



LAWS OF KENYA

FERTILIZERS AND ANIMAL FOODSTUFFS ACT

CHAPTER 345

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CHAPTER 345

FERTILIZERS AND ANIMAL FOODSTUFFS ACT

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CHAPTER 345

FERTILIZERS AND ANIMAL FOODSTUFFS ACT

[Date of assent: 24th August, 1962.]

[Date of commencement: 4th August, 1967.]

An Act of Parliament to regulate the importation, manufacture and sale of agricultural fertilizers and animal foodstuffs and substances of animal origin intended for the manufacture of such fertilizers and foodstuffs, and to provide for matters incidental to and connected with the foregoing

[Act No. 23 of 1962, Act No. 5 of 2007.]

1. Short title

This Act may be cited as the Fertilizers and Animal Foodstuffs Act.

2. Interpretation

In this Act, except where the context otherwise requires—

“**analyst**” means any person appointed under section 8 of this Act to be an analyst for the purposes of this Act;

“**animal**” means cattle, camels, horses, sheep, pigs, goats and poultry, but does not include dogs, cats and other domestic pets, or marine animals;

“**animal foodstuff**” means—

(a) any—

(i) substance obtained by a process of crushing, gristing or grinding or by the addition to any substance or the removal therefrom of any ingredient; or

(ii) condimental foodstuff or mineral substance which possesses or is alleged to possess nutritive properties; or

(iii) substance of animal origin,

which is intended or offered for the feeding of livestock, domestic animals or poultry; or

(b) any stock lick or substance which can be and is used as a stock lick, whether or not it possesses medicinal properties,

but does not include straw, chaff, underground hay, silage, cereal in the grain or any substance which has been crushed, gristed or ground for a farmer in accordance with his directions for his own use, unless such substance has been declared by the Minister, by notice in the *Gazette*, to be an animal foodstuff for the purposes of this Act;

“**fertilizer**” means any substance or mixture of substances which is intended or offered for improving or maintaining the growth of plants or the productivity of the soil, but does not include manure, compost, wood ash, gypsum or refuse when sold in its original condition and under the same name, nor does it include organic fertilizers, other than lime;

“**inspector**” means any person appointed by the Minister under section 8 of this Act to be an inspector for the purposes of this Act;

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

“**the Director**” means the Director of Veterinary Services.

3. Restrictions on importation, manufacture, selling, etc.

(1) No person shall import, manufacture, compound, mix or sell any fertilizer or animal foodstuff other than a substance declared by rule made under section 19 of this Act to be an approved fertilizer or an approved animal foodstuff, as the case may be.

(2) No person shall import, manufacture, compound, mix or sell any fertilizer or animal foodstuff in respect of which rules have been made under paragraph (a) of subsection (1) of section 19 of this Act unless the fertilizer or animal foodstuff conforms to the standard or specification prescribed by such rules:

Provided that it shall be a sufficient defence for anyone charged with importing or selling in contravention of this subsection to show that—

- (i) he imported or purchased the fertilizer or animal foodstuff under a name or brand the subject of a declaration pursuant to subsection (1) of this section, as being the same in all respects as the article which he had ordered or, as the case may be, which he later purported to sell; and
- (ii) he had no reason to believe at the time of importation or sale that it was in any respect different from such article; and
- (iii) the container thereof was branded, labelled, marked or sealed in the prescribed manner; and
- (iv) in the case of a sale, he sold it in the original container and in the state in which it was when he imported or purchased it.

(3) Any person who contravenes any of the provisions of this section shall be guilty of an offence.

(4) Nothing in this section shall render illegal the addition to animal foodstuffs of condiments, growth stimulants, essential food factors or pharmaceutical preparations for the control of disease.

4. Sterilization of bone and animal products

(1) No person shall import—

- (a) any fertilizer or animal foodstuff which contains bone or any other substance derived from an animal carcass; or
- (b) bones or any other substance derived from an animal carcass for the purpose of manufacturing any fertilizer or animal foodstuff,

unless he has first submitted to the Director a certificate signed in the country of origin by a person designated by the Minister, certifying that such bone or substance has been effectively and completely sterilized in such manner as may be prescribed and is free from such pathogenic organisms as may be prescribed.

(2) No person shall manufacture or sell any fertilizer or animal foodstuff containing bone or any other substance derived from an animal carcass unless such bone or substance has been sterilized in the prescribed manner.

(3) Any person who contravenes any of the provisions of this section shall be guilty of an offence.

5. Sterilizing plant

(1) Any person who, for the purpose of the manufacture or sale of any fertilizer or animal foodstuff, uses any sterilizing plant for the sterilizing of bones or other substances derived from an animal carcass except under and in accordance with the provisions of a licence issued to him in respect of that plant, shall be guilty of an offence.

(2) Any person who desires to set up a sterilizing plant as aforesaid shall make application in the form prescribed to the Director, who shall, if he is satisfied that the applicant is a suitable person to engage in the sterilizing of bones and other substances derived from an animal carcass and that such requirements as may be prescribed in relation thereto are likely to be complied with, issue the applicant with a licence, on payment of the fee prescribed therefor.

(3) A licence under this section shall be in the form prescribed, and shall, subject to renewal, be valid for three years from the date of issue unless cancelled earlier under the provisions of this Act or under any rule made under this Act.

(4) If the Director is satisfied that a person who has been issued with a licence to sterilize bones and other products of an animal carcass has contravened the requirements prescribed for sterilizing bones and other products of an animal carcass, he may cancel that licence.

[Act No. 5 of 2007, s. 17.]

6. Appeal against refusal or cancellation of licence

(1) Any person aggrieved by a decision of the Director refusing or cancelling a licence under section 5 of this Act may—

- (a) apply to the Director for a written statement of the reasons why the licence was refused or cancelled, as the case may be, and upon receipt of such application the Director shall within fourteen days thereafter or such longer period as may be reasonable in the circumstances furnish such statement;
- (b) appeal to the Minister against such decision.

(2) On an appeal under this section the Minister may uphold the decision of the Director or make an order instructing the Director—

- (a) to license the applicant; or
- (b) to restore the licence under such conditions as the Minister may direct,

and the Director shall comply with such order.

7. Use of unsterilized bone or other substance

Any person who, for the purpose of the manufacture or sale of a fertilizer or animal foodstuff, uses any bone or other substance derived from an animal carcass which has not been either—

- (a) imported on a certificate in accordance with subsection (1) of section 4; or
- (b) sterilized in accordance with subsection (1) of section 5,

of this Act, shall be guilty of an offence.

8. Appointment of analysts and inspectors

The Minister may by notice in the *Gazette* appoint suitably qualified analysts and inspectors for the purposes of this Act:

Provided that a person shall not, while holding such appointment, engage in any business connected with the manufacture, sale or distribution of fertilizers or animal foodstuffs.

9. Inspection and taking of samples

(1) An inspector may at all reasonable times and on production, if required, of his authority—

- (a) enter and inspect any premises, place or vehicle in which he has reasonable grounds for believing there is any fertilizer, animal foodstuff or sterilizing plant or records pertaining to the importation, manufacture or sale of a fertilizer or animal foodstuff or to the operation of such sterilizing plant;
- (b) inspect and if he considers it necessary seize and remove any fertilizer or animal foodstuff and any books, records or documents found in or upon such premises, place or vehicle which pertain to the manufacture, importation, mixing, compounding or sale of fertilizers or animal foodstuffs or to the sterilizing of bones or other products of an animal carcass, and which he has reasonable cause to believe affords evidence of any contravention of any of the provisions of this Act or of any rules made thereunder;
- (c) take such samples in the manner prescribed of any fertilizers, animal foodstuffs, bones or other products of an animal carcass as he may deem necessary for the purpose of examination or analysis and call upon the occupier of the premises in which the fertilizer, animal foodstuff, bone or other product of an animal carcass lies, to provide him with such reasonable assistance as he may need for so doing.

(2) An inspector shall take such steps as are reasonably practicable to afford the owner of the fertilizer, animal foodstuff, sterilizing plant or records, as the case may be, and the occupier of the premises in which they are situated, an opportunity of being present when any inspection under this section is carried out.

(3) Where it is intended to submit for analysis any sample procured under paragraph (c) of subsection (1) of this section, the inspector procuring it shall

before or as soon as possible after procuring it inform the owner of the fertilizer, animal foodstuff, bones or other product of an animal carcass, as the case may be, that he intends to have the sample analysed.

(4) Where a sample has been taken by an inspector for analysis he shall divide it into three parts and cause each part to be marked, sealed and fastened up, and shall send two of the parts to the analyst together with a signed statement that the sample was taken in the prescribed manner, and the third part he shall deliver to the owner or seller as may be prescribed.

(5) In taking samples for analysis under this section the inspector shall follow the procedure prescribed.

10. Analysis of samples by request

(1) Every inspector shall, on being requested in writing so to do by the purchaser of any animal foodstuff and, upon payment by the purchaser of the fee prescribed together with the cost of procuring the sample, procure a sample of any animal foodstuff and submit it for analysis by an analyst and thereafter forward to the purchaser the analyst's certificate of such analysis:

Provided that the inspector shall not be obliged to comply with such request unless the purchaser—

- (i) makes his request within thirty days after the date upon which he took delivery of the animal foodstuff from the vendor thereof; and
- (ii) first informs the inspector to whom he makes his request of his name and full postal address; and
- (iii) stores the animal foodstuff which he requires to be sampled in such manner as the Minister may prescribe for the storage of animal foodstuffs until a sample has been procured by the inspector.

11. Analyst's certificates

(1) Every certificate of an analyst issued under this Act shall be in the form prescribed.

(2) Where any method is prescribed for the analysis of any fertilizer or animal foodstuff the analyst shall in his certificate declare that he has followed the prescribed method.

(3) Any person who causes or permits any copy of an analyst's certificate obtained under this Act to be used in any advertisement shall be guilty of an offence.

12. Deleterious ingredients

(1) Any person who sells a fertilizer or animal foodstuff containing deleterious ingredients shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months, unless he proves—

- (a) that he did not know and could not with reasonable care have known that the fertilizer or animal foodstuff contained a deleterious ingredient; and

- (b) where he obtained the fertilizer or animal foodstuff from some other person, that on demand by or on behalf of the prosecutor he gave all the information in his power with respect to the person from whom he obtained it, and as to any statement given to him and any mark applied to the fertilizer or animal foodstuff when he obtained it:

Provided that proceedings for an offence under this section shall not be instituted unless the fertilizer or animal foodstuff has been sampled by an inspector in the prescribed manner on the premises on which it was sold and the sample has been analysed in accordance with the provisions of this Act and of any rules made thereunder.

(2) Any substance prohibited by rules made under paragraph (b) of subsection (1) of section 19 of this Act shall, if present in a fertilizer or animal foodstuff or, where a percentage limit has been prescribed by such rules, if present in excess of that limit, as the case may be, be deemed to be a deleterious ingredient unless the contrary is proved.

13. Offence and penalties

Any person who—

- (a) obstructs, hinders, deceives or misleads an inspector in the exercise of his powers or the performance of his duties under this Act or any rules made thereunder; or
- (b) knowingly makes use of, issues or maintains any false or misleading records, statement, document, declaration, marking or label in connexion with the manufacture, importation, mixing, compounding or sale of any fertilizer or animal foodstuff,

shall be guilty of an offence and liable, for a first offence, to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding two months or to both such fine and such imprisonment, and for a second or subsequent offence to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both such fine and such imprisonment.

14. Evidence

In any proceedings under this Act, unless the contrary is proved—

- (a) a sample of a fertilizer or animal foodstuff drawn by an inspector shall be deemed to be of the same composition, to have the same degree of efficacy and, except in so far as the taking of the sample causes it to be otherwise, to possess in all other respects the same properties as the whole from which it was drawn;
- (b) a certificate of analysis purporting to be signed by an analyst shall be accepted as *prima facie* proof of the facts stated therein.

15. Criminal liability of managers, agents and employees

(1) Whenever any manager, agent or employee of a manufacturer, importer or owner of a fertilizer or animal foodstuff does or omits to do any act which it would be an offence under this Act for such manufacturer, importer or owner to do or omit to do, then unless it is proved that—

- (a) in doing or omitting to do that act the manager, agent or employee was acting without the connivance or permission of the manufacturer, importer or owner; and

- (b) all reasonable steps in addition to withholding such connivance and permission were taken by the manufacturer, importer or owner to prevent such act or omission; and
- (c) it was not under any condition or in any circumstances within the scope of the authority or in the course of the employment of the manager, agent or employee to do or omit to do such act,

the manufacturer, importer or owner, as the case may be, shall be presumed himself to have done or omitted to do that act and shall be liable to be convicted and sentenced in respect thereof.

(2) Whenever any manager, agent or employee of a manufacturer, importer or owner of a fertilizer or animal foodstuff does or omits to do any act which it would be an offence under this Act for such manufacturer, importer or owner to do or omit to do, he shall be liable to be convicted and sentenced therefor as if he were the manufacturer, importer or owner and may be so convicted and sentenced in addition to such manufacturer, importer or owner.

16. General penalties

Any person who is guilty of an offence under this Act for which no special penalty (other than those referred to in subsection (4) of section 5, and in section 17, of this Act) is prescribed shall be liable, for a first offence, to a fine not exceeding one thousand shillings or to imprisonment for a term not exceeding one month, and for a second or subsequent offence to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.

17. Supplementary orders on conviction

A court convicting any person of an offence against this Act or against any rules made thereunder may make such order as the Court shall deem proper, as to—

- (a) the forfeiture or disposal of any fertilizer, animal foodstuff, bone or other product of an animal carcass;
- (b) the payment by the defendant of all or any fees and other expenses incidental to the analysis of a fertilizer or animal foodstuff,

in respect of which the conviction is obtained.

18. Exclusions and exemptions

The Minister may by notice in the *Gazette*, subject to such terms and conditions if any as may be specified in such notice, exclude any fertilizer or animal foodstuff, or exempt any person or class of persons, from the operation of all or any of the provisions of this Act.

19. Rules

(1) The Minister may make rules generally for the better carrying out of the purposes and provisions of this Act and particularly, but without prejudice to the foregoing generality, for prescribing—

- (a) standards of composition, efficacy, fineness and purity of fertilizers and animal foodstuffs;

- (b) the prohibition of certain substances and the limitation of percentages of certain substances in fertilizers or animal foodstuffs;
- (c) records and returns to be kept and furnished by importers, manufacturers and sellers of fertilizers and animal foodstuffs;
- (d) requirements as to the proper storage of fertilizers and animal foodstuffs;
- (e) the manner in which fertilizers and animal foodstuffs shall be packed and the branding, labelling, marking and sealing of containers thereof, and the manner in which declarations made at the time of sale shall be made and in which fertilizers and animal foodstuffs shall be exposed for sale;
- (f) any declaration or warranty which may be required to be made or given in prescribed cases, the effect of any declaration made by the seller of a fertilizer or animal foodstuff, and the existence and effect of any implied or written warranty concerning a fertilizer or animal foodstuff;
- (g) the methods whereby bones and other substances derived from an animal carcass shall be sterilized for sale or for manufacture as fertilizers or animal foodstuffs;
- (h) the manner in which samples shall be drawn for analysis and in which such samples shall be certified and analysed, and the manner in which their analyses shall be reported;
- (i) anything which under this Act is required to be or may be prescribed.

(2) Rules made under this section may provide penalties for their breach not exceeding a fine of three thousand shillings or imprisonment for a term of three months, or both such fine and such imprisonment.

20. Advisory committees

The Minister may from time to time appoint such committees as he deems desirable, for the purpose of advising him on matters concerning the administration of this Act.
