

GAZETTE EXTRAORDINARY

**The Malawi Gazette Supplement, dated 14th November, 2022, containing
a Bill**

NOTICE

The following Bill, for introduction in Parliament, is published for general information.

LILONGWE 14th November, 2022.

FIONA KALEMBA
Clerk of Parliament

FERTILIZER BILL, 2022

MEMORANDUM

This Bill seeks to establish a legal framework for regulation of the fertilizer industry in Malawi with the aim of ensuring availability of high-quality fertilizer to farmers in the country.

Firstly, the Bill proposes the establishment of the Malawi Fertilizer Regulatory Authority which will regulate the fertilizer industry. The Authority will, specifically, register new fertilizers, fertilizer manufacturers, fertilizer blenders, fertilizer importers, fertilizer exporters, fertilizer distributors and fertilizer analysts. Further, the Authority will accredit fertilizer testing laboratories and fertilizer research institutions. The Bill also provides for the operation of the Authority to ensure efficient delivery of its mandate.

Secondly, the Bill proposes a legal framework for registration of fertilizer and regulation of manufacturing, production, blending, importation, exportation and distribution of fertilizer in the country. The Bill also provides a quality control mechanism through regulating establishment and operation of fertilizer manufacturing and producing facilities, fertilizer blending facilities, fertilizer testing laboratories, fertilizer distribution facilities and research institutions to carry out research work on fertilizer for purposes of registration of the fertilizer or development of new fertilizers. All registered key players in the fertilizer industry will be required to submit periodic reports to the Authority to facilitate monitoring of operations of the players and ensure compliance with set standards.

Thirdly, the Bill provides for the establishment of an Appeals Panel to ensure expeditious determination of appeals from decisions of the Authority. The Panel will be appointed by the Minister and will comprise a retired judge, a soil scientist

and a chemist with adequate knowledge on fertilizer. A person aggrieved by a decision of the Panel on a matter of law will have a right of appeal to the High Court.

Finally, the Bill creates offences and provides penalties for contravention of the legislation. The Bill further gives power to the Minister to make regulations for smooth implementation of the law.

FERTILIZER BILL, 2022

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A BILL*entitled*

An Act to provide for the establishment of the Malawi Fertilizer Regulatory Authority; regulate the registration of fertilizers approved for use in Malawi; regulate the manufacturing, production, blending, distribution, importation and exportation of fertilizer; and provide for matters incidental thereto

ENACTED by the Parliament of Malawi as follows—

PART I—PRELIMINARY

Short title and commencement

1. This Act may be cited as the Fertilizer Act, 2022, and shall come into force on such date as the Minister may appoint by notice published in the *Gazette*.

Interpretation

2. In this Act, unless the context otherwise requires—

“analyst” means a person registered and licensed as an analyst pursuant to section 29;

“Appeals Panel” means an Appeals Panel established under section 41;

“Authority” means the Malawi Fertilizer Regulatory Authority established under section 3;

“blending” means the process of mixing different fertilizer compounds in appropriate proportions to produce a composite fertilizer;

“Chairperson” means the Chairperson of the Authority appointed under section 6;

“Director General” means the Director General of the Authority appointed under section 14;

“distribute” means make available to the public and includes offer or keep for sale, donate, move stock from one location to another and make available for purposes of distribution;

“fertilizer” means any substance, other than manure, wood ash, town refuse or night soil in their original form, that is intended to improve or maintain the growth of plants or improve soil productivity and includes liquid and bio substances;

“fertilizer blender” means a person registered as a fertilizer blender under section 26;

“fertilizer container” includes a bag, barrel, case, tin, package or any other receptacle in which fertilizer is stored or packaged;

“fertilizer manufacturer” means a person registered as a fertilizer manufacturer under section 25;

“Fertilizer Register” means a fertilizer register maintained under section 22;

“fertilizer testing laboratory” means a fertilizer testing laboratory established or accredited under section 27;

“label” means any tag, brand mark, pictorial or other descriptive matter written, printed, stenciled, marked, embossed or impressed on, or attached to, a fertilizer container;

“sample” means a sample of fertilizer taken from a fertilizer lot for analysis;

“owner” includes a person having the possession, custody or control of fertilizer, equipment or any item or thing, for the time being; and

“plant nutrient” means a chemical element in fertilizer that is recognized as essential for plant growth.

PART II—MALAWI FERTILIZER REGULATORY AUTHORITY

3.—(1) There is hereby established the Malawi Fertilizer Regulatory Authority (in this Act otherwise referred to as the “Authority”) which shall be a body corporate with perpetual succession and a common seal and shall be capable, by that name, of

Establishment of the Malawi Fertilizer Regulatory Authority

(a) doing or performing all such acts as may be necessary or expedient for the furtherance of the provisions of this Act; and

(b) subject to this Act, doing or performing all acts as a body corporate may, by law, do or perform or such acts as are incidental or appertain to a body corporate.

(2) The Authority shall perform its functions and exercise the powers provided for in this Act independent of the direction, influence or interference of any person or entity.

4.—(1) The Authority shall regulate the fertilizer industry in Malawi.

Functions of the Authority

(2) Without derogation from the generality of subsection (1), the Authority shall—

(a) regulate the manufacturing, production, blending, packaging, storage, handling, transportation, sale and disposal of fertilizer;

(b) regulate the importation and exportation of fertilizer and fertilizer raw materials;

(c) register, license and accredit entities to participate in the fertilizer industry;

(d) monitor manufacturing, production, packaging, transportation and use of fertilizer in order to safeguard human life, animal life and the environment;

(e) promote the functions and objects of the Authority, through sponsorship, support or organization of various activities, including conferences, workshops and meetings;

(f) promote domestic fertilizer manufacturing and production through use of locally available materials; and

(g) perform any other functions as are necessary or incidental to the implementation of this Act.

Powers of the Authority

5.—(1) The Authority shall, in the discharge of its functions, have power to—

(a) issue, review, approve, suspend or revoke a licence, permit or certificate of registration;

(b) impose administrative sanctions and penalties for breach of this Act;

(c) issue regulatory orders and impose regulatory sanctions;

(d) receive and investigate any complaint by any person relating to the fertilizer industry in Malawi;

(e) collect any fees prescribed under this Act; and

(f) do and perform all things or acts that are necessary or expedient for the execution of its functions, duties and powers under this Act.

(2) The Authority may delegate in writing any of its powers and functions under this Act to the Director General or any employee of the Authority.

Composition of the Authority

6.—(1) The Authority shall consist of nine members who shall be citizens of Malawi comprising —

(a) five members appointed by the Minister as follows—

(i) one person who is a chemical engineer;

(ii) one person who is a certified public accountant;

(iii) one person who is a soil scientist;

(iv) one person who is a legal practitioner;

(v) one person who is a commercial farmer;

(vi) one person who is a businessman or businesswoman; and

(b) the following *ex-officio* members —

(i) the Secretary responsible for agriculture or his or her designated representative;

(ii) the Secretary responsible for industry or his or her designated representative; and

(iii) the Director General of the Malawi Environment Protection Authority or his or her designated representative.

(2) The Minister shall appoint the Chairperson and Vice-Chairperson of the Authority from among the members appointed under subsection 1(a).

(3) A person, other than an *ex-officio* member, shall not be qualified for appointment as a member of the Authority, if that person—

- (a) is a holder of a political office;
- (b) is an undischarged bankrupt; and

(c) would, for any other reason, be disqualified by law from serving as a trustee or director of a company.

(4) The Minister shall, in making appointments under subsection (1) (a)—

(a) ensure that at least three of the appointed members are of the either gender; and

(b) have regard to the need for continuity in the membership of the Authority so that at least two members of the immediate past Authority shall be retained.

(5) A member of the Authority, other than an *ex-officio* member, shall not, by reason only of his or her appointment as a member of the Authority, be deemed to be an employee in the public service.

(6) The Minister shall publish, in the *Gazette*, names of all members of the Authority, as first constituted, and every subsequent change in the membership.

7.—(1) A member of the Authority, other than an *ex-officio* member, shall hold office for a term of three years, and shall be eligible for re-appointment for a further term of three years.

Tenure of
office and
vacancies

(2) The office of a member of the Authority, other than an *ex-officio* member, shall become vacant—

(a) on the expiry of the term of office of the member;

(b) if the member resigns from office in accordance with subsection (3);

(c) if the member is absent, without valid reason, from three consecutive meetings of the Authority of which the member has had notice;

(d) upon the member becoming mentally or physically ill, where upon a suitably qualified medical practitioner certifies that the member is no longer, by reason of the illness, capable of performing duties of the office of member of the Authority;

(e) upon the member being removed from a position of trust by a court of law;

(f) upon the member being convicted of an offence and sentenced to a term of imprisonment without the option of a fine;

(g) upon the member being removed from office in accordance with subsection (4);

(h) if a situation arises that if the member had not been appointed, the member would have been disqualified from appointment as a member of the Authority; or

(i) upon the death of the member.

(3) A member of the Authority, other than an *ex-officio* member, may at any time resign from his or her office by giving written notice to the Chairperson.

(4) The Minister may remove any member of the Authority, except an *ex-officio* member, on any of the following grounds—

(a) incompetence in the execution of the functions of the office of member;

(b) failure to declare a conflict of interest relating to any matter under consideration by the Authority;

(c) disclosure or publication to any other person or entity, other than in the course of duty, of any confidential information of the Authority obtained in the course of duty or otherwise;

(d) misconduct that brings the Authority into disrepute; or

(e) being compromised to the extent that his or her ability to impartially and effectively exercise the duties of his or her office is seriously in question.

(5) A vacancy in the membership of the Authority shall be filled, within sixty days of the occurrence of the vacancy, by the appointment of a new member by the Minister in accordance with section 6.

(6) A person appointed to fill a vacancy under subsection (5) shall serve the remainder of the term of office, but no person shall be appointed to fill a vacancy of the remainder of a term of office where the remainder of the term is less than six months.

(7) The period served by a person appointed under subsection (5) shall not be regarded as a term for purposes of subsection (1) unless the period is two years or more.

Meetings of
the Authority

8.—(1) The Authority shall meet for the transaction of its business once every three months, at such places and times as the Chairperson may determine after consulting the Director General.

(2) The Chairperson shall convene ordinary meetings of the Authority by giving the members written notice of not less than fourteen days.

(3) The Chairperson may, on his own motion, convene an extraordinary meeting of the Authority at a place and time as the Chairperson may determine after consulting the Director General.

(4) The Chairperson shall, after consulting the Director General, convene an extraordinary meeting within seven days of receipt of a request in writing signed by not less than four members specifying the purpose for which the meeting is to be convened.

(5) A quorum at every meeting of the Authority shall be constituted by five members.

(6) The Chairperson, or in his absence, the Vice-Chairperson, shall preside over meetings of the Authority, and in the absence of both the Chairperson and Vice-Chairperson, the members present and forming a quorum shall elect one of their number to preside over the meeting.

(7) A decision of the Authority on any question shall be by consensus but where this is not possible, the decision shall be determined by a majority vote of members present and voting, and where there is an equality of votes, the Chairperson or, in the absence of the Chairperson, the Vice-Chairperson or other member presiding, shall have a casting vote in addition to that person's deliberative vote.

(8) The Authority may, where necessary taking into account the nature of the matter to be deliberated, invite any person to attend its meeting or any of its committee meetings and participate in the deliberations or to make a presentation or to be asked questions on any matter, but the person so invited shall not be entitled to vote.

(9) The Director General shall serve as secretary at meetings of the Authority, and shall record and keep minutes of each meeting of the Authority and the minutes shall be confirmed at the subsequent meeting.

(10) The Authority may make rules to regulate its proceedings and business or the proceedings and business of any of its committees.

(11) The Director General, or other member of staff of the Authority as the Director General may designate, may attend a meeting of the Authority and of any of its committees and may address the meeting, but shall not vote on any matter.

(12) Where, at any meeting, the deliberations of the Authority or any of its committees concerns the Director General or any member of staff of the Authority designated to attend the meeting, the Authority or the committee, as the case may be, may exclude the Director General or the officer from the meeting.

Committees
of the
Authority

9.—(1) The Authority may establish such number of committees as the Authority determines necessary for the performance of its functions under this Act.

(2) The Authority shall appoint a chairperson for each committee from amongst the members appointed under section 6(1)(a).

(3) The Director General shall serve as secretary at meetings of each committee of the Authority or may, with the approval of the Chairperson, delegate a senior member of staff to serve as secretary at meetings of a committee.

(4) Every committee shall act in accordance with any directions given to it in writing by the Authority.

Personal
attendance of
meetings

10. A member of the Authority or a committee of the Authority, other than an *ex-officio* member, shall not attend any meeting of the Authority or a committee of the Authority by proxy and where such a member is unable to attend any meeting, the member may request that his or her apology for failure to attend the meeting be recorded.

Disclosure
of interest

11.—(1) A member of the Authority, committee of the Authority and a person invited to attend a meeting of the Authority or any of its committees who has a direct or indirect interest in any matter before the Authority or any committee of the Authority, as the case may be, shall disclose the interest as soon as is practicable before or soon after the commencement of the meeting and shall not take part in any consideration or discussion of, or vote on, any question on such matter at that meeting or any subsequent meeting.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(3) Where a person fails to disclose interest in accordance with subsection (1) and the Authority or committee of the Authority makes a decision which benefits that person, a close relative, professional or business partner of that person, the decision shall, to the extent that it benefits that person, the close relative, professional or business partner, be null and void.

(4) For purposes of this section, “close relative” means spouse, brother, sister, parent, child, child of a sibling and the spouse of any of these relations.

Allowances
and expenses

12.—(1) Members of the Authority and members of committees of the Authority shall be paid such allowances as the Minister shall determine, on recommendation of the Government department responsible for human resource development and management.

(2) The Authority may reimburse any reasonable expenses incurred in connection with the business of the Authority by a member of the Authority, a member of a committee of the Authority and a person invited to attend a meeting of the Authority under section 8(8) or a committee of the Authority.

PART III—ADMINISTRATION

13. There shall be a secretariat of the Authority which shall consist of the Director General and other employees of the Authority appointed in accordance with this Act. Secretariat

14.—(1) The Authority shall appoint a Director General, who shall be the chief executive officer of the Authority and shall, subject to the general direction of the Authority, be responsible for the day-to-day operations of the Authority. Appointment of Director General

(2) The Director General shall be appointed through a competitive process and on such terms and conditions as the Authority shall determine after consulting the Government department responsible for human resource development and management.

(3) A person shall not be appointed as Director General, unless the person—

(a) possesses a minimum qualification of a Master's degree from a reputable education institution accredited or recognized under the National Council for Higher Education Act, obtained subsequent to a bachelor's degree from an education institution accredited or recognized under the National Council for Higher Education Act; Cap. 30:12

(b) has proven and demonstrable work experience in agriculture, fertilizer industry, commerce, administration or any field relevant to the functions and responsibilities of the Authority;

(c) has not less than ten years' experience in executive management; and

(d) does not hold a political office.

(4) The office of the Director General shall be a public office.

15.—(1) Subject to the general and special directions of the Authority, the Director General shall be responsible for— Duties and responsibilities of the Director General

(a) the day-to-day administration and management of the affairs of the Authority;

(b) the effective management of the funds, property and business of the Authority;

(c) the administration, organization and control of the other officers and staff of the Authority;

(d) the effective administration and implementation of this Act; and

(e) the performance of any other duties and functions as may be assigned to him or her by the Authority.

(2) The Director General shall devote his or her full time to the duties of his or her office and shall provide the Authority with all the information, data, statistics, documents and other materials pertinent to the efficient performance by the Authority of its functions and responsibilities under this Act or any other written law.

Removal of
the Director
General

16.—(1) The Authority may terminate the appointment of a Director General where the Director General—

(a) is incompetent in the execution of the functions of the office;

(b) is not able to perform the functions of his or her office by reason of physical or mental infirmity;

(c) is declared or adjudged bankrupt by a competent court of law;

(d) is convicted of an offence and sentenced to a term of imprisonment without the option of a fine;

(e) commits a misconduct that brings the office of Director General or the Authority into disrepute;

(f) fails to declare a conflict of interest relating to any matter under consideration by his or her office or the Authority; or

(g) is found guilty of a misconduct punishable by dismissal under his or her employment contract.

(2) The Authority shall not remove a Director General from office unless the Director General is given an opportunity to be heard.

Other staff of
the Authority

17.—(1) The Authority shall employ management, administrative, professional, technical and such other support staff, subordinate to the Director General, as the Authority considers necessary for the efficient discharge of its duties and functions.

(2) The Authority may, by directions in writing, delegate to the Director General the appointment, discipline and dismissal of members of staff in specified junior ranks and the Director General shall report to the Authority, at its next meeting, every appointment, disciplinary decision or dismissal made pursuant to this subsection.

(3) The members of staff of the Authority referred to in subsection (1) shall be appointed on such terms and conditions as the Authority shall determine after consulting the Government department responsible for human resource management and development.

(4) Section 16 shall apply, with the necessary modifications, to dismissal of members of staff employed under this section.

PART IV—FUNDS AND PROPERTY OF THE AUTHORITY

18.—(1) The funds and property of the Authority shall consist of—

Funds and
property of
the Authority

(a) such sums as may, from time to time, be payable to the Authority from moneys appropriated by Parliament;

(b) such sums of money as may accrue to or be received by the Authority by way of fees, subsidies, contributions, subscriptions, charges, penalties, rents, interest or royalties from the Government or any person;

(c) such sums of money or other property, real or personal, as may be acquired, purchased or received by or transferred to the Authority, whether by way of donation, devise, bequest, or otherwise; and

(d) sums of money or other property, real or personal, as may be donated to the Authority by a foreign Government, international agency, other external body of persons or individual.

(2) The funds and assets of the Authority shall exclusively be under the control of the Authority and shall be utilized solely for the purposes of this Act in accordance with the written directions of the Authority and for no other purpose.

(3) The Authority shall, at all times, comply with the provisions of the Public Audit Act, the Public Finance Management Act and the Public Procurement and Disposal of Public Assets Act.

Cap. 37:01
No. 4 of 2022
Cap. 37:03

19.—(1) The Authority shall cause to be kept proper books of accounts and other records relating to its accounts in accordance with the Public Finance Management Act.

Accounting
and audit
No. 4 of 2022

(2) The accounts of the Authority shall be audited annually by the Auditor General, or by independent professional auditors appointed by the Authority after consulting the Auditor General, and the expenses of the audit shall be paid out of the funds of the Authority.

20.—(1) The financial year of the Authority shall be a period of twelve months in line with the Government financial year.

Financial
year of the
Authority

(2) The first financial year of the Authority may be such shorter or longer period than twelve months as the Authority shall determine but being not less than six months nor more than eighteen months.

Annual reports

21.—(1) The Authority shall cause to be prepared and submitted to the Minister, within three months after the end of each financial year, an annual report on the general conduct of the affairs of the Authority and the activities carried out during that financial year.

(2) The report submitted under subsection (1) shall be in the format prescribed by the Minister, and there shall be appended to the report—

(a) an audited statement of financial position;

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

(c) such other information as the Minister may consider appropriate.

(3) The Minister shall, as soon as practicable, but not later than six months after the end of the financial year, lay before Parliament a copy of the annual report.

PART V—REGISTRATION OF FERTILIZERS

Registration of fertilizers approved for use

22.—(1) The Minister may, by regulations, prescribe requirements for a fertilizer to be registered for use in Malawi, including the chemistry, microbiology, composition, efficacy, toxicology and safety standards.

(2) The Authority shall maintain a Fertilizer Register in which shall be registered fertilizers that are approved for use in Malawi.

(3) A fertilizer registration shall be specific to the registered fertilizer brand name and the manufacturer.

(4) A person shall not manufacture, produce, blend, import, export or distribute a fertilizer unless the fertilizer is registered in the Fertilizer Register.

(5) A person who contravenes subsection (4) commits an offence and shall, upon conviction, be liable to a fine of K50,000,000 and to imprisonment for ten years.

Application for registration of fertilizer

23.—(1) A person who intends to manufacture, produce, blend, import, export or distribute a fertilizer which is not registered in the Fertilizer Register shall, at least ninety days before the commencement of the intended manufacturing, production, importation, exportation or distribution, apply to the Authority for registration of the fertilizer.

(2) An application under subsection (1) shall be in the prescribed form and shall be accompanied by—

(a) the prescribed fee;

(b) a sample of the fertilizer;

(c) where the fertilizer is approved or registered in another country, a copy of the approval or registration certificate from that country; and

(d) any other data or information as the Authority may require.

(3) The Authority shall, within thirty days of receiving the application, upon being satisfied that the fertilizer—

(a) complies with the requirements prescribed under section 22(1), register the fertilizer in the Fertilizer Register and issue a registration certificate in the prescribed form; or

(b) does not comply with the requirements prescribed under section 22(1) or upon being satisfied that the information provided in the application is not accurate, refuse to register the fertilizer and give reasons for the decision.

(4) The Authority shall not register a fertilizer unless the fertilizer is tested by an accredited fertilizer testing laboratory and certified to comply with the requirements prescribed under section 22(1).

(5) Notwithstanding subsection (3), the Authority may, where it determines it necessary so to do, order that the fertilizer be subjected to a fertilizer efficacy field evaluation trial before deciding on the application.

(6) The applicant shall, upon registration of the fertilizer, pay the prescribed registration fee and such annual fees, as may be prescribed, to maintain the fertilizer on the Fertilizer Register.

24.—(1) The Authority may, by notice published in the *Gazette*, exempt any person or fertilizer brand from the registration under section 22.

Exemption
from
registration
requirement

(2) A notice under subsection (1) shall state the reason for the exemption.

PART VI—FERTILIZER MANUFACTURING AND BLENDING

25.—(1) A person shall not manufacture or produce fertilizer for distribution in Malawi unless the person is registered as a fertilizer manufacturer under this Act.

Fertilizer
manufacturing
or
production

(2) A registered fertilizer manufacturer shall only manufacture or produce fertilizer—

- (a) that is registered in the Fertilizer Register;
- (b) from a registered fertilizer manufacturing facility; and
- (c) of the type the manufacturer is registered to manufacture or produce.

(3) The Minister may, by regulations, prescribe requirements and procedure for registration and de-registration of fertilizer manufacturers and fertilizer manufacturing facilities.

(4) The Authority shall cause to be maintained a register of fertilizer manufacturers in Malawi.

(5) A person who contravenes subsection (1) commits an offence and shall, upon conviction, be liable to a fine of K50,000,000 and to imprisonment for ten years.

Blending of
fertilizer

26.—(1) A person shall not blend fertilizer for distribution in Malawi unless the person is registered as a fertilizer blender under this Act.

(2) A registered fertilizer blender shall not blend and distribute a fertilizer blend unless—

- (a) the fertilizer blend is registered in the Fertilizer Register;
- (b) the fertilizer is blended at a registered fertilizer blending facility; and
- (c) the fertilizer blender is registered to produce that particular fertilizer blend.

(3) The Minister may, by regulations, prescribe requirements and procedure for registration and deregistration of fertilizer blenders, fertilizer blending facilities and fertilizer blends.

(4) The Authority may, by notice published in the *Gazette*, prescribe guidelines for fertilizer blending.

(5) A registered fertilizer blender shall blend and distribute fertilizer that—

- (a) is registered in the Fertilizer Register; and
- (b) complies with blending guidelines prescribed by the Authority.

(6) The Authority shall cause to be maintained a register of fertilizer blenders in Malawi.

(7) A person who contravenes subsection (1) commits an offence and shall, upon conviction, be liable to a fine of K50,000,000 and to imprisonment for ten years.

27.—(1) The Authority may establish a fertilizer testing laboratory or accredit a laboratory operated by any entity in Malawi as a fertilizer testing laboratory. Fertilizer testing laboratories

(2) The Minister may, by regulations, prescribe—

(a) requirements for accreditation of fertilizer testing laboratories; and

(b) fertilizer analytical methods.

(3) The Authority shall cause to be maintained a register of accredited fertilizer testing laboratories in Malawi.

(4) The Authority may revoke the accreditation of a fertilizer testing laboratory upon being satisfied that the laboratory has breached this Act, has stopped to comply with the accreditation requirements prescribed under subsection (2) or has breached any term or condition of the accreditation.

(5) A decision to revoke the accreditation of a fertilizer testing laboratory shall be in writing and shall be delivered to the operator of the laboratory within fourteen days of the decision.

(6) The accreditation of a fertilizer testing laboratory shall not be revoked under subsection (4) unless the operator of the laboratory is given an opportunity to show cause why the accreditation should not be revoked.

28.—(1) A fertilizer testing laboratory shall, for each sample tested by the laboratory, issue a laboratory analysis report showing the results of the sample and a certificate of analysis duly signed by the analyst who conducted the analysis. Laboratory analysis report and certificate

(2) In court proceedings under this Act, the production of a certificate issued under subsection (1) shall be *prima facie* evidence that the sample was—

(a) taken from the lot described in the report;

(b) taken according to the methods described in the report; and

(c) analyzed in accordance with analytical methods prescribed under section 27(2).

29.—(1) The Authority shall register and license fertilizer analysts who shall— Fertilizer analysts

(a) take and analyze fertilizer samples; and

(b) perform other responsibilities as may be assigned to them under this Act.

(2) A person shall not operate as a fertilizer analyst unless that person is registered by the Authority as a fertilizer analyst and has a valid annual licence.

(3) The Minister may, by regulations, prescribe qualifications, procedure, forms, fees and other requirements for registration and licensing of fertilizer analysts.

(4) The Authority shall cause to be maintained a register of registered and licensed fertilizer analysts.

(5) The Authority shall, by notice published in the *Gazette*, issue a code of conduct for fertilizer analysts.

(6) The Authority may cancel the registration or revoke the licence of a fertilizer analyst where the Authority is satisfied that the fertilizer analyst has contravened this Act or the code of conduct.

(7) The Authority shall not cancel the registration or revoke the licence of a fertilizer analyst, unless the analyst is given an opportunity to show cause why the registration or licence should not be cancelled or revoked.

(8) A fertilizer analyst shall produce his or her licence for upon demand by a person affected by the exercise of the powers of the analyst.

(9) A person who contravenes subsection (2) commits an offence and shall, upon conviction, be liable to a fine of K10,000,000 and to imprisonment for two years.

(10) A fertilizer analyst who contravenes subsection (8) commits a misconduct and shall be liable to disciplinary action as prescribed in the code of conduct.

Fertilizer
testing
guidelines

30. The Authority may, for purposes of this Act and by notice published in the *Gazette*, issue fertilizer testing guidelines prescribing methods for sampling, sample preparation and analysis.

Fertilizer
efficacy field
evaluation
trials

31.—(1) A person shall not carry out or cause to be carried out fertilizer efficacy field evaluation trials of any fertilizer unless the person has a permit issued by the Authority.

(2) A fertilizer efficacy field evaluation trial shall be carried out by an accredited research institution either in its own right or jointly with a fertilizer manufacturer, blender or any other entity with interest in the fertilizer industry.

(3) The Minister may, by regulations, prescribe requirements and procedure for—

(a) accreditation of fertilizer research institutions; and

(b) grant of fertilizer efficacy field evaluation trial permits.

(4) The Authority may, by notice published in the *Gazette*, prescribe guidelines for conduct of fertilizer efficacy field evaluation trials.

(5) An accredited fertilizer research institution shall within ninety days of completing a fertilizer efficacy field evaluation trial, submit a report of the study to the Authority.

(6) A person who contravenes subsection (1) commits an offence and shall, upon conviction, be liable to a fine of K10,000,000 and to imprisonment for two years.

(7) An accredited fertilizer research institution that contravenes subsection (5) shall be liable to an administrative penalty of K10,000,000.

PART VII—DISTRIBUTION OF FERTILIZER

32.—(1) A person shall not distribute fertilizer unless—

Distribution
of fertilizer

(a) the person is registered as a fertilizer distributor under this Act;

(b) the fertilizer is registered in the Fertilizer Register;

(c) the premises from which the fertilizer is distributed is licensed by the Authority; and

(d) the fertilizer is packaged in a fertilizer container which bears a label as prescribed under section 35.

(2) Where fertilizer is distributed in bulk, the manufacturer, blender or the consignor, as the case may be, may dispense with the requirements of subsection (1)(d) in so long as the fertilizer consignment is accompanied by a form on which the information prescribed under section 35 is printed.

(3) A distributor shall not distribute fertilizer after its expiry date.

(4) Subsection (3) shall not apply to transportation of expired fertilizer to a place where the fertilizer is to be destroyed.

(5) A person who contravenes—

(a) subsection (1) commits an offence and shall, upon conviction, be liable to a fine of K20,000,000 and to imprisonment for four years; or

(b) subsection (3) commits an offence and shall, upon conviction, be liable to a fine of K40,000,000 and to imprisonment for eight years.

Registration
of fertilizer
distributors

33.—(1) A person who intends to distribute fertilizer shall submit an application for registration in the prescribed form to the Authority and the application shall be accompanied by the prescribed fee.

(2) The Authority shall, within thirty days of receipt of the application—

(a) where it is satisfied that the applicant has met the prescribed criteria for registration, register the applicant as a fertilizer distributor and issue a registration certificate in the prescribed form; or

(b) where it is satisfied that the applicant has not met the prescribed criteria for registration, reject the application and give reasons for its decision.

(3) A registration under subsection (2)(a) shall be valid for a period of two years and may be renewed on such terms as the Authority may determine.

(4) Where a distributor, during the validity of the registration, dies or, being a body corporate is wound-up or dissolved, the Authority shall suspend the registration until the successor in interest to the said distributor applies for registration and is registered as a distributor.

(5) An application for registration under subsection (4) shall be made within thirty days of the death, winding-up or dissolution of the initial distributor.

(6) The Authority shall register the successor in title as a distributor where it is satisfied that the successor in title will comply with the terms and conditions of the initial registration.

(7) The Authority shall maintain a register in the prescribed form of fertilizer distributors in Malawi.

(8) A distributor shall display a copy of his or her registration certificate at a conspicuous place at his or her business premises.

(9) A distributor who intends to cease his or her business shall notify the Authority in writing at least thirty days from the date of the intended cessation.

(10) The Authority may suspend or revoke a registration under subsection (2)(a) where—

(a) the distributor has contravened a provision of this Act;

(b) the registration was obtained by misrepresentation of a material fact;

(c) the distributor has contravened a condition of the registration;

or

(d) the distributor has failed or refused to comply with any direction given by the Authority in writing.

(11) A decision to revoke or suspend registration shall be in writing and contain reasons for the revocation or suspension and shall be delivered to the distributor or, in the event of death, to a member of the immediate family of the deceased distributor, within fourteen days of the decision.

(12) The Authority shall not revoke or suspend registration under subsection (4), unless the distributor or a member of the immediate family of the deceased distributor is given an opportunity to show cause why the registration should not be revoked or suspended.

(13) A fertilizer distributor who contravenes subsection (8) or (9) shall be liable to an administrative penalty of K5,000,000.

34.—(1) A fertilizer distributor shall obtain from the Authority a licence for each of the premises from which the distributor intends to distribute fertilizer.

Licensing
of fertilizer
distribution
premises

(2) An application for a premises licence shall be in the prescribed form and shall be accompanied by the prescribed fee.

(3) The Authority shall, within thirty days of receipt of the application—

(a) where it is satisfied that the premises meet the prescribed requirements for licensing, issue a premises licence in the prescribed form; or

(b) where it is satisfied that the premises do not meet the prescribed criteria for licensing, reject the application and give reasons for its decision.

(4) A premises licence issued under subsection (3)(a) shall be valid for a period of twelve months from the date of issuance and may be renewed on such terms as the Authority may determine.

(5) A distributor shall display a copy of the premises licence at a conspicuous place at the premises to which it relates.

(6) The Authority shall maintain a register in the prescribed form of fertilizer distribution premises in Malawi.

(7) The Authority may suspend or revoke a premises licence where—

(a) the distributor has contravened a provision of this Act;

(b) the registration was obtained by misrepresentation of a material fact;

- (c) the distributor has contravened a condition of the licence; or
 (d) the distributor has failed or refused to comply with any direction given by the Authority in writing.

(8) A decision to suspend or revoke a licence shall be in writing and contain reasons for the suspension or revocation and shall be delivered to the distributor within fourteen days of the decision.

(9) The Authority shall not suspend or revoke a licence under subsection (7), unless the distributor is given an opportunity to show cause why the licence should not be suspended or revoked.

(10) This section shall not apply to a distributor who only transports fertilizer from one location to another on behalf of a person who owns the fertilizer.

(11) A person who contravenes subsection (1) commits an offence and shall, upon conviction, be liable to a fine of K10,000,000 and to imprisonment for two years.

Packaging
and labelling
of fertilizer

35.—(1) A fertilizer manufacturer or blender shall package fertilizer for distribution in a sealed fertilizer container.

(2) The fertilizer manufacturer or blender shall cause to be printed or stamped on the fertilizer container or on a label attached to the fertilizer container, in clear and legible words, such information as may be prescribed by the Minister under subsection (3).

(3) The Minister may, by notice published in the *Gazette*, prescribe fertilizer labelling requirements including particulars to be included in the label.

PART VIII—IMPORTATION AND EXPORTATION OF FERTILIZER

Restriction on
importation and
exportation of
fertilizer

36.—(1) The Minister may, on recommendation of the Authority and by order published in the *Gazette*, restrict, limit, impose conditions or prohibit the importation into Malawi or exportation from Malawi of fertilizer, any particular fertilizer blend or fertilizer raw material.

(2) A person who imports or exports fertilizer or fertilizer raw material in contravention of a restriction, limitation, condition or prohibition made under subsection (1) commits an offence and shall, upon conviction, be liable to a fine of K30,000,000 and to imprisonment for seven years.

Importation and
exportation of
fertilizer and
fertilizer raw
materials

37.—(1) Subject to section 36, a person shall not import into Malawi or export from Malawi, fertilizer or fertilizer raw material, unless the person is registered under this Act as a fertilizer or fertilizer raw material importer or exporter.

(2) An application for registration as a fertilizer or fertilizer raw material importer or exporter shall be in the prescribed form and shall be accompanied by the prescribed fee.

(3) The Authority shall, within thirty days of receipt of the application—

(a) where it is satisfied that the applicant meets the prescribed requirements for registration, register the applicant and issue a registration certificate in the prescribed form; or

(b) where it is satisfied that the applicant has not met the prescribed criteria for registration, reject the application and give reasons for its decision.

(4) The Authority may impose such conditions as it determines necessary on any registration made pursuant to this section.

(5) A registration under this section shall be valid for two years from the date of registration.

(6) The Authority shall cause to be maintained, in the prescribed form, a register of fertilizer and fertilizer raw material importers and exporters.

(7) The Authority may suspend or revoke a registration under subsection (3)(a) where—

(a) the importer or exporter has contravened a provision of this Act;

(b) the registration was obtained by misrepresentation of a material fact;

(c) the importer or exporter has contravened a condition of the registration; or

(d) the importer or exporter has failed or refused to comply with any direction given by the Authority in writing.

(8) A person who contravenes subsection (1) or a condition imposed under subsection (4) commits an offence and shall, upon conviction be liable to a fine of K30,000,000 and to imprisonment to seven years.

38.—(1) A fertilizer importer shall not import fertilizer unless the fertilizer—

Conditions
for
importation
of fertilizer

(a) is registered in the Fertilizer Register;

(b) conforms to standards and other requirements prescribed under this Act; and

(c) is accompanied by a certificate of analysis and a safety data sheet issued by a competent authority in the country of origin.

(2) The Authority may exempt a fertilizer importer or fertilizer of a particular type from any or all the requirements in subsection (1) and the exemption may be subject to such conditions as the Authority may prescribe.

(3) Where a fertilizer importer fails to comply with subsection (1) or with any condition imposed under subsection (2), the Authority shall revoke the registration certificate of the importer and seize any fertilizer connected with the commission of the offence.

Importation
of fertilizer
samples

39.—(1) The Authority may, on application, issue a permit to import a fertilizer that is not registered in the Fertilizer Register as a sample or for research purposes on such terms and conditions as the Authority may prescribe.

(2) The fertilizer imported in accordance with subsection (1) shall be of a quantity of no commercial value.

Conditions for
exportation of
fertilizer

40. A fertilizer exporter shall not export fertilizer unless the fertilizer—

- (a) is registered in the Fertilizer Register; and
- (b) is manufactured, produced or blended in Malawi.

PART IX—APPEALS PANEL

Establishment
of Appeals
Panel

41.—(1) There shall be an Appeals Panel consisting of three members, one of whom shall be designated chairperson, appointed by the Minister which shall determine appeals from decisions of the Authority.

(2) The Appeals Panel shall consist of a retired judge, a soil scientist and a chemist.

(3) A member of the Appeals Panel shall hold office for three years and shall be eligible for reappointment for one further term of three years.

(4) A member of the Appeals Panel shall be paid such honoraria and allowances as the Minister shall determine.

(5) The Minister shall publish, in the *Gazette*, names of all members of the Appeals Panel as first appointed and every subsequent change in the membership.

Procedure of
Appeals Panel

42.—(1) A person who is aggrieved by a decision of the Authority under this Act may, within fourteen days of receipt of the decision, appeal to the Appeals Panel, in writing, for review of the decision.

(2) The Appeals Panel shall, subject to this Act, determine its own procedure.

(3) Proceedings of the Appeals Panel shall be conducted expeditiously with as little formality and technicality as the requirements of the matter under consideration permit.

(4) The Appeals Panel shall not be bound by rules of evidence but may inform itself on any matter as it thinks appropriate.

(5) The Appeals Panel may, in considering an appeal, consult experts in any relevant field as it considers necessary.

43.—(1) A decision of the Appeals Panel shall be in writing and shall include the reasons for the decision, a statement of its findings on material questions of fact and a reference to the evidence or other material on which those findings are based.

Decisions of
the Appeals
Panel

(2) A decision of the Appeals Panel shall be by consensus but where this is not possible, the decision shall be determined by a majority of members of the Appeals Panel.

(3) In determining an appeal, the Appeals Panel may—

(a) affirm the decision under review;

(b) vary the decision under review; or

(c) set aside the decision under review and—

(i) make a decision in substitution for the decision so set aside;
or

(ii) remit the matter to the Authority for reconsideration in accordance with any guidance provided by the Appeals Panel.

(4) The Appeals Panel shall cause a copy of its decision to be served on each party to the proceedings.

(5) The appellant shall pay the costs and expenses of the Appeals Panel in the event that the appeal has not been successful, otherwise the costs and expenses shall be paid by the Authority.

(6) A party aggrieved by a decision of the Appeals Panel may, within twenty-one days of the decision, appeal to the High Court on a matter of law.

(7) The High Court shall hear and determine the appeal lodged under subsection (6) and may make such orders as it thinks appropriate.

PART X—OFFENCES AND PENALTIES

44.—(1) A person who—

(a) distributes misbranded fertilizer;

Prohibition
against
production or
distribution of
misbranded,
harmful or
adulterated
fertilizer

(b) knowingly distributes fertilizer which contains destructive ingredients or properties harmful to plant growth, animal health, human health, or the environment;

(c) knowingly distributes adulterated fertilizer;

(d) distributes fertilizer in a fertilizer container where the net weight of the package is below the net weight stated on the label by more than one percent; or

(e) distributes nutrient deficient fertilizer,

commits an offence and shall, upon conviction, be liable to—

(i) in the case of a body corporate, a fine of K50,000,000 for the first offence and K100,000,000 for the subsequent offence; and

(ii) in the case of a natural person, a fine of K20,000,000 and to imprisonment for five years for the first offence and K30,000,000 and to imprisonment for seven years for the subsequent offence.

(2) The court may, in addition to the penalty in subsection (1)(e), order that—

(a) any equipment or material used in the commission of the offence be forfeited; and

(b) where the offender is registered or holds a licence or permit under this Act, the registration, licence or permit be revoked.

(3) For purposes of this section—

(a) “misbranded fertilizer” means a fertilizer—

(i) whose label is false or misleading in any manner;

(ii) which is distributed under a name of another fertilizer product;

(iii) which is not labeled as prescribed by this Act; or

(iv) whose nutrient content does not conform to the nutrient content printed on the label;

(b) “adulterated fertilizer” means a fertilizer—

(i) which contains any deleterious or harmful substance rendering it injurious to beneficial plant life, human health, aquatic life, soil, or water when applied in accordance with directions provided on the label;

(ii) whose label does not contain adequate warning statement or directions for use which may be necessary to protect plant life, animal life, human life, aquatic life, soil or water; or

(iii) which is mixed with any extraneous or non-fertilizer material in order to lower its quality;

(c) “nutrient deficient fertilizer” means a fertilizer which does not comply with fertilizer requirements prescribed under section 22(1); and

(d) “non-fertilizer material” means any material apart from fertilizer filler and any nutrients as defined in a particular fertilizer formula.

45. A person who repackages expired fertilizer in a new container for purposes of distribution commits an offence and shall, upon conviction, be liable to a fine of K40,000,000 and to imprisonment for eight years.

Prohibition against repackaging expired fertilizer

46. A person who—

(a) tampers with a fertilizer sample taken for analysis at a fertilizer testing laboratory such that the sample does not correctly represent the bulk from which the sample was taken; or

Prohibition against tampering with fertilizer samples

(b) causes or permits to be sent to a fertilizer testing laboratory for analysis, a sample of any fertilizer which to his or her knowledge does not represent the bulk from which it was taken,

commits an offence and shall, upon conviction, be liable to a fine of K20,000,000 and to imprisonment for five years.

47. A person who, without lawful authority, alters, defaces or removes a register, index or any other official record or document maintained in pursuance of this Act, commits an offence and shall, upon conviction, be liable to a fine of K20,000,000 and to imprisonment for five years.

Prohibition against altering, defacing or removing official records, etc.

48. A person who, without lawful authority—

(a) alters or defaces—

(i) a certificate, report, record, invoice, account or other document prescribed, issued, furnished or kept under this Act; or

(ii) a label on or attached to a fertilizer container; or

(b) removes a label from a fertilizer container with intent to deceive,

commits an offence and shall, upon conviction, be liable to a fine of K20,000,000 and to imprisonment for five years.

Prohibition against altering, defacing, etc, other documents and labels

49. A person who, in any place which is not a fertilizer testing laboratory, analyzes or purports to analyze fertilizer for the purposes of this Act, commits an offence and shall, upon conviction, be liable to a fine of K30,000,000 and to imprisonment for seven years.

Prohibition against testing fertilizer in a place other than a fertilizer testing laboratory

Prohibition against obstruction, etc; of officers of the Authority

50. A person who—

(a) obstructs or impedes an officer of the Authority in the exercise of the officer’s powers under this Act;

(b) refuses to furnish to an officer of the Authority, without justifiable cause, any information which the officer requests; or

(c) willfully or recklessly gives to an officer of the Authority any false or misleading information,

commits an offence and shall, upon conviction, be liable to a fine of K10,000,000 and to imprisonment for two years.

Breach of confidentiality

51. A person who—

(a) being a member of the Authority or a committee of the Authority, a member of staff of the Authority or authorized to perform any function under this Act, publishes or communicates to any other person, without lawful authority, any information acquired by that person in the course of duty; or

(b) is in possession of any information which to that person’s knowledge was obtained in contravention of this Act, publishes or communicates that information without lawful authority to any other person,

commits an offence and shall, upon conviction, be liable to a fine of K10,000,000 and to imprisonment for two years.

General Penalty

52. A person who commits an offence under this Act for which a penalty has not been specified shall be liable to a fine of K20,000,000 and to imprisonment for five years.

Forfeiture and disposal of items used in commission of offence

53. A court may, in addition to any penalty imposed for commission of an offence under this Act, order that any equipment, material or any other thing connected with the commission of the offence be forfeited to the state or be destroyed without compensation.

Offences by body corporates

54. Where an offence under this Act is committed by a body corporate, each director or manager of the body corporate at the time the offence is committed, commits the same offence, unless the director or manager proves that the offence was committed without his or her consent or connivance and that he or she exercised such diligence as he or she ought to have exercised, having regard to the nature of his or her functions in that capacity, to prevent the commission of the offence.

PART XI—MISCELLANEOUS PROVISIONS

55.—(1) The Authority shall treat with strict confidence information provided by an applicant for registration, licence or permit or holder of a certificate, licence or permit or any other information considered exclusive to the person who provided the information in compliance with this Act. Confidentiality

(2) Notwithstanding subsection (1), the Authority may release the information upon being served with an order to release the information by a court of competent jurisdiction.

(3) Where the Authority releases information under a court order, the Authority shall release only such information as it is required to release by the court order and shall as soon as practically possible notify the pending disclosure or disclosure, as the case may be, to the person who provided the information to the Authority.

56. Every—

Oath of
secrecy

(a) member of the Authority;

(b) member of a committee of the Authority;

(c) member of staff of the Authority; or

(d) person invited to attend a meeting of the Authority pursuant to section 8(8),

shall, upon assumption of his or her office or before attending the first meeting, take an oath of secrecy in the form set out in the *Schedule*.

57.—(1) A person shall not bring a court action or other proceeding personally against any member of the Authority, a member of a committee of the Authority or a member of staff of the Authority in respect of any act or omission done in good faith in the course of carrying out the provisions of this Act. Protection
from liability

(2) Where, in any proceeding, a question arises on whether or not an act or omission was done in good faith in the course of carrying out the provisions of this Act, the burden of proving that the act or omission was not done in good faith in the course of carrying out the provisions of this Act shall be on the person alleging that it was not so done.

58.—(1) An employee of the Authority, a fertilizer analyst and a member of his or her immediate family shall not engage in any business connected with the manufacturing, production, blending, packaging, storage, distribution, importation or exportation of fertilizer. Restriction on
engagement
in fertilizer
business

(2) For purposes of this section “member of immediate family” means spouse, child and spouse of a child.

Common seal

59.—(1) Subject to this section, the common seal of the Authority shall be kept by the Director General and shall not be used except in the manner authorized.

(2) All deeds, instruments, contracts and other documents shall be considered to be duly executed by or on behalf of the Authority—

(a) where they are required to be under seal, if sealed with the common seal and authenticated by the Chairperson or any other member nominated in that behalf by the Authority and the Director General or any other officer authorized by the Authority; or

(b) where they are not required to be under seal, if executed in that behalf by a member or officer authorized by the Authority for that purpose.

(3) A deed, instrument, contract or any other document executed in accordance with subsection (2) shall, in law, bind the Authority, its assignees and its successors and may be varied or discharged in the same manner that it was executed.

(4) All courts and other persons acting in a judicial capacity shall take judicial notice of the common seal of the Authority affixed to any document and shall presume, unless otherwise proven, that it was duly affixed.

Power to search and seize goods

60.—(1) A member of the Authority, officer of the Authority or any other person authorized by the Authority may, at any reasonable time, enter upon and search any land, building, premises, vehicle, receptacle or storage facility where he or she has reasonable cause to believe an offence under this Act is being committed.

(2) The member of the Authority, officer of the Authority or other person authorized by the Authority may take a sample of fertilizer found in the course of conducting a search pursuant to subsection (1).

(3) The owner of the land, building, premises, vehicle, receptacle or storage facility referred to in subsection (1) or his or her agent shall, on demand, furnish to the member of the Authority, officer of the Authority or other person authorized by the Authority a statement in writing, containing such particulars as may be required by the member of the Authority, officer of the Authority or other person authorized by the Authority.

(4) Where the member of the Authority, officer of the Authority or other person authorized by the Authority believes that an offence has been committed or is likely to be committed, the member of the

Authority, officer of the Authority or other person authorized by the Authority may seize, remove and detain any fertilizer, container, label, book, record, document or device used or likely to be used in the commission of the offence.

(5) The member of the Authority, officer of the Authority or other person authorized by the Authority shall, upon seizure of any item or thing pursuant to subsection (4), give to the person from whom such item or thing is seized, a notice of seizure signed by the member, officer or other person authorized by the Authority containing—

- (a) particulars of the alleged offence;
- (b) a description of the seized item;
- (c) quantity of the seized item;
- (d) date and time of the seizure; and
- (e) any other information, as the member, officer or other authorized person may think appropriate.

(6) Where after investigation of the matter, the Authority decides not to commence any proceedings, the Authority shall, within ten days of the decision, return any item or thing seized under this section to the owner thereof or the person from whose custody it was seized.

61.—(1) Notwithstanding any criminal sanction imposed under this Act, the Authority may, if it is satisfied that—

Regulatory
orders and
sanctions

- (a) a person has contravened or is likely to contravene any provision of this Act; or
- (b) a holder of a registration certificate, licence or permit has contravened or is likely to contravene a term or condition of the registration certificate, licence or permit, issue a regulatory order or impose a sanction on the person or holder of the registration certificate, licence or permit.

(2) A regulatory order—

(a) shall be valid for a period not exceeding sixty days, as may be stated in the order; and

(b) may be extended for such periods as the Authority may determine appropriate, in so long as the validity period of the order shall not cumulatively exceed six months from the date of first issue.

(3) A regulatory order shall be in writing and shall state—

- (a) particulars of the person to whom it is addressed;
- (b) particulars of the contravention or potential contravention;

(c) the action required of the person to whom the order is addressed; and

(d) the period within which the order should be complied with.

(4) A regulatory order may include one or more of the following—

(a) a compliance order requiring the person to comply with the provisions of this Act;

(b) a cease-and-desist order requiring the person to stop or refrain from doing a specified act which is in contravention of this Act;

(c) a restoration order requiring the person to undertake any appropriate action to restore the environment or anything to its original state, or mitigate the impact of the breach;

(d) a compensation order requiring the person to compensate any other person who has suffered damage as a result of the contravention;

(e) payment of an administrative penalty;

(f) suspension of a registration, licence or permit;

(g) revocation of a registration, licence or permit; and

(h) any other order considered appropriate by the Authority.

(5) A regulatory order shall be discharged upon the Authority being satisfied that the person to whom it is addressed has fully complied with the contents of the order.

(6) Where the person to whom the regulatory order is addressed—

(a) fails to comply with the order within the period stated in the order; or

(b) continues to undertake the activity proscribed in the order, the Authority may—

(i) seize, remove and detain any fertilizer, equipment, material or any other thing used in the commission of the act proscribed in the order and the seized fertilizer, equipment, material or thing may be released upon the person to whom the order is addressed complying with the order and paying all costs and expenses incurred by the Authority in enforcing the order; and

(ii) where the person against whom the order is issued is a holder of a registration certificate, licence or permit under this Act, revoke the certificate, licence or permit.

(7) A compensation order and an administrative penalty imposed under this Act may be recovered in a court of law as a civil debt due

to the awardee of the compensation or the Authority, as the case may be.

(8) A person who fails to comply with a regulatory order made under this section other than a compensation order or payment of an administrative penalty, commits an offence and shall, upon conviction, be liable to a fine of K10,000,000 and to imprisonment for two years.

62.—(1) A holder of a registration certificate, licence or permit under this Act shall keep, within his or her premises, such records as the Minister may prescribe and shall, upon request, submit the records to the Authority, an officer of the Authority or any other officer authorized by the Authority. Duty to keep records

(2) A person who contravenes subsection (1), commits an offence and shall, upon conviction, be liable to a fine of K10,000,000 and to imprisonment for two years.

63.—(1) Where a registration certificate, licence or permit issued under this Act is revoked, the holder of the certificate, licence or permit or, in the case of death of the holder, a member of the immediate family of the holder, shall, within thirty days of receipt of the revocation notice, surrender the certificate, licence or permit to the Authority. Duty to surrender revoked certificate, licence or permit

(2) A person who contravenes subsection (1) commits an offence and shall be liable to an administrative penalty of K5,000,000 for the first offence and K10,000,000 for the subsequent offence.

64. A registration certificate, licence or permit issued under this Act shall not be transferable. Registration, licence or permit not transferable

65.—(1) A holder of a registration certificate, licence or permit who intends to cease his or her operations or cease conducting a specified activity at a specific site, shall notify the Authority in writing about the intended cessation within— Cessation of operations or activity

(a) in the case of ceasing to manufacture, produce or blend fertilizer or a particular brand of fertilizer, at least six months before the date of the intended cessation;

(b) in the case of decommissioning a fertilizer manufacturing facility or fertilizer blending facility, at least six months from the date the decommissioning is intended to commence;

(c) in the case of cessation of operation of a fertilizer testing laboratory, at least six months from the date of the intended cessation; or

(d) in the case of any other activity, at least thirty days before the intended cessation.

(2) A notice submitted under subsection (1) shall be accompanied by—

(a) a work plan for the cessation; and

(b) measures put in place for safe disposal of any products that are harmful to human life, animal life and the environment.

(3) The Authority shall issue guidelines for cessation of operations or activities regulated by this Act.

(4) A holder of a registration certificate, licence or permit who contravenes subsection (1) shall be liable to—

(a) in the case of a fertilizer manufacturer or blender an administrative penalty of K20,000,000;

(b) in the case of an operator of a fertilizer testing laboratory, an administrative penalty of K10,000,000; or

(c) in any other case, an administrative penalty of K5,000,000.

Regulation

66.—(1) The Minister may, on recommendation of the Authority and by notice published in the *Gazette*, make regulations as are necessary or expedient for the purpose of giving full effect to this Act and prescribing all matters which are necessary or convenient to be prescribed.

(2) Without prejudice to the generality of subsection (1), the regulations may make provision for—

(a) forms of registers, notifications, licences, certificates, permits and reports required under this Act;

(b) procedure and requirements for accreditation of fertilizer testing laboratories;

(c) procedure and requirements for registration of fertilizer manufacturers, producers and blenders;

(d) requirements for location and operation of fertilizer manufacturing, producing and blending facilities;

(e) procedure and methods for analyzing fertilizer;

(f) procedure for registration and conduct of fertilizer efficacy field evaluation trials;

(g) requirements and standards for storage of fertilizer;

(h) manner and methods of labelling, stamping, marking or sealing fertilizer containers;

(i) manner of advertising fertilizer for sale;

(j) prescribing a code of conduct for fertilizer analysts;

- (k) fees and charges payable under this Act;
- (l) guidelines for conduct of inspection, sampling and analysis;
- (m) prescribing acceptable fertilizer nutrient content; and
- (n) anything required to be prescribed under this Act.

(3) Notwithstanding the provisions of section 21(e) of the General Interpretation Act, the regulations made under subsection (1), may provide for offences the contravention of which may attract a penalty of a fine of K2,000,000 and to imprisonment for six months.

(4) In addition to the penalty prescribed under subsection (2), the regulations may provide for forfeiture to the state of fertilizer, equipment or any other thing connected with the commission of the offence.

SCHEDULE

(s.56)

OATH OF SECRECY

I,....., being a member of the Authority/member of a committee of the Authority/member of staff of the Authority/ having been invited to attend a meeting of the Authority, do hereby swear that I will freely without fear or favour, affection, or ill-will, discharge the functions of a member/member of staff /invitee of the Authority and that I will not directly, or indirectly reveal any matter related to such functions to any unauthorized person or otherwise than in the course of duty. So, help me God/Allah.

SWORN atthis day of, 20.....

.....
Deponent

Before me:
Commissioner for Oaths

OBJECTS AND REASONS

The object of this Bill is to provide for the establishment of the Malawi Fertilizer Regulatory Authority and its operations; regulate the registration of fertilizers approved for use in Malawi; regulate the manufacturing, production, blending, distribution, importation and exportation of fertilizer; and provide for other matters related to the foregoing.

T. CHAKAKA-NYIRENDA
Attorney General