a plant used for the sterilizing of bones or other substances derived from an animal carcass.

3. Restriction on sale, etc., of remedies

No person shall import, sell or distribute any remedy unless—

- (a) it is registered under this Act;
- (b) it is packed in the prescribed manner;
- (c) the container in which it is sold complies with, prescribed requirements and is branded, labelled, marked or sealed in the prescribed manner; and
- (d) it is of the composition, efficacy, fineness and purity specified in the application for its registration, and possesses all other properties specified in such application:

Provided that any remedy shall be deemed to comply with paragraph (d) if its composition varies within such limits as may be prescribed.

[8 of 1996]

4. Use of sterilizing plant

No person shall use any sterilizing plant for the sterilizing of bones or other substances derived from an animal carcass unless such plant has been registered under this Act.

4A. Security of supply

The Minister may, for the purpose of ensuring supply of farm requisites, and on such terms and conditions as he deems fit, enter into arrangements with any supplier of farm requisites, or person dealing with farm requisites.

[8 of 1996]

5. ***

[Repealed by 8 of 1996]

6. Minister may exclude any fertilizer farm feed or remedy from the Act

Subject to such conditions as he may therein specify, the Minister may by order exclude any fertilizer, farm feed or remedy from the operation of any or all the provisions of this Act.

7. Registrar

- (1) The Minister may appoint a public officer serving in the Ministry of Agriculture to be the Registrar for the purposes of this Act.
- (2) The Registrar shall be secretary to every committee established under this Act and shall perform such other duties as the Minister or the chairman of the committee may assign to him.

[9 of 1991]

7A. Committees

- (1) The Minister may establish any number of committees for the purposes of this Act and such committees shall act in accordance with and be subject to any special or general directions of the Minister.
- (2) Committees under this section may be established for the following functions—
 - (a) to advise the Minister on matters relating to the registration, sell and use of fertilizers, farm feeds or remedies;
 - (b) to keep a record of fertilizers, farm feeds or remedies; and
 - (c) to consider and deal with such matters as the Minister may refer to it or require of it.

[9 of 1991]

7B. Composition of committees

- (1) The Minister shall, by notice published in the *Gazette*, appoint the members of any committee established under this Act.
- (2) The Minister may appoint to the committee such additional members as he deems essential to the committee in the exercise of its powers and functions.
- (3) No person shall be appointed to the committee who—
 - (a) is an undischarged bankrupt;
 - (b) has, within three years last past, been convicted of an offence under this Act;
 - (c) has, within three years last past, been convicted of an offence under any written law and been sentenced therefor to imprisonment for a term of six months or more without the option of a fine; and

- (d) has, within five years last past, been convicted of an offence involving fraud or dishonesty.
- (4) Members of the committee shall not, by virtue only of their appointments to the committee be deemed to be officers in the public service.
- (5) The names of all members of the committee as first constituted and every change in membership thereof shall be published in the *Gazette*.

7C. Committees may co-opt persons to attend meetings

- (1) A committee may co-opt any one or more persons to attend any particular meeting for the purpose of assisting or advising the committee in respect of any particular matter under consideration by the committee.
- (2) Any person co-opted pursuant to subsection (1) may take part in the deliberations of the committee at any meeting he so attends, but shall have no voting powers.

7D. Tenure of office of committee members

- (1) Members of the committee shall, subject to the provisions of this section, hold office for a period of not exceeding two years as may be specified in their respective appointments.
- (2) *Ex officio* members of any committee shall hold office as such so long as they hold the office by virtue of which they are members of the committee.
- (3) A retiring member shall be eligible for reappointment.
- (4) On the expiry of the period for which a member, other than an *ex officio* member, is appointed he shall continue to hold office until his successor has been appointed, but in no case shall such further period exceed three months.
- (5) The office of a member, other than an *ex officio* member, shall be vacated—
 - (a) upon the happening to him of an event which would disqualify him from appointment;
 - (b) upon his death;
 - (c) if he is adjudged a bankrupt;
 - (d) if he is convicted of an offence under this Act;
 - (e) if he is convicted of an offence under any other written law and sentenced therefor to imprisonment for a term of six months or more without the option of a fine;
 - (f) if he is convicted of an offence involving fraud or dishonesty;
 - (g) if he is absent from three consecutive meetings of the committee without the permission of the chairman or the committee or without valid excuse;
 - (h) upon the expiry of one month's notice in writing of his intention to resign his office given by him to the Minister;
 - (i) upon the expiry of one month's notice in writing terminating his appointment to such office given to him by the Minister;
 - (j) if he becomes mentally or physically incapable of performing his duties as a member of the committee; and
 - (k) if the Minister so directs.

7E. Allowances payable to members

The Minister may pay to all or any of the members of a committee such allowance as he may determine as honorarium or for attending to the specific business of the committee.

7F. Meetings of the committee

- (1) A committee may meet at such places and times as the chairman of the committee may determine or as he may be directed by the Minister and such meetings shall be convened by notice to the members given by the chairman.
- (2) At every meeting of the committee the chairman or, if one be appointed, the vice-chairman shall preside and in their absence, the members present shall elect one of their number to preside at that meeting and the person so elected shall have all of the powers and shall perform all of the duties of the chairman for that meeting and the person presiding shall have deliberative and a casting vote.
- (3) Save where otherwise provided by this Act, a committee shall conduct its proceedings in such manner as may be directed by the Minister or, in the absence of such direction, in such manner as a committee deems fit.
- (4) Minutes of each meeting of a committee shall be kept by the Registrar and shall be confirmed at the succeeding meeting by the committee.
- (5) At every meeting of a committee the quorum shall be constituted by a majority of its membership.

7G. Non-liability of members of the committee

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

7H. Members to declare interests

- (1) If a member of the committee or his spouse, or any company, of which he or she is a director or major shareholder, or any partner of such member or a partner of his spouse has or acquires any pecuniary interest, direct, or indirect, in any matter in which his private interests conflict with his duties as a member and which is the subject of consideration by the committee he shall as soon as he becomes aware of such interest in such matter, disclose the facts relating thereto to the committee and the Minister.
- (2) A member referred to in subsection (1) shall not take part in the consideration of, or vote on, any question before the committee which relates to the matter referred to in that subsection.
- (3) For the purposes of this section, the expression “major shareholder” means, any person who, at the relevant time, in his own right or by right of any other person, has the power to exercise or control not less than ten *per centum* of the voting rights in the relevant company, whether by reason of share holdings, debenture holdings, proxy or otherwise.

8. Registration of remedies and sterilizing plants

- (1) An Application for the registration of a remedy or sterilizing plant shall be made to the Registrar in the prescribed form for consideration by the relevant committee established under [section 7A](#).
- (2) As soon as practicable after the receipt of an application under subsection (1) the committee shall—
 - (a) if it is satisfied that the remedy or sterilizing plant in question is suitable and sufficiently effective for the purposes for which it is intended and complies with the prescribed requirements, register such remedy or sterilizing plant; or

- (b) if it is not satisfied in accordance with paragraph (a), refuse to register such remedy or sterilizing plant.
- (3) Any registration under this section shall be valid until cancelled under this Act or until and including the 31st March next after the date of such registration, whichever is the earlier.
- (4) The committee may impose such conditions in regard to any registration under this section as it thinks fit.
- (5) Any person who fails to comply with any condition imposed under subsection (4) or with any such condition as amended by the Minister under [section 10](#) (2) shall be guilty of an offence, and shall be liable to a fine of K10,000 and to imprisonment for a period of 12 months.

[9 of 1991]

[8 of 1996]

9. Cancellation of registration

If the committee referred to in [section 8](#) is satisfied—

- (a) that any person has failed to comply with any condition subject to which any remedy or sterilizing plant had been registered;
- (b) that any remedy or sterilizing plant registered under this Act does not comply with any regulation made under this Act; or
- (c) that any sterilizing plant registered under this Act does not sterilize bones or other substances derived from an animal carcass effectively,

the committee, may cancel the registration thereof.

[9 of 1991]

[8 of 1996]

10. Appeal against decision of registering officer

- (1) Any applicant for the registration of any remedy or sterilizing plant who is aggrieved by the decision of the committee referred to in [section 8](#) to refuse registration or to impose conditions in regard thereto or to cancel any registration, may appeal to the Minister against such decision.
- (2) Upon such appeal the Minister may uphold the decision of the registering officer or make an order instructing the committee—
 - (a) to register the remedy or sterilizing plant in question;
 - (b) to strike out all or any of the conditions imposed by the committee or to amend such conditions; or
 - (c) to restore the registration, and the committee shall comply with such order.
- (3) Any decision of the Minister under this section shall be final and shall not be questioned in any court.

[9 of 1991]

[8 of 1996]

11. Appointment of inspectors and analysts

The Minister may appoint persons as inspectors and analysts for the purposes of this Act.

12. Powers of inspector

- (1) An inspector or any other officer specially authorized thereto by the Minister may at all reasonable times—
 - (a) enter upon any premises, place or vehicle at or in which there is or is on reasonable grounds suspected to be any farming requisite or sterilizing plant;
 - (b) inspect any farming requisite or any sterilizing plant or any other machinery utilized in connexion with the manufacture of any farming requisite, or any book, record or document found in or upon such premises, place or vehicle;
 - (c) seize my farming require, book, record or document found in or upon such premises, place or vehicle which appears to afford evidence of a contravention of any provision of this Act;
 - (d) take samples of any farming requisite in such quantities., may be necessary for the purpose of examination or analysis under this Act:

Provided that any officer specially authorized by the Minister under this subsection shall on request produce his authority to enter upon any such premises, place or vehicle.

- (2) The inspector or the officer specially authorized under subsection (1) shall give a receipt to the person from whose custody any fanning requisite, book, record or document has been taken under subsection (1) (c). Such farming requisite, book, record or document shall be returned to the person from whose custody it was taken, immediately after it has been decided that no prosecution will be instituted or the trial of the relevant person has been concluded, as the case may be:

Provided that such farming requisite shall not be returned at the conclusion of such trial if it has been declared forfeited under [section 13](#).

- (3) Any sample taken under subsection (1) (d) shall be taken in accordance with the methods prescribed and in the presence of the person who is in charge of such farming requisite or his representative, and such sample shall, in the presence of such person or such representative be divided into three parts, each of which shall forthwith be fastened up and sealed and suitably labelled or marked in such manner as its nature may permit. One part shall then be transmitted to an analyst together with a certificate in the prescribed form signed by such inspector or officer. The second part together with a copy of the aforesaid certificate shall be handed or forwarded under registered cover to the owner or seller of such farming requisite or to his agent. The third part shall be retained by the inspector or officer aforesaid.
- (4) The analyst to whom one part of a sample has been transmitted under subsection (3) shall with all convenient speed analyse or test the article delivered to him, and the result of the analysis or test shall be stated in a certificate in the prescribed form.
- (5) The owner of the farming requisite from which the sample was taken may claim from the Minister an amount equal to the market value of the sample.

13. Offences and penalties

- (1) Any person who—
 - (a) contravenes any provision of this Act;
 - (b) obstructs or hinders any inspector, analyst or other officer in the exercise of his powers or the performance of his duties under this Act;
 - (c) with fraudulent intent tampers with any sample taken in accordance with this Act;
 - (d) makes use in connexion with any fertilizer, farm feed or remedy of any certificate, invoice or other document issued in respect of any other fertilizer, farm feed or remedy;

- (e) makes any false or misleading statement in connexion with—
 - (i) any remedy in the application for the registration; or
 - (ii) any fertilizer, farm feed or remedy in any advertisement thereof or in the course of the sale thereof;

[8 of 1996]

- (f) sells any fertilizer, farm feed or remedy upon the container of which a false or misleading statement in connexion with such contents is printed or written;
- (g) sells or supplies any farming requisite which is not of the kind, nature, composition, strength, potency or quality described or represented when so sold or supplied,

shall be guilty of an offence and shall be liable to a fine of K200 and to imprisonment for a period of 6 months.

- (2) The court convicting any person of an offence under this Act may, upon the application of the prosecutor, declare any farming requisite in respect of which the offence has been committed, and all farming requisites in respect of which such person has been convicted, and of which such person is the owner, or which are in his possession, to be forfeited.

14. Procedure and evidence

- (1) In any criminal proceedings under this Act—
 - (a) any quantity of a farming requisite in or upon any premises, place or vehicle at the time a sample thereof 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 shall be deemed to have acted with fraudulent intent unless the contrary is proved;
 - (c) a certificate stating the result of an analysis or test carried out under [section 12](#) (4) and purporting to be signed by the analyst who earned out such analysis or test shall be accepted as *prima facie* proof of the facts stated therein:

Provided that at the request of the accused not less than ten days before the trial such analyst shall be summoned to give oral evidence;

- (d) any statement or entry contained in any book or document kept by any manufacturer, importer or owner of a farming requisite or by the manager, agent or employee of such person, or found upon or in any premises occupied by, or any vehicle used in the business of such person shall be admissible in evidence against him as an admission of the facts set forth in that statement or entry, unless it is proved that that statement or entry was not made by such person, or by any manager, agent or employee of such person in the course of his work as manager, or in the course of his agency or employment:

Provided that no such statement or entry shall be tendered in evidence unless such person has been given not less than ten days' written notice of intention to produce such statement or entry and an opportunity to inspect the same and make a copy thereof.

- (2) No prosecution shall be instituted as a result of any analysis or test performed under [section 12](#) (4) unless a copy of the analyst's certificate has been transmitted at least twenty-one days before the institution of such prosecution to the person who is to be the accused.

15. Special defences in case of prosecution

- (1) It shall be a sufficient defence for a person charged with the sale of fertilizer, farm feed or remedy in contravention of [section 3](#) (d) if he proves to the satisfaction of the court—
 - (a) that he purchased such fertilizer, farm feed or remedy under a registered name or brand as being the same in all respects as the article which he purported to sell; and
 - (b) that he had no reason to believe at the time of the sale that it was in any respect different from such article; and
 - (c) that he sold it in the original container and in the state in which it was when he purchased it; and
 - (d) that the container thereof was branded, labelled, marked or sealed in the prescribed manner.

16. Regulations

- (1) The Minister may make such regulations as may appear to him to be necessary or expedient for the proper carrying out of the purposes and provisions of this Act, and, without prejudice to the generality of the foregoing, such regulations may provide for—
 - (a) the manner in which remedies and sterilizing plants may be registered, the forms to be used, the fees to be paid and the information to be furnished with any application for registration;
 - (b) the description under which any substance registered as a remedy, or sold as fertilizer, farm feed, or remedy, and prescribing the conditions under which any such substance may be registered or sold, as the case may be, under any particular name or brand;
 - (c) the composition, efficacy, fineness, putty or other property required in any substance before it is sold or registered as a fertilizer, farm feed or remedy, as the case may be;
 - (d) the requirements as to the containers in which fertilizers, farm feeds or remedies shall be packed and the manner in which such containers shall be branded, labelled, marked or sealed;
 - (e) the process by which fertilizers, farm feeds or remedies or substances used in the manufacture of fertilizers, farm feeds or remedies shall be sterilized, and the manner of inspection of sterilizing plants;
 - (f) the methods to be employed the fees to be paid, and the certificates to be issued in respect of the examination, analysis or test of samples taken under this Act;
 - (g) requiring any person who has in his possession or under his control any fertilizers farm feeds or remedies to keep records relating thereto in the form and manner prescribed and to render returns in the form and manner and at the times prescribed; and
 - (h) prescribing any other matters required to be or which may be prescribed under this Act.
- (2) Different regulations may be made in respect of different classes of fertilizers, farm feeds and remedies, or in respect of different classes or groups of persons.
- (3) Any regulations made under this section may prescribe penalties for any contravention thereof but not exceeding the penalty provided under [section 13](#) (1).

[8 of 1996]

17. Publication of returns

The Minister may from time to time cause to be published in the *Gazette* a return showing the names of the manufacturers, importers or dealers in remedies which have been registered, under this Act. Such

return shall state the name and the chemical constituents of each remedy so registered and such other particulars as the Minister may deem necessary.

[8 of 1996]

18. Compensation for injury arising from use of farm requisite

Where a farm requisite is sold or supplied otherwise than in accordance with the provisions of this Act, then any person whose land, crops, poultry, domestic animals, livestock or plants are injuriously affected by such farm requisite shall be entitled to claim compensation for such injury from the person who sold or supplied the farm requisite concerned.