

## FERTILIZERS

### AN ACT TO REGULATE THE SALE OF FERTILIZERS OF THE SOIL AND TO PROVIDE AGAINST THE ADULTERATION THEREOF AND TO REPEAL THE FERTILIZERS ORDINANCE.

Act Nos,

21 of 1961

[31<sup>st</sup> December , 1980 ]

Short title and **1.** This Act may be cited as the Fertilizers Act, and shall come into date of operation. operation on such date\* (hereinafter referred to as the " appointed date") as the Minister may appoint by Order published in the Gazette.

The Chief Fertilizer **2.** The Chemist of the Department of Agriculture shall be the Chief Analyst. Fertilizer Analyst for the purposes of this Act.

Deputy Chief Fertilizer Analysts, Fertilizer **3.** For the purposes of this Act there may be Analysts, Fertilizer Inspectors, and other appointed, by name or by office, the necessary staff. number of-

(a) persons to be or to act as Deputy Chief Fertilizer Analysts,

(b) persons to be or to act as Fertilizer Analysts,

(c) persons to be or to act as Fertilizer Inspectors, and

(d) other officers and servants.

Chief Fertilizer Analyst may exercise or **4.** The powers or duties of any Fertilizer Analyst perform powers or duties of any Fertilizer or any Fertilizer Inspector may be exercised or Analyst or Fertilizer Inspector. performed by the Chief Fertilizer Analyst.

Powers or duties of any Fertilizer Inspector **5.** The powers or duties of any Fertilizer may be exercised or performed by any Inspector may be exercised or performed by any Fertilizer Analyst. Fertilizer Analyst.

Statutory **6.**  
statement in  
respect of certain  
articles

(1) Where any article specified in column I of the First Schedule to this Act is sold for use as a fertilizer of the soil, whatever may be the name under which the article is sold, the seller of such article shall give or cause to be given to the purchaser of such article, on or before delivery thereof or as soon as reasonably practicable thereafter, a statement in writing (hereafter in this Act referred to as a " statutory statement") specifying-

(a) the name under which the article is sold, and

(b) such particulars of the nature, substance or quality of the article, and the amount of any ingredient of the article, as are in relation to the article mentioned in column II of that Schedule:

Provided that the preceding provisions of this subsection shall

not apply-

(i) to the sale of two or more such articles which are mixed at the request of the purchaser before delivery to him; or

(ii) to the sale of any such article in any quantity not exceeding fifty-six pounds if the article sold is taken in the presence of the purchaser from a parcel marked in the prescribed manner with any registered mark or marks indicating the particulars required by the preceding provisions of this subsection to be specified in the statutory statement.

(2) The failure to give a statutory statement in accordance with the provisions of this section shall not invalidate a contract for sale.

#### Warranties.7.

(1) A statutory statement given by the seller of any article specified in column I of the First Schedule to this Act shall, notwithstanding any contract or notice to the contrary, have effect as a written warranty by the seller that the particulars contained in such statement are correct.

(2) Where any such article specified in column I of the First Schedule to this Act as is sold for use as a fertilizer of the soil is, in a statutory statement or other document provided or issued by or on behalf of the seller of the article, described by a name specified in column I of the Second Schedule to this Act, the sale of the article under that name shall have effect as a written warranty by the seller of the article that the article accords with the definition thereof contained in column II of that Second Schedule.

(3) Any statement as to the amount of chemical or other ingredients or as to the fineness of grinding of any such article specified in column I of the First Schedule to this Act as is sold for use as a fertilizer of the soil, which is made after the appointed date in any such document (other than a statutory statement) descriptive of the article as is provided or issued by or on behalf of the seller of the article, shall have effect as a warranty by the seller of the article that the facts stated in that document are correct.

(4) No action on any warranty referred to in the preceding provisions of this section shall lie for any mis-statement therein as to the particulars of the nature, substance or quality of the article in respect of which the warranty is given or as to the amount of any ingredient of such article where the mis-statement does not exceed the limits of variation (if any) prescribed in relation to such particulars or amounts, but where the mis-statement exceeds such limits, the rights of the purchaser of such article under the warranty shall not be affected by such limits.

#### Right of purchaser 8. to have article sampled and

analysed.

(1) The purchaser of-

(a) any article specified in column I of the First Schedule to this Act, or

(b) any other article sold for use as a fertilizer of the soil in respect of which a warranty, express or implied, has been given by the seller of such article,

may apply in writing to the Fertilizer Inspector of the area where such article is sold to such purchaser that a sample of such article be taken by such Inspector for analysis by a Fertilizer Analyst. Such application shall be so transmitted as to reach such Inspector at least three days before the delivery of such article to such purchaser, and shall be accompanied by the prescribed fee for such analysis and a copy of the statutory statement, or of the warranty, relating to such article.

(2) Where an application relating to an article specified in subsection (1) is transmitted to a Fertilizer Inspector in accordance with the provisions of that subsection, he shall take in the prescribed manner a sample of such article at the time of the delivery of such article to its purchaser at the place of sale or at the time of the despatch of such article by its seller to its purchaser.

Marking of articles **9**.  
prepared for sale or  
consignment

(1) Every parcel of any article specified in column I of the First Schedule to this Act when prepared for sale or consignment for use as a fertilizer of the soil shall, if exposed for sale, or, if not exposed for sale, before being removed from the premises where it is so prepared, be marked in the prescribed manner with any registered mark or marks indicating the particulars required by this Act to be contained in the statutory statement relating to such article :

Provided that the preceding provisions of this subsection shall not apply to a parcel of two or more such articles which are mixed at the request of the purchaser before delivery to him.

(2) The proprietor of the business of selling such parcels as are referred to in subsection (1) shall keep, in such form as may be prescribed, a register of marks specifying the particulars indicated by the several marks entered in the register.

(3) The marking of a parcel of any article specified in column I of the First Schedule to this Act with any mark or marks entered in a register kept under subsection (2) shall be treated as indicating that the particulars of such article are those entered in the register in relation to such mark or marks.

(4) On the sale of any parcel marked in the prescribed manner with any registered mark or marks, the seller shall add or cause to be added such mark or marks to the statutory statement.

(5) Where the statutory statement received by the seller on the sale to him of a parcel of any article specified in column I of the First Schedule to this Act contains any registered mark or marks, and the parcel has not been on his premises, he shall add or cause to be added such mark or marks to the statutory statement required to be given by him to a purchaser of such parcel.

(6) If any parcel required by subsection (1) to be marked as provided in that subsection is not so marked, or if any such parcel is so marked and from the analysis of a sample of the article in the parcel taken by a Fertilizer Inspector in the prescribed manner on the premises on which the parcel is exposed for sale or on any premises on which the parcel after having been so marked may happen to be before being delivered to a purchaser or carrying agent, it appears that the particulars indicated by the registered mark or marks with which the parcel is marked are false to the prejudice of the purchaser, or that such particulars do not include any particulars which are required by this Act to be specified in the statutory statement relating to the article in the parcel, the person selling or having in his possession or disposition for the purpose of sale or consigning the parcel or exposing it for sale shall be guilty of an offence unless he proves that he took all reasonable steps to prevent the commission of the offence and that he acted without intent to defraud.

Sales in small quantities.

**10.** Where any article is sold for use as a fertilizer of the soil in any quantity not exceeding fifty-six pounds from a parcel which purports to be marked in the prescribed manner with any registered mark or marks, and from an analysis of a sample of the article in the parcel taken by a Fertilizer Inspector in the prescribed manner on the premises on which the parcel is kept it appears that the particulars indicated by such mark or marks are false to the prejudice of the purchaser, or do not include any particulars which are required by this Act to be specified in a statutory statement relating to that article, the seller of that article shall be guilty of an offence unless he proves that he took all reasonable steps to prevent the commission of the offence and that he acted without intent to defraud.

Failure to give, and mis-statements in, statutory statements, & c.

**11.**

(1) A person who, Without reasonable excuse, fails to comply with the provisions of subsection (1) of section 6 shall be guilty of an offence.

(2) If, on the sale of any article specified in column I of the First Schedule to this Act, a statutory statement is given the particulars stated in which differ-

(a) from the particulars indicated by any registered mark or marks with which a parcel of that article is marked in the prescribed manner, or

(b) where that article has not been on the

premises of the seller, from the particulars stated in the statutory statement received by the seller on the sale of that article to him,

the seller of that article shall be guilty of an offence unless he proves that he took all reasonable steps to prevent the commission of the offence and that he acted without intent to defraud.

(3) A person who, without reasonable excuse, fails to comply with the provisions of subsection (4) or subsection (5) of section 9 shall be guilty of an offence.

Relief from liability under the code of intellectual Property Act in certain cases.

**12.** Where in pursuance of the foregoing provisions of this Act a description has been applied to any article specified in column I of the First Schedule to this Act and such description is a trade description within the meaning of the Code of Intellectual Property Act, no proceedings shall be taken under that Act on the ground that the description so applied is a false description.

Preservation of registers and certain statutory statements and inspection of registers and statutory statements.

(1) It shall be the duty of any person who keeps a register under this Act, or who, in respect of an article which has been sold by him but which has never been on his premises, has received a statutory statement on the sale of that article to him, to preserve the register or statutory statement for the prescribed period, and on demand made by any Fertilizer Inspector at any time within that period to produce it for his inspection, and if such person fails so to preserve the register or statutory statement or so to produce it for such inspection, such person shall be guilty of an offence.

(2) Any person having in his possession or under his control any register kept under this Act or any statutory statement made under this Act shall on demand made by any Fertilizer Inspector produce it for his inspection, and if such person fails so to produce the register or statutory statement, he shall be guilty of an offence.

(3) Any Fertilizer Inspector may at all reasonable times enter any premises where he has reasonable cause to believe that any register required by this Act to be kept, or any statutory statement, is for the time being kept, and may take copies thereof.

Power of entry and sampling.

**14** Any Fertilizer Inspector may at all reasonable times enter any premises in which he has reasonable cause to believe that there is any article specified in column I of the First Schedule to this Act which has been prepared for sale or consignment and may take samples in the prescribed manner of any article on such premises which he has reasonable cause to believe to be such an article as aforesaid:

Provided that a Fertilizer Inspector shall not exercise his powers under the preceding provisions of this section in respect of a mixture of two or more such articles prepared at the

request of a purchaser.  
Samples.15.

(1) Where a sample of any article has been taken by a Fertilizer Inspector in the prescribed manner, he shall-

- (a) divide the sample into three parts; and
- (b) place each such part in a bottle or other container which shall be so closed or secured as to preserve the original composition of the article and shall be marked and sealed in the prescribed manner; and
- (c) send two of the parts to a Fertilizer Analyst together with a signed statement that the sample was taken in the prescribed manner; and
- (d) deliver or send the third part to the seller or owner as may be prescribed.

(2) A Fertilizer Analyst to whom two parts of a sample are sent under subsection (1) shall analyze one of those parts and shall retain the other for the prescribed period.

(3) If the person on whose behalf the sample of an article is taken and analyzed, or the owner or seller of such article, objects to the certificate of the Fertilizer Analyst who made the analysis, the person objecting thereto shall, on payment of the prescribed fee, be entitled to have submitted to the Chief Fertilizer Analyst the part of the sample retained by the aforesaid Fertilizer Analyst and to have that part analyzed by the Chief Fertilizer Analyst and to receive from him a certificate of the result of his analysis.

(4) Where a sample is under this section sent for analysis to a Fertilizer Analyst or to the Chief Fertilizer Analyst, there shall also be sent to him any statutory statement, or warranty relating to the article sampled or a copy thereof, or, where such article was taken from a parcel, a copy of the particulars indicated by any registered mark or marks with which the parcel was marked in the prescribed manner.

(5) Where a sample is sent for analysis to a Fertilizer Analyst or the Chief Fertilizer Analyst, the analysis may be made by any person acting under the direction of such Fertilizer Analyst or Chief Fertilizer Analyst, but the certificate of analysis shall be signed by such Fertilizer Analyst or Chief Fertilizer Analyst, as the case may be.

(6) Where a sample of any article taken in the prescribed manner has been analyzed by a Fertilizer Analyst or the Chief Fertilizer Analyst, such Analyst shall, within twenty-one days after the receipt by such Analyst of the sample analyzed, furnish to the person who submitted the sample for analysis and, where that person is not the purchaser of such article, also to such purchaser, and in every case to the owner or seller of such article, his certificate of analysis:

Provided that if such Analyst does not know the name and address of the owner or seller, such Analyst shall send the certificate intended for the owner or seller to the person who submitted the sample, who shall transmit it to the owner or seller.

(7) Where a sample of any article, which has not been taken in the

prescribed manner, is analyzed by a Fertilizer Analyst or the Chief Fertilizer Analyst, such Analyst shall send his certificate of analysis to the person who submitted the sample to him.

Tampering with **16.** If any person knowingly or fraudulently-samples,

(a) tampers with any article so as to procure that any sample of it taken or submitted for analysis under this Act does not correctly represent the article; or

(b) tampers with any sample taken or submitted for analysis under this Act,

he shall be guilty of an offence.

Obstruction of **17.** inspectors.

(1) If the owner or person entrusted for the time being with the charge and custody of any article refuses to allow a Fertilizer Inspector to take a sample of the article on any premises on which he is authorized by this Act to do so, such owner or person shall be guilty of an offence.

(2) If any person willfully delays or obstructs a Fertilizer Inspector in the execution of his duties under this Act, such person shall be guilty of an offence.

Prohibition against disclosures.

**18.** If a Fertilizer Inspector discloses any information obtained by him in or in connexion with the exercise of his powers under this Act, except to a person acting in the execution of this Act and so far as such information may be necessary for such execution, such Inspector shall be guilty of an offence.

Penalties for offences.

**19.** Any person guilty of an offence under this Act shall be liable, on conviction after summary trial before a Magistrate, in the case of a first offence to a fine not exceeding two hundred and fifty rupees, and in the case of a second or subsequent offence to a fine not exceeding five hundred rupees.

Sanction of chemist of the Department of Agriculture required for prosecution.

**20.** No proceedings for an offence under this Act shall be instituted except with the written sanction of the Chemist of the Department of Agriculture.

Liability of directors and certain officers of a body corporate for offence under this Act committed by that body.

**21.** Where an offence under this Act is committed by a body corporate, any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer of that body or was purporting to act in such capacity shall be deemed to be guilty of the offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in such capacity and in all the circumstances.

General provisions as to legal proceedings.

**22.**

(1) Notwithstanding anything in any other written law, proceedings for an offence under this Act may, if the prosecutor so desires, be instituted in the Magistrate's Court having jurisdiction in the place where the person charged resides or carries on business.

(2) In any proceedings for an offence under this Act, it shall be no defence to allege that a sample of any article having been taken for analysis only there was no prejudice to the purchaser.

(3) Notwithstanding anything in any other written law, proceedings for an offence under this Act may, subject to the provisions of section 20, be instituted by the person aggrieved or by a Fertilizer Inspector.

Evidence of certificates of analysis. **23.**

(1) Where a sample which has been taken in the prescribed manner by a Fertilizer Inspector and has been divided into parts and parcelled, marked and sealed as hereinbefore provided in this Act, has been analyzed by a Fertilizer Analyst, such Analyst's certificate shall at the hearing of any civil or criminal proceedings with respect to the article sampled be sufficient evidence of the facts therein stated, unless the defendant or the person charged requires that such Analyst be called as a witness or that the sample be further analyzed by the Chief Fertilizer Analyst.

(2) In any legal proceedings a certificate by the Chief Fertilizer Analyst shall be sufficient evidence of the facts stated therein unless either party to the proceedings requires that such Analyst be called as a witness.

Regulations. **24.**

(1) The Minister may, after consultation with the advisory committee to be constituted under section 25, make regulations for prescribing anything which under this Act is required or authorized to be prescribed, and generally to give effect to the provisions of this Act; and in particular such regulations may-

- (a) amend any Schedule to this Act;
- (b) prescribe the manner in which parcels of articles required to be marked under this Act are to be marked and the nature of the marks ;
- (c) prescribe the limits of variation for the purpose of this Act;
- (d) prescribe the manner in which samples are to be taken and dealt with;
- (e) prescribe the methods of analysis to be followed for determining the percentages of particular substances.

(2) No regulation made by the Minister under this Act shall have effect until it is approved by Parliament and notification of such approval is published in the Gazette.

Advisory committee. **25.** For the purpose of assisting and advising him with respect to the making of regulations under this Act, the Minister shall, after consultation with such associations or other bodies as appear to him to represent the interests concerned, appoint an advisory committee consisting of such number of members as he may deem necessary.



Repeal of Fertilizers  
Ordinance.  
Interpretation<sup>27</sup>.

**26.** The Fertilizers Ordinance, No. 12 of 1901, is hereby repealed.

- (1) In this Act, unless the context otherwise requires,-  
" Chief Fertilizer Analyst" includes any Deputy Chief Fertilizer Analyst appointed for the purposes of this Act;  
" registered mark", with reference to a parcel of any article specified in column I of the First Schedule to this Act, means a mark entered in a register kept under subsection (2) of section 9 by the proprietor of the business of selling such parcel;  
" seller", with reference to any article sold, means the person who was the owner of the article at the time of its sale.
- (2) Where the method of analysis for determining the amount of any substance contained in any article is prescribed under this Act, any statement in any statutory statement or document which by virtue of this Act takes effect as a warranty and any registered mark or marks on a parcel of any article or any entry in a register under this Act indicating or stating the amount of that substance shall be taken to be a statement of the amount of that substance as determined by analysis in accordance with the method so prescribed.
- (3) Particulars as to the nature, substance or quality of an article in a parcel marked with any registered mark or marks shall not for the purposes of this Act be deemed to be false to the prejudice of the purchaser of that article if the mis-statement as respects any ingredient does not exceed the limits of variation (if any) prescribed under this Act in relation thereto.