

Food and Drugs Act

Principal Act

Act. No. 1964-07	<i>Commencement</i>	21.8.1964
	<i>Assent</i>	15.5.1964

Amending enactments	Relevant current provisions	Commencement date
Order of 25.11.1969	ss. 6(1)-(2), 8(1), 13(1), 15(4), 23(1), (3), 27, 58	
Regs of 28.5.1970	ss. 2(1), 10(1), 12(1), 13(3), 14(1)-(2), 15(1), 16(2), (4), 17, 20(2), 21, 24(1), 30-31, 32(1), (3)-(4), 33, 34(1), 35(3), 36(4), 39-40, 41(1), 42(1), 50(3), 53, 55, 56(1), 59-63, Sch. 2	
Acts.1972-05	ss.16(4), 43(1), (3)	
1976-22	ss. 2(1), 15(1), Sch. 6	
1978-16	ss.18, 8A	
1984-07	ss. 2(1), 6(1), 16(4), 18(1), 18A(1), (3), 21(1), 23(1)-(2), 24(1), 25(4), 26(2), (5), (8), 27, 29, 41, 43(1), (3), 44,, 44A, 46, 58, 58A, Sch. 2	1.7.1984
1987-34	ss. 2, 15-17, 18A, 20-21, 31(2), 39	1.2.1988
1997-25	ss. 2, 18A, 20	21.8.1997
2007-17	ss. 6(1)-(2), 8(1), 13(1), 15(4), 18(2), 18A(2), 23(1), (3), 58(h), 58A(1)-(2)	14.6.2007

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Food and Drugs Act 1955 (4 & 5 Eliz. 2 c.16)

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AN ACT TO CONSOLIDATE THE LAW RELATING TO FOOD AND DRUGS AND FOR PURPOSES CONNECTED THEREWITH.

Short title.

1. This Act may be cited as the Food and Drugs Act.

Interpretation.

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

“advertisement” includes any notice, circular, label, wrapper, invoice or other document, and any public announcement made orally or by any means of producing or transmitting light or sound;

“analysis” includes micro-biological assay but no other form of biological assay;

“animal” does not include bird or fish;

“article” does not include a live animal or bird;

“authorized officer” has the meaning assigned to it by section 31;

“business” includes the undertaking of a canteen, club, school, hospital or institution, whether carried on for profit or not;

“catering premises” means premises where, in the course of a business, food is prepared and supplied for immediate consumption;

“cheese” means the substance usually known as cheese, containing no fat other than fat derived from milk;

“Community” means the European Economic Community”;

“container” includes any basket, pail, tray, package or receptacle of any kind, whether open or closed;

“cream” means that part of milk rich in fat which has been separated by skimming or otherwise;

“dairy”, “dairy farm”, “dairy farmer” and “dairyman” have the meanings assigned to them by section 22;

“drug” includes medicine for internal or external use;

“food” includes drink, chewing gum and other products of a like nature and use, and articles and substances used as ingredients in the preparation of food or drink or of such products, but does not include—

- (a) water, live animals or birds,
- (b) fodder or feeding stuffs for animals, birds or fish, or
- (c) articles or substances used only as drugs;

“functions” includes powers and duties;

“human consumption” includes use in the preparation of food for human consumption;

“ice-cream” includes any similar commodity;

“importer”, in relation to an imported article, includes any person who, whether as owner, consignor, consignee, agent or broker, is in possession of an article or in any way entitled to the custody or control of it;

“milk” means the mammary secretion obtained from cows or goats and includes cream and separated milk, but does not include dried milk or condensed milk;

“officer” includes servant;

“open food” means food which is not in a container of such materials and so closed as to exclude the risk of contamination but does not include any food mentioned in column 1 of Schedule 6 which has been wrapped in the manner described in column 2 thereof;

“premises” means a building or part of a building, and any forecourt, yard or place of storage used in connection with a building or part of a building, and includes, in relation to dairies and dairy farms, and the trade of dairyman or dairy farmer, any land other than buildings;

“preparation”, in relation to food, includes manufacture and any form of treatment, and “preparation for sale” includes packaging;

“public analyst” has the meaning assigned to it by section 32;

“Public Health Director” means the registered medical practitioner appointed as such by the Gibraltar Health Authority;

“purveyor”, in relation to milk, includes any person who sells milk, whether wholesale or by retail;

“sampling officer” has the meaning assigned to it by section 34;

“sanitary convenience” means a water closet, urinal, earth or chemical closet or similar convenience;

“separated”, in relation to milk, includes skimmed;

“ship” includes any boat or craft;

“shop” includes any premises where any retail trade or business is carried on;

“substance” includes a liquid;

“transit” includes all stages of transit from the dairy, place of manufacture or other source of origin, to the consumer;

“vessel” includes a receptacle of any kind, whether open or closed.

(2) For the purposes of this Act—

- (a) the supply of food, otherwise than by sale, at, in or from any place where food is supplied in the course of a business shall be deemed to be a sale of that food, and references to purchasing and purchasers shall be construed accordingly; and
- (b) where in connection with any business in the course of which food is supplied the place where food is served to the customer is different from the place where the food is consumed, both those places shall be deemed to be places in which food is sold.

PART I.

GENERAL PROVISIONS AS TO FOOD AND DRUGS.

Composition and labelling of food and drugs.

Offences in connection with preparation and sale of injurious foods and adulterated drugs.

3.(1) No person shall add any substance to food, use any substance as an ingredient in the preparation of food, abstract any constituent from food, or subject food to any other process or treatment, so as (in any such case) to render the food injurious to health, with intent that the food shall be sold for human consumption in that state.

(2) No person shall add any substance to, or abstract any constituent from, a drug so as to affect injuriously the quality, constitution or potency of the drug, with intent that the drug shall be sold in that state.

- (3) Subject to the provisions of this section, no person shall—
- (a) sell for human consumption, offer, expose or advertise for sale for human consumption, or have in his possession for the purpose of such sale, any food rendered injurious to health by means of any operation described in subsection (1); or
 - (b) sell, offer, expose or advertise for sale, or have in his possession for the purpose of sale, any drug injuriously affected in its quality, constitution or potency by means of any operation described in subsection (2).

(4) A person who contravenes any of the foregoing provisions of this section is guilty of an offence.

(5) In determining for the purposes of this Act whether an article of food is injurious to health, regard shall be had not only to the probable effect of that article on the health of a person consuming it, but also to the probable cumulative effect of articles of substantially the same composition on the health of a person consuming such articles in ordinary quantities.

(6) In proceedings under this section for an offence consisting of the advertisement for sale of any food or drug, it shall be a defence for the person charged to prove that, being a person whose business it is to publish, or arrange for the publication of, advertisements, he received the advertisement for publication in the ordinary course of business.

General protection for purchasers of food and drugs.

4.(1) A person who sells to the prejudice of the purchaser any food or drug which is not of the nature, or not of the substance, or not of the quality, of the food or drug demanded by the purchaser, is, subject to the provisions of section 5, guilty of an offence.

(2) In proceedings under this section it shall not be a defence to allege that the purchaser bought for analysis or examination and therefore was not prejudiced.

(3) In this section, except so far as it relates to drugs, the reference to sale shall be construed as a reference to sale for human consumption.

Defences available in proceedings under section 4.

5.(1) In proceedings under section 4 for an offence consisting of the sale of food to which any substance has been added, or in the preparation of which any substance has been used as an ingredient, or from which any constituent has been abstracted, or which has been subjected to any other process or treatment, other than food thereby rendered injurious to health, it shall be a defence for the person charged to prove that the operation in question was not carried out fraudulently, and that the article was sold having attached thereto a notice of adequate size, distinctly and legibly printed and conspicuously visible, stating explicitly the nature of the operation, or was sold in a wrapper or container displaying such a notice.

(2) The provisions of subsection (1) shall apply in relation to proceedings for an offence consisting of the sale of a drug to which any substance has been added, or from which any constituent has been abstracted, other than a drug thereby injuriously affected in its quality, constitution or potency, as they apply in relation to any such offence as is therein mentioned.

(3) In proceedings under section 4 in respect of any food or drug containing some extraneous matter, it shall be a defence for the defendant to prove that the presence of that matter was an unavoidable consequence of the process of collection or preparation.

(4) In proceedings under section 4 in respect of diluted whisky, brandy, rum or gin, it shall be a defence for the defendant to prove that the spirit in question had been diluted with water only and that its strength was still not lower than thirty-five degrees under proof.

Regulations as to composition of food, etc.

6.(1) The Government may, so far as appears to him to be necessary or expedient in the interests of the public health, or to be called for by any Community obligation or otherwise for the protection of the public, make regulations for any of the following purposes:—

- (a) for requiring, prohibiting or regulating the addition of any specified substance, or any substance of any specified class, to food intended for sale for human consumption or any class of such food, or the use of any such substance as an ingredient in the preparation of such food, and generally for regulating the composition of such food;
- (b) for requiring, prohibiting or regulating the use of any process or treatment in the preparation of any food intended for sale for human consumption, or any class of such food:
- (c) for prohibiting or regulating the sale, possession for sale, offer or exposure for sale, consignment, or delivery, of food which does not comply with any of the regulations, or in relation to which an offence against the regulations has been committed or would have been committed if any relevant act or omission had taken place in Gibraltar, or for prohibiting or regulating the importation of any such food;
- (d) for prohibiting or regulating the sale, possession for sale, or offer, exposure or advertisement for sale, of any specified substance, or of any substance of any specified class, with a view to its use in the preparation of food for human consumption, and the possession of any such substance for use in the preparation of food intended for sale for human consumption.

(2) in the exercise of his functions under this section the Government shall have regard to the desirability of restricting, so far as practicable, the use of substances of no nutritional value as foods or as ingredients of foods.

(3) Regulations made under this section may apply to cream, and to any food containing milk; but except as aforesaid such regulations shall not apply to milk.

(4) Regulations so made may provide, in relation to such cases as may be specified and subject to such exceptions as may be allowed by or under the regulations, that, where any food is certified by the public analyst as being food to which the regulations apply so far as they are made under paragraph (c) of subsection (1), that food may be treated for the purposes of section 10 (under which food may be seized and destroyed on the order of a justice of the peace) as being unfit for human consumption:

Provided that nothing in any such regulations shall be taken as prejudicing the generality of the powers conferred by section 10.

False labelling or advertisement of food or drug.

7.(1) A person who gives with any food or drug sold by him, or displays with any food or drug exposed by him for sale, a label, whether attached to or printed on the wrapper or container or not, which—

- (a) falsely describes the food or drug; or
- (b) is calculated to mislead as to its nature, substance or quality, is guilty of an offence, unless he proves that he did not know, and could not with reasonable diligence have ascertained, that the label was of such a character.

(2) Subject to subsection (3), a person who publishes, or is a party to the publication of, an advertisement (not being such a label so given or displayed by him as aforesaid) which—

- (a) falsely describes any food or drug; or
- (b) is calculated to mislead as to the nature, substance or quality of any food or drug, is guilty of an offence; and in any proceedings under this subsection against the manufacturer, producer or importer of the food or drug, it shall rest on the defendant to prove that he did not publish, and was not a party to the publication of, the advertisement.

(3) In proceedings under subsection (2) it shall be a defence for the defendant to prove either—

- (a) that he did not know, and could not with reasonable diligence have ascertained, that the advertisement was of such a character as is described in that subsection; or

- (b) that, being a person whose business it is to publish, or arrange for the publication of, advertisements, he received the advertisement for publication in the ordinary course of business.
- (4) It is hereby declared that, for the purposes of this section, a label or advertisement which is calculated to mislead as to the nutritional or dietary value of any food is calculated to mislead as to the quality of the food.
- (5) In proceedings for an offence under this section the fact that a label or advertisement in respect of which the offence is alleged to have been committed contained an accurate statement of the composition of the food or drug shall not preclude the court from finding that the offence was committed.
- (6) In this section, except so far as it relates to drugs, references to sale shall be construed as references to sale for human consumption.

Regulations as to labelling and description of food.

8.(1) Without prejudice to the provisions of section 7 the Government may make regulations for imposing requirements as to, and otherwise regulating, the labelling, marking or advertising of food intended for sale for human consumption, and the descriptions which may be applied to such food.

(2) Regulations made under this section may make provision for any purpose authorized by section 6(1)(c) in the case of regulations under that section.

(3) Regulations made under this section may apply to cream, and to any food containing milk; but except as aforesaid such regulations shall not apply to milk.

Food unfit for human consumption.

Punishment for sale, etc., of food unfit for human consumption.

- 9.(1) Subject to the provisions of this section, a person who—
- (a) sells, or offers or exposes for sale, or has in his possession for the purpose of sale or of preparation for sale; or
 - (b) deposits with, or consigns to, any person for the purpose of sale or preparation for sale, any food intended for, but unfit for, human consumption is guilty of an offence.
- (2) Subject as aforesaid, where food in respect of which an offence under subsection (1)(a) has been committed was sold to the offender by some other person, that person also is guilty of an offence.

(3) Where a person is charged with an offence under subsection (1)(b), or under subsection (2), it shall be a defence for him to prove either:—

- (a) that he gave notice to the person with whom he deposited or to whom he consigned or sold, the food in question that it was not intended for human consumption; or
- (b) that, at the time when he delivered or dispatched it to that person, either it was fit for human consumption or he did not know, and could not with reasonable diligence have ascertained, that it was unfit for human consumption.

(4) The justice of the peace before whom any food is brought under section 10 may, but need not, be a member of the court before which a person is charged with an offence under this section in relation to that food.

Examination and seizure of suspected food.

10.(1) An authorized officer of the Government may at all reasonable times examine any food intended for human consumption which has been sold, or is offered or exposed for sale, or is in the possession of, or has been deposited with or consigned to, any person for the purpose of sale or of preparation for sale, and, if it appears to him to be unfit for human consumption, may seize it and remove it in order to have it dealt with by a justice of the peace.

(2) An officer who seizes any food under subsection (1) shall inform the person in whose possession the food was found of his intention to have it dealt with by a justice of the peace, and any person who under section 9 might be liable to a prosecution in respect of the food shall, if he attends before the justice upon the application for its condemnation, be entitled to be heard and to call witnesses.

(3) If it appears to a justice of the peace that any food brought before him, whether seized under the provisions of this section or not, is unfit for human consumption, he shall condemn it and order it to be destroyed or to be so disposed of as to prevent it from being used for human consumption.

(4) If a justice of the peace refuses to condemn any food seized under this Part by an authorized officer of the Government, the Government shall compensate the owner of the food for any depreciation in its value resulting from its seizure and removal.

Food offered as prizes, etc.

11.(1) Sections 9 and 10 shall apply—

- (a) in relation to any food which is intended for human consumption and is offered as a prize or reward in connection with any entertainment to which the public are admitted, whether on payment of money or not, as if the food were, or had been, exposed for sale by each person concerned in the organization of the entertainment;

- (b) in relation to any food which is intended for human consumption and is offered as a prize or reward or given away for the purpose of advertisement, or in furtherance of any trade or business, as if the food were, or had been, exposed for sale by the person offering or giving away the food; and
 - (c) in relation to any food which is intended for human consumption and is exposed or deposited in any premises for the purpose of being so offered or given away as aforesaid, as if the food were, or had been exposed for sale by the occupier of the premises.
- (2) In this section the expression “entertainment” includes any social gathering, amusement, exhibition, performance, game, sport or trial of skill.

Power to examine food in course of transit.

12.(1) Subject to the provisions of this section, if an authorized officer of the Government has reason to suspect that any vehicle or container contains any food which is intended for sale for human consumption, or is in the course of delivery after sale for human consumption, he may examine the contents of the vehicle or container, and for that purpose may, if necessary, detain the vehicle or container; and if the officer finds any food which appears to him to be intended for, but unfit for, human consumption, he may deal with it as food falling within subsection (1) of section 10 and subsections (2) to (4) of that section shall apply accordingly.

(2) Where the duties of a revenue officer with respect to any goods have not been wholly discharged, nothing in this section shall authorize the examination of those goods without his consent.

Hygiene in connection with sale, etc., of food to the public.

Regulations as to food hygiene.

13.(1) The Government may make regulations for securing the observance of sanitary and cleanly conditions and practices in connection with—

- (a) the sale of food for human consumption; or
- (b) the importation, preparation, transport, storage, handling, packing, wrapping, exposure for sale, service or delivery of food intended for sale or sold for human consumption,

or otherwise for the protection of the public health in connection with the matters aforesaid.

(2) Without prejudice to the generality of subsection (1), regulations made under this section may make provision—

- (a) for imposing requirements as to the construction, layout, drainage, equipment, maintenance, cleanliness, ventilation, lighting, water supply and use, of premises in, at or from which food is sold for human consumption, or offered, exposed, stored or prepared for sale, for human consumption (including any parts of such premises in which apparatus and utensils are cleansed, or in which refuse is disposed of or stored);
 - (b) for imposing requirements as to the provision, maintenance and cleanliness of sanitary and washing facilities in connection with such premises, the disposal of refuse and the maintenance and cleanliness of apparatus, equipment, furnishings and utensils used in such premises and in particular for imposing requirements that every sanitary convenience situated in such premises shall be supplied with water through a suitable flushing appliance;
 - (c) for prohibiting or regulating the use of any specified materials, or of materials of any specified class, in the manufacture of apparatus or utensils designed for use in the preparation of food for human consumption, and the sale or importation for sale of apparatus or utensils designed for such use and containing any specified materials, or materials of any specified class;
 - (d) for prohibiting spitting on premises where food is sold for human consumption, or offered, exposed, stored or prepared for sale for human consumption (including any parts of such premises where apparatus and utensils are cleansed);
 - (e) for imposing requirements as to the clothing worn by persons in such premises;
 - (f) for requiring the staining or sterilization in accordance with the regulations of meat which is unfit for human consumption, or which is derived from animals slaughtered in knackers' yards or from carcasses brought into knackers' yards, or which, though not unfit for human consumption, is not intended therefor;
 - (g) for regulating generally the treatment and disposal of any food unfit for human consumption.
- (3) Regulations under this section may make different provisions in relation to different classes of business, and, without prejudice to the foregoing provisions of this section or of section 58, any such regulations imposing requirements in respect of premises may—
- (a) impose on the occupier of the premises and, in the case of requirements of a structural character, on any owner of the premises who either lets them for use for a purpose to which the regulations apply or permits them to be so used after notice from the Government, responsibility for compliance with those requirements;

- (b) provide, subject to such limitations and safeguards as may be specified, for conferring, in relation to particular premises, exemptions from the operation of specified provisions contained in regulations made for the purposes of paragraph (a) or paragraph (b) of subsection (2) while there is in force a certificate of the Government to the effect that compliance with those provisions cannot reasonably be required with respect to the premises or any activities carried on therein.

(4) If any person who has incurred, or is about to incur, expenditure in securing that the requirements of regulations made under this section, being requirements of a structural character, are complied with in respect of any premises owned or occupied by him claims that the whole or any part of the expenditure ought to be borne by any other person having an interest in the premises, he may apply to the Court of First Instance¹, and the court may make such order concerning the expenditure or its apportionment as appears to the court, having regard to all the circumstances of the case, including the terms of any contract between the parties, to be just and equitable; and any order made under this subsection may direct that any such contract shall cease to have effect in so far as it is inconsistent with the terms of the order.

(5) Regulations made under this section may impose in respect of vehicles, stalls and places other than premises, any such requirements as may be imposed thereunder in respect of premises.

(6) Subject as hereinafter provided, references in this section to food shall be construed as references to food other than milk:

Provided that—

- (a) regulations under this section relating to importation may apply to milk; and
- (b) any regulations under this section may apply to any food containing milk.

Power of court to disqualify caterer.

14.(1) Where a person is proceeded against by the Government for an offence against regulations made under section 13 in respect of any premises used as catering premises or of any business carried on at such premises, the following provisions of this section shall have effect.

(2) If the person is convicted of the offence and the court thinks it expedient to do so having regard to the gravity of the offence or (in the case of an offence committed in respect of premises) to the unsatisfactory nature of the premises, or having regard to any offences against regulations made under section 13 of which the person has previously been convicted, the

¹ Any reference to the Court of First Instance in any other Act shall be read as if it were a reference to the Supreme Court. (see Act. 2004-11 s.6.)

court may, on the application of the Government, make an order disqualifying that person from using those premises as catering premises for such period not exceeding two years as may be specified in the order:

Provided that an order under this section shall not be made against any person unless the Government have, not less than fourteen days before the date of the hearing, given that person written notice of their intention to apply for an order to be made against him.

(3) A person subject to an order under this section is guilty of an offence if, while the order is in force,—

- (a) he uses the premises to which the order relates as catering premises; or
- (b) he participates in the management of any business in the course of which the premises are so used by another person.

(4) A person so subject may, at any time after the expiration of six months from the date on which the order came into force and from time to time thereafter, apply to the court before which he was convicted, or by which the order was made, to revoke the order, and on any such application the court may, if it thinks proper having regard to all the circumstances of the case, including in particular the person's conduct subsequent to the conviction and any improvement in the state of the premises to which the order relates, grant the application.

(5) If an application under subsection (4) is refused by the court to which it is made, a further application thereunder shall not be entertained if made within three months after the date of the refusal.

(6) The court to which an application under that subsection is made shall have power to order the applicant to pay the whole or any part of the costs of the application. Registration of premises in connection with sale of food.

Registration of certain premises.

15.(1) Subject to the provisions of this section, no premises shall be used—

- (a) as catering premises; or
- (b) for the sale of meat or fish; or
- (c) for the sale or preparation or manufacture for the purposes of sale, of bread, confectionery or cakes; or
- (d) for the sale, or the manufacture for the purpose of sale, of ice-cream, or the storage of ice-cream intended for sale; or

- (e) for the preparation or manufacture of sausages or potted, pressed, pickled or preserved food intended for sale; or
- (d) for the sale of any other open food,

unless they are registered under this section for that purpose by the Chief Environmental Health Officer.

For the purposes of this subsection—

- (i) “sale” means sale for human consumption; and
- (ii) the preparation of meat or fish by any process of cooking shall be deemed to be the preservation thereof.

(2) A person who uses any premises in contravention of the provisions of subsection (1) is guilty of an offence.

(3) Nothing in this Part shall apply so as to require the registration under this section of premises used wholly or mainly as a school or club and subsection (1)(d) shall not apply in relation to the sale or storage of ice-cream at any premises used as a theatre, cinematographic theatre, music hall or concert hall.

(4) The Government may make regulations extending the application of this section to premises used for the manufacture, preparation, storage or sale of such other articles of food as may be specified in such regulations.

Applications for registration.

16.(1) An application for the registration of any premises under section 15 shall specify—

- (a) the purpose or purposes for which registration is applied for; and
- (b) all rooms or accommodation in the premises proposed to be used for those purposes.

(2) The Chief Environmental Health Officer may register the same premises for more than one purpose for which registration under section 15 is required and may register different parts of the same premises for different purposes.

(3) The premises registered under section 15 in pursuance of such an application as aforesaid shall not include any room or accommodation not specified in the application.

(4) Upon any change in the occupation of premises registered under section 15, the incoming occupier shall, if he intends to use them for the purpose for which they are registered,

forthwith give notice of the change to the Director who shall thereupon make any necessary alteration in the register.

A person required to give a notice under this subsection who fails to do so, is guilty of an offence and is liable to a fine of £25.

Refusal or cancellation of registration.

17.(1) If in the case of any premises in respect of which an application is made for registration under section 15 or which are registered thereunder, it appears to the Chief Environmental Health Officer –

- (a) that the requirements of regulations in force under section 13 are not complied with in connection with the premises or the business carried on at the premises; or
- (b) that the premises or any part of the premises are otherwise unsuitable (having regard to considerations of hygiene and in particular to the situation, construction or condition of the premises, or to any activities carried on therein) for use for the purpose or purposes specified in the application, or for which they are used, as the case may be,

the Director may refuse the application or, as the case may be, cancel the registration of the premises, and shall forthwith give notice to the applicant or to the occupier of the premises, as the case may be, of his decision in the matter, giving the reasons for his decision.

(2) A person aggrieved by the decision of the Director under this section to refuse to register any premises, or to cancel the registration of any premises, may appeal to the magistrates' court.

Special provisions as to sale, etc., of particular foods.

Sale of ice-cream from stalls, etc.

18.(1) Every dealer in ice-cream who in a street or other place of public resort sells or offers or exposes for sale, ice-cream from a stall or vehicle, or from a container used without a stall or vehicle, shall have his name and address legibly and conspicuously displayed on the stall, vehicle or container, as the case may be, and, if he fails to comply with the requirements of this section is guilty of an offence and is liable on summary conviction to a fine of £25 .

(2) The Government may, by notice, direct that, as from such date, not being less than four weeks from the date of the notice as may be specified therein and until the notice is revoked, this section shall apply in relation to all kinds of food, or to any kinds of food specified in the notice as it applies in relation to ice-cream, and while any such notice is in force this section shall apply accordingly:

Provided that nothing in this section shall have effect in relation to milk.

Prevention of spread of disease by ice-cream.

18A.(1) Every manufacturer of, or dealer in, ice-cream shall, upon the occurrence of any disease to which this subsection applies among the persons living or working in or about the premises on which the ice-cream is manufactured, stored or sold, forthwith give notice thereof to the Public Health Director and, if he fails to do so, is guilty of an offence and is liable on summary conviction to a fine of £25.

(2) Subsection (1) applies to the diseases specified in Schedule 1 and any other disease which the Government may, by order, declare to be a disease to which that subsection applies.

(3) If the Public Health Director has reasonable ground for suspecting that any ice-cream or substance intended for use in the manufacture of ice-cream, is likely to cause any disease communicable to human beings, he may give notice to the person in charge thereof that, until further notice, the ice-cream or substance in question, or any specified portion thereof, is not to be used for human consumption and either is not to be removed, or is not to be removed except to some place specified in the notice. A person who uses or removes any ice-cream or substance in contravention of the requirements of a notice given under this subsection is guilty of an offence and is liable on summary conviction to a fine of £1000.

(4) If on further investigation the Public Health Director is satisfied that the ice-cream or substance in question may safely be used for human consumption, he shall forthwith withdraw his notice; but, if he is not so satisfied, he shall cause, the ice-cream or other substance to be destroyed, and he shall also cause to be destroyed any other ice-cream or such substance as aforesaid then on the premises as to which he is not so satisfied.

(5) Where a notice given under subsection (3) is withdrawn by the Public Health Director or the Public Health Director acting under subsection (4) causes any ice-cream or other substance to be destroyed, the owner of the ice-cream or other substance in question shall be compensated for any depreciation in its value resulting from the action taken by Public Health Director, or, as the case may be, for the loss of its value:

Provided that—

- (a) no compensation shall be payable in respect of the destruction of any ice-cream or substance if it is proved that it was likely to cause any disease communicable to human beings;
- (b) no compensation shall in any case be payable—
 - (i) in respect of any ice-cream or substance manufactured on, or brought within, any premises while a notice given under subsection (3) with respect to anything on those premises was operative, or

- (ii) in any case where the owner of the ice-cream or substance in question has failed to give a notice which he was required by subsection (1) to give.

For the purposes of this subsection, the value of any ice-cream or other substance shall not be assessed at a sum exceeding the cost incurred by the owner in making or purchasing it.

- (6) Any person aggrieved by the amount of compensation assessed as payable under the provisions of subsection (5) may appeal to the Supreme Court.

Sale of horseflesh.

19.(1) No person shall sell, or offer or expose for sale, or have in his possession for the purpose of sale, any horseflesh for human consumption elsewhere than in premises, or in a stall, vehicle or place, over or on which a notice in legible letters stating that horseflesh is sold there is displayed in a conspicuous position so as to be visible whenever horseflesh is being sold or offered or exposed for sale.

(2) No person shall supply horseflesh for human consumption to a purchaser who has not asked to be supplied with horseflesh, or who has asked to be supplied with some compound article of food not ordinarily made of horseflesh.

(3) A person who contravenes any of the provisions of this section is guilty of an offence.

(4) If any horseflesh is exposed for sale elsewhere than in premises, or in a stall, vehicle or place, distinguished as aforesaid without anything to show that it was not intended for sale for human consumption, the onus of proving that it was not so intended shall rest upon the person exposing it for sale.

(5) In this section the expression "horseflesh" means the flesh of horses, asses and mules, and includes any such flesh whether cooked or uncooked and whether alone, or accompanied by, or mixed with, any other substance, and the expression "flesh" includes any part of any such animal.

Food poisoning

Cases of food poisoning to be notified.

20.(1) If a registered medical practitioner becomes aware, or suspects, that a patient whom he is attending is suffering from food poisoning, he shall forthwith send to the Public Health Director a certificate stating—

- (a) the name, age and sex of the patient, and the address of the premises where the patient is; and

(b) particulars of the food poisoning from which he is, or is suspected to be, suffering.

(2) The Government shall pay to a registered medical practitioner for each certificate duly sent by him under the foregoing provisions of this section a fee of thirteen pence.

Inspection and control of infested food.

21.(1) If the Chief Environmental Health Officer has reasonable ground for suspecting that any food of which he, or any other officer of the Government has procured a sample under the provisions of this Act is likely to cause food poisoning, he may give notice to the person in charge of the food that, until his investigations are completed, the food, or any specified portion thereof, is not to be used for human consumption and either is not to be removed, or is not to be removed except to some place specified in the notice.

A person who uses or removes any food in contravention of the requirements of a notice given under this subsection is guilty of an offence and is liable to a fine of £1000.

(2) If, as a result of his investigation, the Director is satisfied that the food in question, or any portion thereof, is likely to cause food poisoning, he may deal with it as food falling within subsection (1) of section 10 and subsections (2) and (3) of that section shall apply accordingly; but, if he is satisfied that it may safely be used for human consumption, he shall forthwith withdraw his notice.

(3) If a notice given under subsection (1) of this section is withdrawn by the Director or if the justice of the peace before whom any food is brought under this section refuses to condemn it, the Government shall compensate the owner of the food to which the notice related for any depreciation in its value resulting from the action taken by the Director.

PART II.

MILK, DAIRIES AND CREAM SUBSTITUTES.

Milk and Dairies.

Meaning of “dairy”, “dairy farm”, etc.

22. In the following provisions of this Act—

(a) the expression “dairy”—

- (i) includes any farm, cowshed, goatshed, milking house, milk store, milk shop or other premises from which milk is supplied on or for sale, or in which milk is kept or used for purposes of sale or for the purposes of manufacture into butter, cheese, dried milk or condensed milk for sale, or in which vessels used for the sale of milk are kept; but

- (ii) does not include a shop from which milk is supplied only in the properly closed and unopened vessels in which it is delivered to the shop, or a shop or other place in which milk is sold for consumption on the premises only;
- (b) the expression “dairy farm”–
 - (i) means any premises (being a dairy) on which milk is produced from cows or goats; and
 - (ii) does not include any part of any such premises on which milk is manufactured into other products unless the milk produced on the premises forms a substantial part of the milk so manufactured;
- (c) the expression “dairy farmer” means a dairyman who produces milk from cows and goats; and
- (d) the expression “dairyman” includes an occupier of a dairy, a cowkeeper, goatkeeper and a purveyor of milk.

Milk and Dairies Regulations.

23.(1) The Government may make regulations, making provision–

- (a) for prohibiting or regulating the importation of cows and goats, whether for the production of milk for the purposes of sale or otherwise, and for the inspection of cows and goats on dairy farms;
- (b) for the inspection of dairies, and of persons in or about dairies who have access to the milk, or to the churns or other milk vessels;
- (c) with respect to the lighting, ventilation, cleansing, drainage and water supply of dairies;
- (d) for securing the cleanliness of churns and other milk vessels and appliances and for prohibiting, subject to prescribed exceptions, the use of churns (whether by the persons to whom they belong or other persons) otherwise than as containers for milk, where the churns are in use for the purposes of the business of a dairyman;
- (e) for prescribing the precautions to be taken for protecting milk against infection or contamination;
- (f) for preventing danger to health from the sale of infected, contaminated or dirty milk, and in particular for prohibiting the supply or sale of milk suspected of being infected;

- (g) for imposing obligations on dairymen and their employees in regard to cases of infectious illness;
 - (h) for regulating the cooling, storage, conveyance and distribution of milk;
 - (i) with respect to the labelling, marking or identification, and the sealing or closing, of churns and other vessels used for the conveyance of milk, the labelling of vessels in which milk is sold or offered or exposed for sale or delivered, and the display of the vendor's name and address on any stall, or any cart, barrow or other vehicle, from which milk is sold or delivered;
 - (j) in cases where no express provision is made by this Act, for prohibiting or restricting—
 - (i) the addition of any substance to milk, or the abstraction from milk of fat or any other constituent;
 - (ii) the sale of milk to which any such addition, or from which any such abstraction, has been made, or which has been otherwise artificially treated;
 - (k) for prohibiting or restricting, subject to prescribed exceptions, the sale for human consumption as milk of any specified description of milk containing less than a specified quantity of any specified normal constituent;
 - (l) for requiring, subject to prescribed exceptions, milk or cream to be subjected to a specified treatment before being sold for human consumption;
 - (m) for extending the list of diseases of cows and goats contained in Schedule 3.
- (2) In subsection (1)–
- (a) “prescribed exceptions” means such exceptions as may be allowed by or under regulations made under this Act; and
 - (b) “milk” means milk intended for sale or sold for human consumption, or intended for manufacture into products for sale for human consumption.
- (3) Paragraph (l) of subsection (1) so far as it relates to cream, shall be without prejudice to the power of the Government under section 6 to make regulations applying to cream, but regulations made under paragraph (i), paragraph (j) or paragraph (k) of subsection (1) shall not apply in relation to cream in so far as they are made for any purpose for which regulations relating to cream may be made under section 6.

Registration of dairymen and dairies and licensing of dairy farms and dairy farmers.

24.(1) Regulations may provide—

- (a) for the registration of persons carrying on, or proposing to carry on, the trade of a dairyman and for the registration of dairies, and for prohibiting any person from carrying on that trade unless he and any premises used by him as a dairy are duly registered; and
 - (b) for the licensing by the Government of dairy farms and of persons carrying on, or proposing to carry on, the trade of a dairy farmer.
- (2) Regulations made for the purposes of this section may make special provision—
- (a) for the registration of premises used temporarily as dairies or dairy farms, and of the occupiers of such premises;
 - (b) for the removal from the register of such premises and occupiers at the expiration of the period for which the registration is effected.
- (3) Part I of Schedule 2 shall have effect with respect to refusing or cancelling the registration of dairymen.
- (4) Part II of Schedule 2 shall have effect with respect to refusing or cancelling the registration of dairies.

Prohibition of sale of milk from diseased cows and goats.

25.(1) No person shall—

- (a) sell, or offer or expose for sale, for human consumption, or and goats.
- (b) use in the manufacture of products for sale for human consumption,

the milk of any cow or goat which to his knowledge has given tuberculous milk, or is suffering from emaciation due to tuberculosis, or from tuberculosis of the udder or any other disease of cows or goats to which this section applies.

- (2) In proceedings under this section, the defendant shall be deemed to have known that a cow or goat had given tuberculous milk, or was so suffering as aforesaid, if he could with ordinary care have ascertained the fact.
- (3) A person who contravenes any of the provisions of this section is guilty of an offence.
- (4) The diseases of cows or goats to which this section applies are those listed in Schedule 3 and any other disease to which the provisions of this section are extended by Regulations.

Adulteration, etc., of milk.

26.(1) No person shall add water or colouring matter, or any dried or condensed milk or liquid reconstituted therefrom, to milk intended for sale for human consumption.

(2) *revoked.*

(3) No person shall sell, or offer or expose for sale, or have in his possession for the purpose of sale, for human consumption any milk to which any addition has been made in contravention of the foregoing provisions of this section.

(4) No person shall sell, or offer or expose for sale, or have in his possession for the purposes of sale for human consumption any milk which is a mixture of milk obtained from different species of animals.

(5) No person shall sell, or offer or expose for sale, under the designation of milk any liquid in the making of which any dried or condensed milk, has been used.

(6) A person who contravenes any of the provisions of this section is guilty of an offence.

(7) For the purposes of subsections (3) and (4), a person shall be deemed to retain the possession of milk which is deposited in any place for collection until it is actually collected; but nothing in this subsection shall be taken as prejudicing the defence available under section 37 to a person charged with an offence in respect of a sample of milk taken after the milk has left his possession.

(8) The treatment of milk by the application of steam shall not be treated for the purposes of this section as the making of an addition of water to that milk in contravention of the foregoing provisions of this section if –

- (a) regulations made under this Act are in force prescribing a special designation in relation to milk submitted to that treatment; and
- (b) that treatment is carried out in accordance with the conditions prescribed by those regulations; and
- (c) these conditions include a condition that both the percentage of the milk consisting of milk fat and the percentage of the milk consisting of milk solids other than milk fat are the same after treatment as before it.

27. *Repealed.*

*Cream substitutes.***Misuse of designation “cream” in relation to cream substitutes.**

28.(1) Subject to the provisions of this section, no person shall sell, or offer or expose for sale, for human consumption–

- (a) any substance which resembles cream in appearance, but is not cream; or
- (b) any article of food containing such a substance, under a description or designation which includes the word “cream” (whether or not as part of a composite word).

(2) Subsection (1) shall not apply to the sale, or offer or exposure for sale, of any substance being reconstituted or imitation cream as defined by this section, or of any article containing such a substance, under a description or designation which identifies the substance as such or to the sale, or offer or exposure for sale, of any substance under a description or designation which indicates that the substance is not for use as, or as a substitute for, cream.

(3) In this section “reconstituted cream” means a substance which, not being cream, resembles cream in appearance and contains no ingredient not derived from milk, except–

- (a) water; or
- (b) ingredients (not added fraudulently to increase bulk, weight or measure, or conceal inferior quality) which may lawfully be contained in a substance sold for human consumption as cream,

and “imitation cream” means a substance which, not being cream or reconstituted cream, resembles cream in appearance and is produced by emulsifying edible oils or fats with water, either by themselves or with other substances which are neither prohibited by regulations made for the purposes of this section under section 6 nor added in quantities so prohibited.

(4) For the purposes of this section, the description or designation under which a substance or article is sold, or offered or exposed for sale, shall be deemed to include the word “cream” if it includes any other word (composite or otherwise) which is calculated to lead a purchaser to suppose that the substance is or, as the case may be, the article contains either cream or a substance for use as cream.

(5) A person who contravenes subsection (1) is guilty of an offence.

Extension to reconstituted cream of provisions relating to cream.

29. Save as otherwise expressly provided, such of the following provisions as apply in relation to cream, that is to say–

- (a) any provision of this Part; and

- (b) any provisions of any Regulations made under this Act, other than provisions relating to the registration of dairymen and dairies,

shall also apply in relation to reconstituted cream as defined by section 28.

PART III.

ADMINISTRATION, ENFORCEMENT AND LEGAL PROCEEDINGS.

Administration.

Authorities responsible for enforcement.

30. It shall be the duty of the Government to enforce and execute the provisions of this Act with respect to which the duty is not expressly, or by necessary implication, imposed on some other authority.

Meaning of “authorized officer”.

31.(1) Subject to the provisions of this section, the expression “authorized officer”, where used in this Act in relation to the Government means an officer of the Government authorized by them in writing, either generally or specially, to act in matters of any specified kind or in any specified matter.

(2) The Chief Environmental Health Officer and Environmental Health Officers shall by virtue of their appointments be deemed to be authorized officers for all the purposes of this Act.

Sampling and analysis.

Public analyst.

32.(1) The Government shall appoint a fit and proper person possessing competent knowledge and skill (in this Act referred to as “the public analyst”) to be analyst of food and drugs.

(2) No person shall be appointed public analyst who is engaged directly or indirectly in any trade or business connected with the sale of food or drugs.

(3) The Government shall pay to the public analyst such remuneration as they may determine.

(4) The Government may also appoint a deputy to act during any vacancy in the office of public analyst, or during the absence or incapacity of the holder of the office, and—

- (a) the foregoing provisions of this section with respect to the qualifications and remuneration of the public analyst shall apply also in relation to the deputy public analyst; and
- (b) any reference in the following provisions of this Act to the public analyst shall be construed as including a reference to the deputy public analyst appointed under this subsection.

Facilities for examination of food and drugs.

33. The Government may provide facilities for bacteriological and other examinations of samples of food and drugs.

Powers of sampling.

34.(1) An authorized officer of the Government may exercise such powers of procuring samples for analysis, or for bacteriological or other examination, as are conferred upon him by this section, and any such officer is in this Act referred to as a “sampling officer”.

(2) A sampling officer may purchase samples of any food or drug, or of any substance capable of being used in the preparation of food; but nothing in this subsection shall be construed as authorizing any purchase or sale of drugs in contravention of the Drugs (Misuse) Act.

(3) Subject to the provisions of this section, a sampling officer may take a sample of any food, or of any substance capable of being used in the preparation of food, which appears to him to be intended for sale, or to have been sold, for human consumption, or is found by him on or in any premises, stall, vehicle, ship, aircraft or place which he is authorized to enter for the purposes of the execution of this Act.

(4) Without prejudice to subsection (3) a sampling officer—

- (a) may take a sample of milk while at any dairy, or while deposited for collection, or at any time before it is delivered to a consumer in pursuance of a sale by retail;
- (b) may, at the request of a person to whom any food or substance is, or is to be, delivered in pursuance of a contract of sale, take a sample of that food or substance in the course of delivery, or at the place of delivery.

(5) A sampling officer who under this section takes a sample of the milk of any cows or goats at a dairy may take such steps at the dairy as may be necessary to satisfy himself that the sample is a fair sample of the milk of the cows or goats when properly and fully milked.

(6) Except as provided by subsection (4) or with the consent of the purchaser, a sampling officer shall not take a sample of any food or substance which appears to him to have been

sold by retail, either while the food or substance is in the course of delivery to the purchaser, or at any time after such delivery; and nothing in this section shall authorize a sampling officer to take a sample of any food or substance in a ship or in any aircraft, other than food imported as part of the cargo of that ship or aircraft.

Right to have samples analysed.

35.(1) If a sampling officer who has procured a sample of any food, drug or substance considers that it should be analysed, he shall submit it to be analysed by the public analyst.

(2) A person, other than a sampling officer, who has purchased any food or drug, or any substance capable of being used in the preparation of food, may submit a sample of it to be analysed by the public analyst.

(3) The public analyst shall analyse as soon as practicable any sample submitted to him in pursuance of this section, but may, in the case of a sample submitted by a person not being an officer of the Government demand in advance the payment of such fee as may be fixed by the Government.

(4) The public analyst shall give to the person by whom a sample was submitted a certificate specifying the result of the analysis; and any such certificate shall be in the form set out in Schedule 4.

(5) Any certificate of the results of an analysis given by the public analyst in pursuance of this section shall be signed by him, but the analysis may be made by any person acting under the direction of the public analyst.

Provisions as to samples taken for analysis.

36.(1) A sampling officer who purchases or takes a sample of any food, drug or substance for the purpose of analysis by the public analyst shall deal with the sample in accordance with the provisions of Schedule 5,

(2) Schedule 5 shall apply to the purchase of samples by any person who is not a sampling officer as it applies in relation to the purchase of samples by a sampling officer; and references therein to a sampling officer shall be construed accordingly.

(3) If it appears to a sampling officer that any food, drug or substance, of which he has procured a sample for the purpose of analysis by the public analyst, was manufactured or put into its wrapper or container by a person (not being a person to whom one part of the sample is required to be given under Schedule 5) having his name and an address in Gibraltar displayed on the wrapper or container, the officer shall, unless he decides not to have an analysis made, within three days of procuring the sample send to that person a notice informing him that the sample has been procured by the officer and where the sample was taken or, as the case may be, from whom it was purchased.

(4) Where a sample taken or purchased by a sampling officer has been analysed by the public analyst, any person to whom a part of the sample was given under Schedule 5 shall be entitled, on payment to the Government of a fee of five pence, to be supplied with a copy of the certificate given by the public analyst under section 35(4).

Special defence in proceedings relating to milk.

37. It shall be a defence for a person charged with an offence against this Act, in respect of a sample of milk taken after the milk has left his possession, to prove that the churn or other vessel in which the milk was contained was effectively closed and sealed at the time when it left his possession, but had been opened before the person by whom the sample was taken had access to it.

Provision as to cases in which division of sample into parts is impracticable.

38. Where any person procures a sample consisting of a food, drug or substance contained in unopened containers, and the division into parts of the food, drug or substance contained in those containers—

- (a) is not reasonably practicable; or
- (b) might affect the composition, or impede the proper analysis, of the contents, —the provisions of Schedule 5 with respect to the division of samples into parts shall be deemed to be complied with if the person procuring the sample divides the containers into the requisite number of lots and deals with each lot as if it were a part in the manner provided by those provisions; and references in this Act to a part of a sample shall be construed accordingly.

Examination of food not for sale.

39. The Chief Environmental Health Officer may, at the request of a person who has in his possession any food which has not been sold and is not intended for sale, and on payment by that person of such fee, if any, as may be fixed by the Government, arrange to have the food examined.

Reports by public analyst.

40. The public analyst shall—

- (a) as soon as may be after the last day of December in every year, report to the Government the number of articles which have been analysed by him under this Act in his capacity of public analyst during the preceding year and the result of each analysis;

- (b) furnish the Government with such further reports relating to analyses made by him in his capacity of public analyst as may from time to time be required by the Government.

Enforcement.

Power to enter premises.

41.(1) Subject to the provisions of this section, an authorized officer of the Government shall, on producing, if so required, some duly authenticated document showing his authority, have a right to enter any premises at all reasonable hours—

- (a) for the purpose of ascertaining whether there is or has been on, or in connection with, the premises any contravention of the provisions of this Act, being provisions which the Government are required or empowered to enforce; and
- (b) generally for the purpose of the performance by the Government of their functions under this Act:

Provided that admission to any premises used only as a private dwelling-house shall not be demanded as of right unless twenty-four hours notice of the intended entry has been given to the occupier.

- (2) If a justice of the peace, on sworn information in writing—
 - (a) is satisfied that there is reasonable ground for entry into any premises for any such purpose as aforesaid; and
 - (b) is also satisfied either—
 - (i) that admission to the premises has been refused, or a refusal is apprehended and that notice of the intention to apply for a warrant has been given to the occupier; or
 - (ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry, or that the case is one of urgency, or that the premises are unoccupied or the occupier temporarily absent,

the justice may by warrant under his hand authorize the Government by any authorized officer to enter the premises, it need be by force.

(3) An authorized officer entering any premises by virtue of this section, or of a warrant issued thereunder, may take with him such other persons as may be necessary, and on leaving any unoccupied premises which he has entered by virtue of such a warrant shall leave them as effectively secured against trespassers as he found them.

(4) Every warrant granted under this section shall continue in force for a period of one month.

(5) If a person who, in compliance with the provisions of this section or of a warrant issued thereunder is admitted into a factory or workplace, discloses to any person any information obtained by him in the factory or workplace with regard to any manufacturing process or trade secret, he is, unless the disclosure was made in the performance of his duty, guilty of an offence and liable on conviction to a fine of £200 or to imprisonment for three months.

Power to enter ships, aircraft, vehicles, etc.

42.(1) An authorized officer of the Government shall, on producing, if so required, some duly authenticated document showing his authority, have a right at all reasonable hours—

- (a) to enter any ship or aircraft for the purpose of ascertaining whether there is in the ship or aircraft any food imported as part of the cargo in contravention of the provisions of regulations made under Part I, being provisions which the Government are required or empowered to enforce; and
- (b) to enter any vehicle, stall or place other than premises, or any ship, for any purpose for which he is empowered under section 41 to enter premises.

(2) Subsections (2) to (4) of section 41 shall apply in relation to any ship, aircraft, vehicle, stall or place which may be entered under the powers conferred by subsection (1) of this section as they apply in relation to premises, and as if any reference to the occupier of premises were a reference to the master, commander or other person in charge of the ship, aircraft, vehicle, stall or place.

Persons obstructing execution of Act.

43.(1) A person who wilfully obstructs any person acting in the execution of this Act is guilty of an offence and is liable on conviction to a fine of £1000:

Provided that, if the court is satisfied that he committed the offence with intent to prevent the discovery of some other offence under this Act, or if he has within the twelve months last preceding been convicted of an offence under this subsection, he is liable to a fine of £1000.

(2) If—

- (a) a sampling officer applies to purchase any food, drug or substance exposed for sale, or on sale by retail, and tenders the price for the quantity which he requires as a sample, and the person exposing the food, drug or substance for sale, or having it for sale, refuses to sell to the officer such quantity thereof; or

- (b) the seller or consignor of any article or substance of which an officer has power to take a sample, or a person having the charge for the time of such an article or substance, refuses to allow the officer to take the quantity which he requires as a sample,

then, in any of the cases mentioned in the foregoing paragraphs, the person concerned shall be treated for the purposes of subsection (1) as having wilfully obstructed the officer:

Provided that, where any food, drug or substance is exposed for sale in an unopened container duly labelled, no person shall be required to sell it except in the unopened container in which it is contained.

(3) A person who fails to give to any person acting in the execution of this Act, any assistance which that person may reasonably request him to give, or any information which that person is expressly authorized by this Act to call for or may reasonably require, or who, when required to give any such information, knowingly makes any misstatement in respect thereof, is guilty of an offence and is liable on conviction to a fine of £1000:

Provided that nothing in this subsection shall be construed as requiring a person to answer any question or give any information, if to do so might incriminate him.

(4) Subsection (3) of this section shall be without prejudice to so much of section 58 as enables regulations made under this Act to contain provisions for imposing penalties on persons offending against the regulations.

Legal proceedings.

Offences triable either way.

44.(1) A person guilty of an offence to which this section applies shall be liable—

- (a) on summary conviction, to a fine not exceeding £1000; and
- (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both.

(2) This section applies to any offence under this Act except an offence under any provision of this Act specified in section 44A (3) of this Act.

Offences triable summarily.

44A.(1) Any offence to which this section applies shall be triable summarily.

- (2) The offences to which this section applies are—

-
- (a) an offence under any provision of this Act specified in subsection (3) of this section;
 - (b) an offence under regulations made under this Act other than an offence which by virtue of the regulations is triable either on indictment or summarily;
- (3) The provisions of this Act mentioned in subsection (2) (a) of this section are—
- (a) section 16(4);
 - (b) section 18(1);
 - (c) section 18A(1);
 - (d) section 18A(3);
 - (e) section 21(1);
 - (f) section 41(5);
 - (g) section 43(1);
 - (h) section 43(3).

Offences by corporations.

45.(1) Where an offence against 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 any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Prosecutions.

46.(1) No prosecution for an offence under this Act or regulations made under this Act which is triable either on indictment or summarily shall be begun after the expiration of three years from the commission of the offence or one year from its discovery by the prosecutor, whichever is the earlier.

(2) Where a sample has been procured under this Act, no prosecution in respect of the article or substance sampled shall be begun after the expiration of the following periods, beginning with the date on which the sample was procured, that is to say—

- (i) in the case of a sample of milk, twenty eight days;

- (ii) in any other case, two months

unless the justice of the peace before whom the information is laid, on being satisfied on oath that having regard to the circumstances of the particular case it was not practicable to lay the information at an earlier date, gives a certificate to that effect; and, if the prosecution is in respect of a sample of milk, it shall not in any case be begun after the expiration of forty two days beginning with the said date;

(3) the time within which proceeding may be commenced under Section 52 in respect of the giving of a false warranty shall be twelve months;

(4) In any proceedings under this Act in respect of an article or substance sampled, 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, and of any certificate given by justice under subsection (2) shall be served with the summons;

(5) In any proceedings under this Act, where a sample has been procured in such circumstances that its division into parts is required by this Act, the part of the sample retained by the person who procured it shall be produced at the hearing.

Evidence of analysis.

47.(1) In any proceedings under this Act, the production by one of the parties of a document purporting to be a certificate of the public analyst in the form prescribed under section 35(5), or of a document supplied to him by the other party as being a copy of such a certificate, shall be sufficient evidence of the facts stated therein, unless in the first-mentioned case, the other party requires that the analyst shall be called as a witness.

(2) In any such proceedings, if a defendant intends to produce a certificate of the public analyst, or under subsection (1) to require that a public analyst shall be called as a witness, notice of his intention, together, in the first-mentioned case, with a copy of the certificate, shall be given to the other party at least three clear days before the day on which the summons is returnable, and, if this requirement is not complied with, the court may, if it thinks fit, adjourn the hearing on such terms as it thinks proper.

(3) Regulations made under section 6 or section 8 may prescribe a method of analysis for the purpose of ascertaining the presence in, or absence from, any food of any substance specified in the regulations, or the quantity of any such substance which is present in any food; and in any proceedings under this Act—

- (a) for a contravention of any regulations made under either of the said sections; or
- (b) for an offence against section 4 or section 7, in respect of any food alleged to contain, or not to contain, any substance specified as aforesaid or any particular

quantity of such a substance, evidence of an analysis carried out by the prescribed method shall be preferred to evidence of any other analysis or test.

Presumptions.

48. For the purposes of this Act—

- (a) any article commonly used for human consumption shall, if sold or offered, exposed or kept for sale, be presumed, until the contrary is proved, to have been sold or, as the case may be, to have been or to be intended for sale, for human consumption;
- (b) any article commonly used for human consumption which is found on premises used for the preparation, storage, or sale of that article and any article commonly used in the manufacture of products for human consumption which is found on premises used for the preparation, storage or sale of those products, shall be presumed, until the contrary is proved, to be intended for sale, or for manufacturing products for sale, for human consumption;
- (c) any substance capable of being used in the composition or preparation of any article commonly used for human consumption which is found on premises on which that article is prepared shall, until the contrary is proved, be presumed to be intended for such use.

Power of court to require analysis by Government Chemist in United Kingdom.

49.(1) The court before which any proceedings are taken under this Act may, if it thinks fit, and upon the request of either party shall, cause the part of any sample produced before the court under section 46(3) to be sent for analysis to the Government Chemist in the United Kingdom and the costs of the analysis shall be paid by the prosecutor or the defendant as the court may order.

(2) If, in a case where an appeal is brought, no action has been taken under subsection (1), the provisions thereof shall apply also in relation to the court by which the appeal is heard.

(3) Any certificate of the results of an analysis signed by or on behalf of the Government Chemist shall be evidence of the facts stated therein.

Contravention due to default of some other person.

50.(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 any person to whose act or default he alleges that the contravention of the provisions in question was due brought before the court in the proceedings; 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 that he has used all due diligence to secure that the provisions in question were complied with, he shall be acquitted of the offence.

- (2) Where a defendant seeks to avail himself of the provisions of subsection (1)–
- (a) the prosecution, as well as the person whom the defendant charges with the offence, shall have the right to cross-examine him, if he gives evidence, and any witness called by him in support of his pleas, and to call rebutting evidence;
 - (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.

(3) Where it appears to the Government that an offence has been committed in respect of which proceedings might be taken under this Act against some person and the Government are reasonably satisfied that the offence of which complaint is made was due to an act or default of some other person and that the first-mentioned person could establish a defence under subsection (1), they may cause proceedings to be taken against that other person without first causing proceedings to be taken against the first-mentioned person.

In any such proceedings the defendant may be charged with, and, on proof that the contravention was due to his act or default, be convicted of, the offence with which the first-mentioned person might have been charged.

Conditions under which warranty may be pleaded as defence.

51.(1) Subject to the provisions of this section, in any proceedings for an offence under this Act being an offence consisting of selling, or offering, exposing or advertising for sale, or having in possession for the purpose of sale, any article or substance, it shall be a defence for the defendant to prove–

- (a) that he purchased it as being an article or substance which could lawfully be sold or otherwise dealt with as aforesaid, or, as the case may be, could lawfully be so sold or dealt with under the name or description or for the purpose under or for which he sold or dealt with it, and with a written warranty to that effect; and
 - (b) that he had no reason to believe at the time of the commission of the alleged offence that it was otherwise; and
 - (c) that it was then in the same state as when he purchased it.
- (2) A warranty shall only be a defence in proceedings under this Act if–
- (a) the defendant–

- (i) has, not later than three clear days before the date of the hearing, sent to the prosecutor a copy of the warranty with a notice stating that he intends to rely on it and specifying the name and address of the person from whom he received it; and
 - (ii) has also sent a like notice of his intention to that person; and
- (b) in the case of a warranty given by a person resident outside Gibraltar, the defendant proves that he had taken reasonable steps to ascertain, and did in fact believe in, the accuracy of the statement contained therein.
- (3) Where the defendant is a servant of the person who purchased the article or substance under a warranty, he shall be entitled to rely on the provisions of this section in the same way as his employer would have been entitled to do if he had been the defendant.
- (4) The person by whom the warranty is alleged to have been given shall be entitled to appear at the hearing and to give evidence, and the court may, if it thinks fit, adjourn the hearing to enable him to do so.
- (5) For the purposes of this section and of section 52 a name or description entered in an invoice shall be deemed to be a written warranty that the article or substance to which the entry refers can be sold or otherwise dealt with under that name or description by any person without contravening any of the provisions of this Act.

Offences in relation to warranties and certificates of analysis.

52.(1) A defendant who in any proceedings under this Act wilfully applies to any article or substance a warranty or certificate of analysis given in relation to any other article or substance is guilty of an offence.

(2) A person who, in respect of any article or substance sold by him, being an article or substance in respect of which a warranty might be pleaded under section 51, gives to the purchaser a false warranty in writing, is guilty of an offence, unless he proves that when he gave the warranty he had reason to believe that the statements or description contained therein were accurate.

Appeals.

Appeals to the magistrates' court.

53.(1) Where any enactment in, or regulation made under, this Act provides for an appeal to the magistrates' court against a refusal or other decision of the Government, the procedure shall be by way of complaint for an order, and the Magistrates' Court Act shall apply to the proceedings.

(2) The time within which such an appeal may be brought shall be twenty-one days from the date on which notice of the Government's refusal or other decision was served upon the person desiring to appeal, and for the purposes of this subsection the making of the complaint shall be deemed to be the bringing of the appeal.

(3) In any case where such an appeal lies, the document notifying to the person concerned the decision of the Government in the matter shall state the right of appeal to the magistrates' court and the time within which such an appeal may be brought.

Further appeal to Supreme Court.

54. Where a person aggrieved by an order, determination or other decision of the magistrates' court under this Act is not by any other enactment authorized to appeal to the Supreme Court he may appeal to that court.

Effect of court's decision.

55. Where on an appeal under this Act a court varies or reverses any decision of the Government, it shall be the duty of the Government to give effect to the order of the court, and, in particular, to grant any necessary licence and to make any necessary entry in any register.

Right to carry on business pending appeal.

56.(1) Where a decision of the Government under this Act refusing, cancelling, suspending or revoking, registration or a licence or a decision of the magistrates' court on appeal against such a decision, makes it unlawful for a person to carry on any business which he, or his immediate predecessor in the business, was lawfully carrying on at the date when the decision of the Government was given, or to use any premises for any purpose for which he, or his immediate predecessor in the business, was lawfully using them at the said date, he may carry on that business and use those premises for that purpose until the time for appealing has expired and, if an appeal is lodged, until the appeal is finally disposed of or abandoned or has failed for want of prosecution.

(2) The foregoing provisions with respect to the right to continue to carry on a business and to use premises shall apply also where the decision of a court in proceedings in respect of an offence under this Act makes it unlawful for a person to carry on a business which he was lawfully carrying on immediately before the decision was given, or to use any premises for any purpose for which he was then lawfully using them.

Compensation.

Disputes as to compensation under Part I.

57. Where by any of the provisions in Part I provision is made for the payment of compensation to any person, all questions as to the fact of damage or loss, liability to pay compensation and the amount of compensation may on the application of either party be determined by, and any compensation awarded may be recovered before, the magistrates' court.

PART IV.
MISCELLANEOUS AND GENERAL.

58. Regulations made under this Act, without prejudice to the generality of the provisions under which they are made, may—

- (a) modify for the purposes of the regulations any provisions of this Act relating to the taking, analysis and examination of samples;
- (b) apply, as respects matters to be dealt with by the regulations, any provision in any Act (including this Act) dealing with the like matters, with the necessary modifications and adaptations;
- (c) provide for an appeal to the magistrates' court against any refusal or other decision of an authority by whom the regulations are to be enforced and executed;
- (d) authorize the making of charges for the purposes of the regulations, or for any services performed thereunder, and provide for the recovery of charges so made;
- (e) provide that an offence under the regulations shall be triable either on indictment or summarily;
- (f) include provisions under which a person guilty of an offence under the regulations which is so triable on summary conviction to a fine not exceeding £1,000 or such smaller amount as may be specified in the regulations and on conviction on indictment to either or both of the following:
 - (i) to a fine not exceeding an amount specified in the regulation or of an indefinite amount;
 - (ii) imprisonment for a term not exceeding two years or such shorter term as may be specified in the regulations;
- (g) include provision under which a person guilty of an offence under the regulations which is triable only summarily is liable on conviction to a fine not exceeding £1,000 or such smaller amount as may be specified in the regulations.

- (h) make such ancillary and incidental provisions as appear to the Government to be necessary or desirable;

and regulations made under Part I may, without prejudice as aforesaid, require persons carrying on any activity to which the regulations apply to keep and produce records and furnish returns.

Regulations to conform to Community Requirements.

58A.(1) The Government may, in respect of any directly applicable Community provision relating to food for which, in his opinion, it is appropriate to make provision under this Act, by regulations make such provisions as he considers necessary or expedient for the purpose of securing that the Community provision is administered, executed and enforced under this Act, and may apply such of the provisions of this Act as may be specified in the regulations in relation to the Community provision with such modifications if any, as may be so specified.

(2) For the purpose of complying with any Community obligation, or for conformity with any provision made for that purpose, the Government may by regulations make provisions as to—

- (a) the manner of sampling any food specified in the regulations, and the manner in which samples are to be dealt with; and
- (b) the method to be used in analysing, testing or examining samples of any food so specified;

and regulations made by the Government for that purpose, or for conformity for any provision so made, may modify or exclude any provision of this Act relating to the procuring or analysis of, or dealing with, samples or to evidence of the results of any analysis or test.

Expenses.

59.(1) Expenses incurred by the Government under this Act shall be defrayed out of the General Rates leviable by them under the Public Health Act.

(2) Expenses incurred under this Act by a sampling officer in procuring samples and causing samples to be analysed shall be defrayed by the Government.

Application of fines.

60. Any fine recovered under this Act—

- (a) in the case of a prosecution by the Government or by an officer of the Government shall be paid to the Government, to be accounted for and applied to the expenses of the Government under this Act; and

- (b) in the case of any other prosecution, shall be paid and applied in accordance with the law regulating the application of fines for offences punishable summarily.

Protection for officers acting in good faith.

61.(1) An officer of the Government shall not be personally liable in respect of any act done by him in the execution or purported execution of this Act and within the scope of his employment, if he did that act in the honest belief that his duty under this Act required or entitled him to do it:

Provided that nothing in this subsection shall be construed as relieving the Government from any liability in respect of acts of their officers.

(2) Where an action has been brought against an officer of the Government in respect of an act done by him in the execution or purported execution of this Act and the circumstances are such that he is not legally entitled to require the Government to indemnify him, the Government may, nevertheless, indemnify him against the whole or a part of any damages and costs which he may have been ordered to pay or may have incurred, if they are satisfied that he honestly believed that the act complained of was within the scope of his employment and that his duty under this Act required or entitled him to do it.

(3) For the purposes of this section, the public analyst shall be treated as being an officer of the Government whether or not he is employed whole-time.

Incorporation of certain provisions of Public Health Act.

62. The following provisions of the Public Health Act shall be deemed to be incorporated in this Act, that is to say—

- Section 325 – (Interpretation of “provide”).
- Section 329 – (Power of Government to require information as to ownership of premises).
- Section 332 – (Notices to be in writing; forms of notices, etc.).
- Section 333 – (Authentication of documents).
- Section 334 – (Service of notices, etc.).
- section 335 – (Proof of resolutions, etc.).
- Section 338 – (Power to require occupier to permit works to be executed by owner).
- Section 351 – (Judges and justices not to be disqualified by liability to rates).
- Section 357 – (Powers of Act to be cumulative).

Temporary continuance of licence or registration on death.

63. Where a person who holds a licence or is registered in respect of any premises under this Act dies, the licence or registration shall, unless previously revoked or cancelled, ensure for

the benefit of his personal representative, or of his widow or any other member of his family, until the expiration of two months from his death, or until the expiration of such longer period as the Government may allow.

SCHEDULE 1.

Section 18A(2).

DISEASES TO WHICH SECTION 18A(1) APPLIES.

Enteric fever (including typhoid and paratyphoid fevers).

Dysentery.

Diphtheria.

Scarlet fever.

Acute inflammation of the throat.

Gastro-enteritis.

Undulant fever.

SCHEDULE 2.

Section 24.

REFUSAL AND CANCELLATION OF
REGISTRATION OF DAIRYMEN AND DAIRIES.

PART I.

DAIRYMEN.

1. If it appears to the Government that the public health is, or is likely to be, endangered by any act or default of a person who has applied to be, or, is so registered by the Government, being an act or default, committed in relation to the quality, storage or distribution of milk, they may serve on him a notice—

- (a) stating the place and time, not being less than twenty-one days after the date of the service of the notice, at which they propose to take the matter into consideration; and
- (b) informing him that he may attend before them, with any witnesses whom he desires to call, at the place and time mentioned to show cause why they should not, for reasons specified in the notice, refuse to register him or cancel his registration, as the case may be, either generally or in respect of any specified premises.

2. A person entitled under paragraph I of this Schedule to appear before the Government may appear in person or by barrister or a solicitor or any other representative, or may be accompanied by any person whom he may wish to assist him in the proceedings.

3. If a person on whom a notice is served under paragraph I of this Schedule fails to show cause to the satisfaction of the Government, they may refuse to register him or may cancel his registration, as the case may be, and shall forthwith give notice to him of their decision in the matter, and shall, if so required by him within fourteen days from the date of their decision give to him, not less than forty-eight hours after receiving the requirement, a statement of the grounds on which it was based.

4. A person aggrieved by the decision of the Government under this Part of this Schedule to refuse to register him, or to cancel his registration, may appeal to the magistrates' court.

5. The court before whom a person registered as a dairyman is convicted of an offence under any of the provisions relating to milk in this Act, or under any regulations made under this Act, may, in addition to any other punishment, cancel his registration as such.

6. Where under this Part of this Schedule a person's application for registration is refused, or his registration is cancelled, he shall not be liable for any breach of contract for the purchase

of further supplies of milk from any person, if the refusal or cancellation was due to the quality of the milk supplied by that person.

PART II.
DAIRIES.

7. If in the case of any premises in respect of which an application is made for registration as a dairy, or which are registered as such, it appears to the Government—

- (a) that any requirement of any regulations made under this Act cannot be or are not being complied with, as the case may be, in connection with the premises or the business proposed to be carried on or carried on at the premises; or
- (b) that the premises or any part of the premises are otherwise unsuitable (having regard to considerations of hygiene and in particular to the situation, construction or condition of the premises, or to the activities proposed to be carried on or carried on thereat) for use for the purpose or purposes specified in the application or for which they are used, as the case maybe,

the Government may refuse the application or, as the case may be, cancel the registration of the premises, and shall forthwith give notice to the applicant or to the occupier of the premises, as the case may be, of their decision on the matter, and shall, if so required by such applicant or occupier within fourteen days from the date of their decision, give to him, not less than forty-eight hours after receiving the requirement a statement of the ground on which it was based.

8. A person aggrieved by the decision of the Government to refuse to register, or to cancel the registration of any premises, may appeal to the magistrates' court.

SCHEDULE 3.

Section 25.

**DISEASES OF COWS OR GOATS
TO WHICH SECTION 25 APPLIES.**

Acute mastitis.
Actinomycosis of the udder.
Suppuration of the udder.
Any infection of the udder or teats which is likely to convey disease.
Any comatose condition.
Any septic condition of the uterus.
Anthrax.
Foot-and-mouth disease.

SCHEDULE 4.

Section 35.

FORM OF CERTIFICATE TO BE GIVEN BY THE
PUBLIC ANALYST IN PURSUANCE OF SECTION 35.

FOOD AND DRUGS ACT.

To (1)

I the undersigned, public analyst for Gibraltar, hereby certify that on the _____ day of _____, 20____ a sample marked (2) and measuring (or weighing)(3) was submitted by you to me as a sample of _____ for analysis.

I further certify that the sample has been analysed by me, or under my direction, and as a result of the analysis I am of the opinion that:—(4)

Observations (5)

I certify that the sample had undergone no change which would affect the opinion expressed above.

As witness my hand the _____ day of _____, 20____ .

Notes.

- (1) *Insert the name and address of the persons submitting the sample for analysis.*
- (2) *Insert particulars of marking, e. g., date, number, etc.*
- (3) *This may be left unanswered if the sample cannot conveniently be weighed or measured or the weight or measurement is not material to the result of the analysis.*
- (4) *Here the analyst should specify the result of the analysis in the light of the provisions of the Food and Drugs Act.*
- (5) *Here the analyst may insert at his discretion his opinion whether the analysis indicates any addition, abstraction, or deficiency or the presence of foreign matter or other defect and whether the nature, substance or quality is thereby affected; any physical, chemical or other properties bearing on the nature, substance or quality of the article; whether the article is injurious to health or unfit for human consumption; whether and in what respect a label or description or any advertisement relating to the sample is incorrect or misleading; and he may add any other observations he may consider relevant.*

(These notes are for guidance only and do not form part of the Certificate).

SCHEDULE 5.

Sections 36 and 38.

SAMPLING.

PROVISIONS AS TO MANNER IN WHICH SAMPLES TAKEN OR PURCHASED FOR ANALYSIS ARE TO BE DEALT WITH.

1. The sampling officer shall forthwith divide the sample into three parts, each part to be marked and sealed or fastened up in such manner as its nature will permit, and shall—

- (a) with respect to one part of the sample comply with paragraphs 2 to 7 of this Schedule, and
- (b) deal with the remaining parts in accordance with paragraph 8 of this Schedule.

2.(1) If the sample was purchased by the sampling officer, he shall give the part of the sample to the vendor.

(2) In relation to a sample purchased from an automatic machine, this paragraph shall apply as if for the reference to the vendor there were substituted a reference—

- (a) if the name and address (being an address in Gibraltar) of a person stated to be the proprietor of the machine appears on the machine, to that person;
- (b) in any other case, to the occupier of the premises on which the machine stands or to which it is affixed.

3. If the sample is of goods consigned from outside Gibraltar and was taken by the sampling officer before delivery to the consignee, the officer shall give the part of the sample to the consignee.

4.(1) This paragraph applies in relation to any sample of milk taken by the sampling officer, except to—

- (a) one in relation to which paragraph 3 of this Schedule applies; or
- (b) any sample of cream.

(2) If the sample was taken from a container appearing to the officer to show the name and address (being an address in Gibraltar) of any person as purveyor of the milk, or as the person who put the milk into the container, the officer shall give the part of the sample to that person.

(3) If the sample was taken at a dairy the officer shall give the part of the sample to the occupier of the dairy.

5. If the sample was taken by the sampling officer at the request of a purchaser, or taken with the consent of a purchaser by retail, the officer shall give the part of the sample to the vendor.
6. If none of the foregoing paragraphs of this Schedule apply, the sampling officer shall give the part of the sample to the person appearing to be the owner of the food, drug or substance of which the sample was taken.
7. In every case to which paragraphs 2 to 6 of this Schedule apply the sampling officer shall inform the person to whom the part of the sample is given that the sample was purchased or taken for the purpose of analysis by the public analyst.
8. Of the remaining parts of the sample, the sampling officer shall, unless he decides not to have an analysis made, submit one for analysis in accordance with section 35 and retain the other for future comparison.
9. Any part of a sample which under this Schedule is to be given to any person may be given either by delivering it to him or to his agent or by sending it to him by post in a registered packet; but where after reasonable inquiry the sampling officer is unable to ascertain the name and address of the person to whom the part of the sample is to be given, he may, in lieu of giving the part to that person, retain it.

SCHEDULE 6.

Section 2.

FOOD NOT TO BE REGARDED AS OPEN FOOD.

<i>(1)</i> <i>Food</i>	<i>(2)</i> <i>Mode of wrapping or enclosure</i>
Butter, margarine and cooking fat	Any total enclosure of greaseproof paper or foil
Meat, except meat which has been cooked or otherwise prepared for sale by any similar process	Any total wrapping of mutton cloth, hessian, jute, paper or film
Fish	Any total enclosure of greaseproof paper or film
Vegetables	Any box, bag, sack, string container or pliable film pack
Flour, confectionery and bakery goods	Any total enclosure
Ice-cream	Any total greaseproof enclosure of paper, foil, film, cardboard, carton, cup or similar wrapping
Ice-lollies	Any total greaseproof enclosure of paper, foil, film or similar wrapping; or any bag made of such materials to contain the ice lolly and which may or may not be sealed at the end from which the stick or holder protrudes.