



LAWS OF KENYA

USE OF POISONOUS SUBSTANCES ACT

CHAPTER 247

Revised Edition 2012 [1983]

Published by the National Council for Law Reporting
with the Authority of the Attorney-General

www.kenyalaw.org

CHAPTER 247

USE OF POISONOUS SUBSTANCES ACT

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CHAPTER 247**USE OF POISONOUS SUBSTANCES ACT**

[Date of assent: 20th November, 1957.]

[Date of commencement: By Notice.]

An Act of Parliament to provide for the protection of persons against risks of poisoning by certain substances, and for matters incidental thereto and connected therewith

[Act No. 23 of 1957, L.N. 365/1964, Act No. 17 of 2006.]

1. Short title and commencement

This Act may be cited as the Use of Poisonous Substances Act, and shall come into operation on such day as the Minister may, by notice in the *Gazette*, appoint.

[L.N. 365/1964, Sch.]

2. Interpretation

In this Act, except where the context otherwise requires—

“**employee**” means a person employed under a contract of service or apprenticeship or gratuitously, casually or otherwise employed;

“**inspector**” means an inspector appointed under section 5;

“**poisonous substance**” means any substance or class of substances declared to be a poisonous substance under the provisions of section 9 of this Act and to which the provisions of this Act are made to apply;

“**proceedings under this Act**” includes proceedings under any regulations made under this Act.

3. Protection of persons against risks of poisoning

(1) Provision may be made by regulations under this Act for the purpose of protecting persons against risks of poisoning by poisonous substances arising from

- (a) the use of those poisonous substances;
- (b) the employment of employees at places in which or on which such poisonous substances are being or have been used; and
- (c) *Deleted by Act No. 17 of 2006, s. 17.*

(2) Regulations under this Act shall be made by the Minister and may make such provision for the purposes mentioned in subsection (1) of this section as appears to him to be reasonably practicable and to meet the necessity of the case, and may impose obligations on employers, employees and others.

(3) Without prejudice to the generality of subsection (2) of this section, regulations under this Act may provide for—

- (a) imposing restrictions or conditions as to the purposes for which, the circumstances in which, or the methods or means by which, a poisonous substance may be used, including restrictions or conditions involving a general prohibition of the use thereof;

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- (b) imposing restrictions or conditions on the importation, sale, disposal, storage, transport or use of any poisonous substances;
- (c) requiring persons concerned with the importation, sale, disposal, storage, transportation or use of poisonous substances to be registered or licensed;
- (d) requiring the provision, and keeping available and in good order, of protective clothing and equipment, of facilities for washing and cleaning, and of other things needed for protecting persons, clothing, equipment and appliances from contamination or for removing sources of contamination therefrom;
- (e) requiring the observance of precautions against poisoning, including the use of things provided in pursuance of the regulations, and including abstention from eating, drinking, smoking and taking snuff in circumstances involving risk of poisoning;
- (f) securing intervals between, or limitations of, periods of exposure to risk of poisoning;
- (g) requiring the observance of special precautions in the case of persons who, by reason of their state of health, age or other circumstances, are subject to particular risk of poisoning or of injury therefrom, or imposing in the case of persons so subject prohibitions (whether temporary or permanent), or restrictions, on employment;
- (h) measures for detecting and investigating cases in which poisoning has occurred, and cases falling within the preceding paragraph (g), including medical examinations, making of blood tests and notification of absences from work in circumstances involving suspicion of poisoning;
- (i) requiring the provision, and keeping available and in good order, and the use, of facilities for preventive and first-aid treatment;
- (j) requiring the provision of, and submission to, instruction and training in the use of things provided in pursuance of the rules and in the observance of precautions;
- (k) the keeping and inspection of records and the furnishing of returns and information;
- (l) imposing restrictions on the concentrations of poisonous substances used and on the period elapsing between the treatment of any crop, food, building, land or other thing and the subsequent consumption or use thereof or the subsequent handling or other dealings therewith.

(4) Regulations under this section may make different provision to meet different circumstances and, in particular, differences in the composition of the substances dealt with and in their effect under different conditions of use and on different classes of persons.

(5) Where the Minister proposes to make regulations under this Act, he shall, before making the regulations, consult with such organizations as appear to him to represent the interests concerned.

4. Prohibition of certain acts

(1) No person shall—

- (a) wilfully interfere with or misuse any appliance, clothing, equipment, facilities or other thing provided in pursuance of regulations made under this Act; or
- (b) wilfully and without reasonable cause do anything likely to cause risk of poisoning by a poisonous substance to himself or others.

(2) Nothing in this section shall be taken as limiting the power conferred by section 3 to make by regulations any such provision as is therein mentioned, including further provision as to matters which are the subject of this section.

5. Appointment of inspectors and their powers

(1) The Minister may appoint persons to be inspectors for the purpose of this Act and, subject to the provisions of this Act, prescribe the powers, duties and functions of inspectors.

(2) An inspector, on producing, if so required, a duly authenticated document showing his appointment, may enter at all reasonable hours any land, premises or vehicle—

- (a) on which a poisonous substance is being, or has recently been or is about to be, used; or
- (b) which is or are being used, or has or have recently been or is or are about to be used, for a purpose connected with a poisonous substance; or
- (c) which is or are being used, or has or have recently been or is or are about to be used, for the storage or sale of a poisonous substance; or
- (d) on which things required by regulations made under this Act to be provided or done are provided or done,

or which he has reasonable cause to believe to be land, premises or vehicles falling within any of the preceding paragraphs of this subsection:

Provided that admission shall not be demanded under this subsection to a dwelling-house, other than one in which there are, or are reasonably believed by the inspector to be, washing facilities or other things provided for persons not living in the house for whom such things are required by regulations under this Act to be provided, unless twenty-four hours' notice of the intended entry has been given to the occupier of the house.

(3) A person shall be deemed to obstruct an inspector in the execution of his powers, duties or functions under this Act or any regulations made thereunder if he wilfully delays an inspector in the exercise of any such power, duty or function, or fails to comply with any requirement of an inspector made in pursuance of any such regulation.

6. Offences and penalties

(1) If a person—

- (a) contravenes any provision of section 4 of this Act; or

- (b) obstructs an inspector in the execution of his powers, duties or functions under this Act or regulations thereunder; or
- (c) willfully makes a false entry in a register, record, return or other document kept or furnished in pursuance of regulations made under this Act, or willfully makes use of such a false entry, or willfully makes or signs as being a declaration required by an inspector in pursuance of this Act or any regulation made thereunder a declaration which is false,

he shall be guilty of an offence and liable to a fine not exceeding one thousand shillings; and, if a contravention of a provision of this Act in respect of which a person has been convicted is continued by him after his conviction, he shall be guilty of a further offence and shall be liable in respect thereof to a fine not exceeding two hundred shillings for each day on which the contravention is so continued or to imprisonment for a period not exceeding six months, or to both.

(2) Where an offence against this Act or against any regulations made under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in such capacity, he as well as the body corporate shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

7. Defence available in certain circumstances to person charged with offence where some other person is responsible

(1) A person against whom proceedings are brought under this Act shall, upon information duly laid by him and on giving to the prosecution not less than three clear days' notice of his intention, be entitled to have brought before the court in the proceedings any person to whose act or default he alleges that the contravention of the provision in question was due, and, if after the contravention has been proved the original defendant proves that the contravention was due to the act or default of that other person, that other person may be convicted of the offence, and, if the original defendant further proves—

- (a) that he has used all due diligence to secure that the provision in question was complied with; and
- (b) that the said other person's act or default was without his consent, connivance or wilful default,

he shall be acquitted of the offence.

(2) Where a defendant seeks to avail himself of the provisions of subsection (1) of this section—

- (a) the prosecution, as well as the person whom the defendant charges with the offence, shall have the right to cross-examine the defendant, if he gives evidence, and any witness called by him in support of his pleas, and to call rebutting evidence; and
- (b) the court may make such order as it thinks fit for the payment of costs by any party to the proceedings to any other party thereto.

8. Provisions as to samples

(1) An inspector may take for analysis a sample of any substance or thing which in his opinion may be or contain a poisonous substance.

(2) An inspector taking a sample under subsection (1) with the intention of having it analysed shall, if practicable, forthwith after taking it give information of his intention to the employer of any person using or having charge of the said substance or thing, and shall then and there divide the sample into three parts, each part to be marked, and sealed or fastened up in such a manner as its nature will permit, and shall—

- (a) if required so to do by an employer so informed, deliver one part to him; and
- (b) retain one part for future comparison; and
- (c) if the inspector thinks fit to have an analysis made, submit one part to an analyst approved by the Minister for the purposes of this Act.

(3) Where it is not practicable for the inspector to give information of his intention as mentioned in subsection (2), the inspector shall, if he intends to have the sample analysed and if he can ascertain the name and address of the employer, forward one part of the sample to him by registered post or otherwise, together with a notice informing him that he intends to have the sample analysed.

(4) A document purporting to be a certificate by an analyst approved by the Minister for the purposes of this Act as to the result of an analysis of a sample shall in proceedings under this Act be admissible as evidence of the matters stated therein, but either party may require the person by whom the analysis was made to be called as a witness.

(5) In any proceedings under this Act in which the prosecutor intends to rely on evidence relating to a sample taken under this section, the summons shall not be made returnable less than fourteen days from the day on which it is served, and a copy of any certificate of analysis obtained on behalf of the prosecutor shall be served with the summons.

(6) In any proceedings under this Act in which the prosecutor relies on evidence relating to a sample taken under this section, the part of the sample retained by the inspector for future comparison shall be produced at the hearing.

(7) The court before which any proceedings are taken under this Act may, and upon the request of either party shall, cause the part of any sample produced before it under subsection (6) to be sent to the Government Chemist who shall make an analysis and transmit to the court a certificate of the result thereof, and the cost of the analysis shall be paid by the prosecutor or the defendant, as the court may order.

(8) If, in a case where an appeal is brought, no action has been taken under subsection (7), those provisions shall apply also in relation to the court by which the appeal is heard.

9. Substances to which this Act applies

If the Minister is satisfied that the use of a substance or a class of substances involves, or that if used its use would be likely to involve, substantial risk of

poisoning to persons, he may, by order, declare the substance or class of substances to be a poisonous substance and direct that the provisions of this Act shall apply to that substance or class of substances.

10. Application to the Government

This Act and regulations thereunder shall bind the Government, but regulations under this Act may provide for modifications or exceptions in the application of this Act or regulations to, or in relation to, the Government.

11. Protection of inspectors acting under the Act

No suit, prosecution or other legal proceedings shall lie against any inspector for anything done in good faith and without negligence under the provisions of this Act or of any regulations made thereunder.