

THE FOOD SAFETY BILL, 2019

MEMORANDUM

The objects of this Bill are to—

- (a) provide for the protection of the public against health hazards and fraud in the manufacture, sale and use of food;
- (b) provide for a streamlined process for regulatory clearances for regulatory health requirements for food premises;
- (c) establish the Food Safety Coordinating Committee and provide for its functions and powers;
- (d) provide for health inspection reports and report notices;
- (e) establish the National Food Laboratory;
- (f) repeal the Food and Drugs Act, 1972 and sections 79 and 83 of the Public Health Act, 1972; and
- (g) provide for matters connected with, or incidental to, the foregoing.

L. KALALUKA,
Attorney-General

THE FOOD SAFETY BILL, 2019

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A BILL

ENTITLED

An Act to provide for the protection of the public against health hazards and fraud in the manufacture, sale and use of food; provide for a streamlined process for regulatory clearances for regulatory health requirements for food premises; establish the Food Safety Coordinating Committee and provide for its functions and powers; provide for health inspection reports and report notices; establish the National Food Laboratory; repeal the Food and Drugs Act, 1972 and sections 79 and 83 of the Public Health Act, 1972; and provide for matters connected with, or incidental to, the foregoing.

ENACTED by the Parliament of Zambia

Enactment

PART I PRELIMINARY

1. This Act may be cited as the Food Safety Act, 2019, and shall come into operation on the date appointed by the Minister by statutory instrument. Short title and commencement
2. In this Act, unless the context otherwise requires— Interpretation
- “adulteration” means the intentional addition or subtraction of a substance to or from an article that is likely to adversely affect its quality;
- “advertisement” includes a representation, by any means, for the purpose of promoting, directly or indirectly, the sale or disposal of any food or device;

- Act No. 27 of 2010
- “ animal ” has the meaning assigned to the word in the Animal Health Act, 2010;
- “ animal produce ” means a product of a live animal such as milk, eggs and honey and their by products or other products of animal origin intended for human or animal consumption; 5
- Act No. 27 of 2010
- “ animal product ” has the meaning assigned to the words in the Animal Health Act, 2010;
- “ appeals committee ” means an *ad hoc* appeals committee constituted under section 61;
- “ appropriate enforcement authority ” means the Ministry responsible for health, the Ministry responsible for animal health, the Ministry responsible for agriculture, Ministry responsible for higher education, Ministry responsible for trade, industry and consumer protection or a local authority and any other Ministry or institution that the Minister may specify, by statutory instrument; 10 15
- “ approved laboratory ” means any laboratory undertaking the functions relating to food safety established under any other written law;
- “article” includes— 20
- (a) any food, food additive or device and any labelling or advertising materials in respect of the food, food additive or device; or
- (b) anything used for the preparation, preservation, packing or storing of any food, food additive or device, but excludes narcotics, psychotropic substances and their precursors and essential chemicals; 25
- Act No. 27 of 2010
- “ authorised officer ” means medical officer of health, environmental health officer, health inspector, plant health inspector, veterinary officer, veterinary inspector as assigned in the Animal Health Act, 2010 and any other suitably qualified officer appointed as such by the Minister, by statutory instrument, for the purposes of this Act, and includes— 30
- (a) a police officer and an officer of the Department of Customs and Excise authorised in that behalf by the Commissioner-General responsible for Customs and Excise; and 35

- (b) principal officer as defined in the Local Government Act, 2019; Act No. 2 of 2019
- 5 “ authorised person ” means a person assigned to carry out the duties of a law enforcement authority for the purposes of this Act;
- “ business ” has the meaning assigned to the word in the Business Regulatory Act, 2014; Act No. 3 of 2014
- 10 “ certificate of compliance ” means a certificate issued to an applicant under section 26;
- “ Committee ” means the Food Safety Coordinating Committee established under section 3;
- “ contact material ” means an article or substance which is intended to come into contact with food;
- 15 “ contaminant ” means a substance not intentionally added to food, which is present in the food as a result of the production or operations carried out in crop husbandry, animal husbandry, veterinary medicine and the manufacture, processing, preparation, treatment, packaging, transportation or handling of the food as a result of environmental contamination, but does not include insect fragments, rodent hair and other extraneous matter;
- 20 “ contaminate ” means the effect exerted by an external agent on food so that it—
- (a) does not meet a standard or requirement determined by any law;
- 25 (b) does not meet acceptable food hygiene standards or consumer norms or standards; or
- (c) is unfit for human consumption;
- 30 “ conveyance ” means an aircraft, ship, train, vehicle or any other means of transport;
- “ court ” means a court of competent jurisdiction;
- 35 “ device ” means an instrument, apparatus or contrivance, including components, parts and accessories of the instrument, apparatus or contrivance, manufactured, sold or intended for use in the preparation, preservation, packaging, storage or transportation of any food;

Act No. 24 of
2009

“environmental health officer” means a person registered as an environmental health officer under the Health Professions Act, 2009;

“ food ” means any substance, whether processed, semi-processed or raw, which is intended for human consumption, 5 and includes drinks, chewing gum and any substance which has been used in the manufacture, preparation or treatment of food;

“ food additive ” means a natural or synthetic substance used in the processing of food as a preservative, antioxidant or 10 emulsifier in order to preserve or add flavour, colour or texture to processed food, but does not include contaminants or substances added to food for maintaining or improving nutritional qualities;

“ food control system ” means an organised mandatory 15 regulatory system of enforcement by national or local authorities to provide consumer protection and ensure that food is safe during the production, handling, storage, processing and distribution and is wholesome and fit for human consumption; 20

“ food premises ” means a building, structure, stall or other similar structure, and includes a caravan, vehicle, stand or place used for or in connection with the handling of food;

“ food safety ” means a scientific discipline describing the production, manufacture, handling, preparation and storage 25 of food in a manner that prevents food related diseases and harm;

“ food source ” means a living plant, animal, bird or fish from which food is intended to be derived, whether by gathering, harvesting, slaughtering, milking, collecting eggs or 30 otherwise;

“ food quality ” means the quality characteristics of food that includes external factors such as appearance, texture and flavour;

“ handle ” includes manufacture, process, produce, pack, 35 prepare, keep, offer, store, transport or display for sale or serving, and “handling” shall be construed accordingly;

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- “harmful” means capable of causing damage or harm;
- 5 “health clearance permit” means a written permission granted to a trader to allow the trader to import articles into, or export articles out of, Zambia after all necessary health requirements provided for by this Act have been fulfilled accordingly;
- “health hazard” includes any condition, act or omission that may contaminate or spoil food so that consumption of that food is likely to be dangerous or detrimental to health;
- 10 “health inspector” has the meaning assigned to the words in the Public Health Act; Cap. 295
- 15 “health inspection” means an investigation, observation or inquiry carried out at business premises as required under this Act or any other written law, by the Committee, a local authority, regulatory agency or a joint inspection team, for checking or examining compliance by a business with regulatory health requirements under this Act or any other written law;
- 20 “health inspection report” means a document issued or to be issued to an applicant for a licence, permit or certificate under the relevant law, certifying that the applicant’s business premises and business activities or proposed business premises and proposed business activities are in compliance with regulatory health requirements in accordance with this Act or any other written law;
- 25 “insanitary conditions” means conditions or circumstances that might cause contamination of an article and render the article injurious or dangerous to health;
- 30 “joint inspection team” means a composite team from relevant regulatory agencies mandated under this Act or any other law to undertake health inspections;
- 35 “label” includes a tag, brand, mark, pictorial or other descriptive matter, written, printed, stencilled, marked, embossed or impressed on, attached to or included in, belonging to or accompanying any food or device;
- “Laboratory” means the National Food Laboratory established under section 40;

- Cap. 1 “local authority” has the meaning assigned to the words in the Constitution;
- Cap. 295 “Medical Officer of Health” has the meaning assigned to the words in the Public Health Act;
- “package” includes anything in which an article is wholly or partly placed or packed whether open or closed; 5
- “premises” includes—
- (a) a building, tent or other structure, permanent or otherwise, with the land on which the building, tent or structure is situated and any adjoining land used in connection with the building, tent or structure, or a vehicle, conveyance or vessel used for the manufacture, processing, preparation, treatment, packing, packaging or storage of an article; and 10
- (b) for the purpose of section 18, a street, open space or place of public resort, bicycle or other vehicle used for the preparation, preservation, packaging, storage or conveyance of an article;
- “process” includes a procedure involving the storage and preparation of food; 20
- “public analyst” means a person appointed as a public analyst under section 42;
- Cap. 1 “public officer” has the meaning assigned to the words in the Constitution;
- “register” means a register of regulatory health clearances, certificates of compliance, notifications of refusal and health clearance certificates established pursuant to section 38; 25
- Act No. 3 of 2014 “regulatory agency” has the meaning assigned to the words in the Business Regulatory Act, 2014;
- Act No. 3 of 2014 “regulatory clearance system” has the meaning assigned to the words in the Business Regulatory Act, 2014; 30
- “regulatory health clearance” means the certification by the Committee, a local authority or regulatory agency, or these institutions acting jointly, that an applicant for a licence, permit or certificate under any other law has complied with prescribed regulatory health requirements under this Act or any other law; 35

- “ regulatory health requirement ” means a regulatory requirement relating to or impacting on health or a requirement or standard required to be complied with under this Act;
- 5 “ regulatory requirement ” has the meaning assigned to the words in the Business Regulatory Act, 2014; Act No. 3 of 2014
- “ regulatory service ” has the meaning assigned to the words in the Business Regulatory Act, 2014; Act No. 3 of 2014
- 10 “ regulatory services centre ” has the meaning assigned to the words in the Business Regulatory Act, 2014; Act No. 3 of 2014
- “ Scientific Advisory Sub Committee ” means the Scientific Advisory Sub-Committee established under section 5;
- 15 “ sell ” includes to offer, advertise, keep, store, expose, transmit, convey, deliver or prepare for sale or exchange, give, donate or dispose of for any consideration or transmit, convey or deliver in pursuance of a sale, exchange or disposal;
- “ ship ” includes a boat, canoe, vessel or craft;
- 20 “ single licensing system ” has the meaning assigned to the words in the Business Regulatory Act, 2014; Act No. 3 of 2014
- “ slaughter ” includes the harvesting, removal or taking of an animal for the purpose of use as an article;
- 25 “ standard ” has the meaning assigned to the word in the Standards Act, 2017, “ substance ” includes solid, liquid and gas; Act No. 4 of 2017
- “ unsafe ” in relation to food, means food that is likely to cause physical harm to a person who might consume it, except that food is not unsafe merely because its inherent nutritional or chemical properties cause, or its inherent nature causes, adverse reactions only with allergies or sensitivities;
- 30 “ unsuitable food ” includes food that—
- (a) is the product of a diseased animal or an animal that has died other than by slaughter, and has not been declared under this Act or any other written law to be safe for human consumption; or
- 35

(b) contains a biological or chemical agent or other matter or substance that is foreign to the nature or food in an amount that exceeds the level permitted under any written law; and

“Zambia Bureau of Standards” means the Zambia Bureau of Standards established under the Standards Act, 2017.

Act No. 4 of
2017

PART II

THE FOOD SAFETY COORDINATING COMMITTEE

Establishment
of Food
Safety
Coordinating
Committee

3. (1) There is established the Food Safety Coordinating Committee which is responsible for the implementation of the provisions of this Act. 10

(2) The First Schedule applies to the Committee.

(3) The Committee consists of the following members appointed by the Minister:

(a) a representative of the Ministry responsible for health, who shall be the Chairperson; 15

(b) one representative each of the Ministries responsible for—

(i) animal health;

(ii) commerce; 20

(iii) higher education;

(iv) agriculture;

(v) local government; and

(vi) water, sanitation and environment.

(c) one representative each of the— 25

(i) Attorney General;

(ii) Consumer Unity and Trust Society; and

(iii) Zambia Association of Manufacturers.

(4) The members referred to in subsection (1) shall be nominated by their respective institutions. 30

(5) The members shall elect the Vice Chairperson from among themselves.

(6) A person shall not be nominated or appointed as a member of the Committee if that person

- 5 (a) has been convicted of an offence under any written law and sentenced to imprisonment for a period exceeding six months, without the option of a fine;
- (b) is in lawful custody or the person's freedom of movement is restricted under any law in force within or outside Zambia;
- 10 (c) is legally disqualified from performing the functions of a member; or
- (d) is adjudged or declared bankrupt under any written law.

(7) The Minister shall, in appointing the members of the Committee, ensure equitable gender representation, and representation of the youth and persons with disabilities in accordance with the Constitution.

Cap.1

(8) The Committee may, for the purposes of this Act, co opt any other person from a Government department, the private sector or non governmental organisation as a member, with approval of the Minister.

20 **4.** (1) The functions of the Committee are to—

Functions of Committee

- (a) coordinate activities and responses relating to food safety among enforcement agencies in order to have a unified scientific basis in the food control system;
- 25 (b) coordinate the regulation of importation, exportation, production, manufacturing, labelling, storage, promotion, transportation, advertisement, packing, packaging, sale, distribution and disposal of articles and materials or substances used in the manufacture of an article;
- 30 (c) facilitate consumer protection in relation to food safety in collaboration with the Competition and Consumer Protection Commission;
- (d) facilitate information sharing on matters relating to food safety among enforcement agencies;
- 35 (d) coordinate the implementation of food safety policies, procedures and guidelines;
- (e) advise the Minister on policy matters related to food safety of articles; and
- (f) liaise with other agencies in matters relating to food safety.

- (2) The Committee shall, in the performance of its functions—
- (a) consult and cooperate with any State institution in the implementation of this Act; and
 - (b) recognise the role of other agencies in implementing matters relating to food safety. 5
- Scientific Advisory Sub Committee 5. The Committee shall, on the terms and conditions that it may determine, constitute a Scientific Advisory Sub Committee comprising experts from fields relevant to matters of food safety and quality.
- Functions of Scientific Advisory Sub Committee 6. (1) The functions of the Scientific Advisory Sub Committee 10 are to—
- (a) provide technical and scientific based evidence to the Committee on matters of food safety and quality;
 - (b) facilitate national coordination for—
 - (i) the prevention of, and dealing with, food borne 15 diseases;
 - (ii) surveillance;
 - (iii) recalls;
 - (iv) audits, surveys, data collection;
 - (v) prevention of health hazards; and 20
 - (vi) responses to food borne diseases and poisoning; and
 - (c) perform functions that the Committee may delegate or assign to the Scientific Advisory Sub Committee for purposes of this Act. 25
- (2) The Minister may, by statutory instrument, make regulations to provide for the tenure and composition of the Scientific Advisory Sub Committee.
- (3) The Scientific Advisory Sub Committee may regulate its own procedure. 30

PART III

REGULATION OF ARTICLES

- Prohibition of sale of poisonous, unfit or adulterated food 7. (1) A person shall not sell, import, manufacture or store any food that—
- (a) is unsafe, contaminated or adulterated; 35
 - (b) has in or on it any poisonous or harmful substance;

(c) consists in whole or in part of any filthy, putrid, rotten, decomposed or diseased substance or foreign matter;
or

(d) is unfit for human consumption.

5 (2) A person shall not sell, import, manufacture or store any unsuitable food.

(3) Food shall be stored and transported in a manner that preserves its composition, quality and purity and minimises the dissipation of its nutritive properties from climate and other
10 deteriorating conditions.

8. A person shall not sell, import, manufacture or store an article that is not of the nature, substance or quality of the article required by the purchaser.

Prohibition of sale of article not of nature, substance or quality required by purchaser

9. (1) A person shall not prepare, treat, pack, process, manufacture, sell, transport or store any food under insanitary
15 conditions.

Sale and preparation of food under insanitary conditions

(2) A person shall not sell, import, manufacture or store any food which was manufactured, prepared, preserved, packaged or stored under insanitary conditions.

20 10. A person shall not label, package, sell or advertise any food in a manner that is false, misleading or deceptive as regards its character, nature, value, substance, quality, composition, merit or safety or in contravention of this Act.

Prohibition of deception in labelling, packaging and selling of food

25 11. (1) Without prejudice to Part VII of the Competition and Consumer Protection Act, 2010, where a standard is prescribed for any food, a person who labels, packages, sells or advertises the food in contravention of that standard, or in a manner that is likely to be mistaken for food of the prescribed standard commits an
30 offence.

Labelling, selling or advertising of food contrary to standards for foods Act No. 24 of 2010

(2) Where a standard has not been prescribed for a food but a standard for the food is contained in any of the publications specified in the Third Schedule, a person who labels, packs, packages, sells or advertises any other substance or article in a
35 manner that is likely to be mistaken for that food commits an offence.

- (3) A person who labels, packs, packages, sells or advertises any food for which no standard has been prescribed or for which no standard is contained in any of the publications specified in the Third Schedule commits an offence unless the food
- (a) is in accordance with the prescribed standard under which it is labelled, packaged, sold or advertised; and 5
 - (b) does not resemble, in a manner likely to deceive, any food for which a standard has been prescribed or which is contained in any of the publications specified in the Third Schedule. 10
- 12.** (1) A person commits an offence if that person renders any food injurious to health by—
- Rendering food injurious to health
- (a) adding an article or substance to the food;
 - (b) using an article or substance as an ingredient in the preparation of the food; 15
 - (c) abstracting any constituent from the food; and
 - (d) subjecting the food to any other process or treatment, with intent that it shall be sold for human consumption.
- (2) For the purposes of subsection (1), in determining whether any food is injurious to health, regard shall be had to— 20
- (a) the probable effect of that food on the health of a person consuming it; and
 - (b) the probable cumulative effect of food of substantially the same composition on the health of a person consuming it in ordinary quantities. 25
- (3) In this Part, “injury”, in relation to health, includes an impairment, whether permanent or temporary, and “injurious to health” shall be construed accordingly.
- 13.** (1) A person commits an offence if that person—
- Selling food not compliant with food safety requirements
- (a) sells for human consumption; 30
 - (b) has in that person’s possession for the purpose of sale or preparation for sale; or
 - (c) deposits with or consigns to another person for the purpose of sale or preparation for sale; any food which does not comply with food safety and quality requirements. 35

(2) For the purposes of this Part, food fails to comply with food safety requirements if it is—

- (a) injurious to health by means of any of the operations mentioned in section 12 (1);
- 5 (b) unfit for human consumption; or
- (c) so contaminated whether by extraneous matter or otherwise, that it would not be reasonable to expect it to be used for human consumption in that state.

(3) Where any food which fails to comply with food safety requirements is part of a batch, lot or consignment of food of the same class or description, it shall be presumed to be part of that batch, lot or consignment for the purposes of this section.

14. A person shall not—

- (a) advertise any food as treatment, preventative or cure for a disease, disorder or abnormality; or
- 15 (b) sell any food that is presented on the label or is advertised as a treatment, preventative or cure for a disease, disorder or abnormality.

Prohibition of sale or advertisement of food as treatment for diseases

15. A person who requires regulatory health clearance under Part IV shall not handle food or permit food to be handled

- (a) on food premises in respect of which a health inspection report and certificate of compliance have not been issued; or
- 25 (b) in contravention of any restriction or condition specified in the certificate of compliance or food safety and quality standards or guidelines.

Prohibition of handling food without certificate of compliance or health inspection, report

16. A person shall not sell a device that when used according to directions on the label or contained in a separate document delivered with the device or under conditions that are customary or usual may cause injury to the health of the purchaser or user of the device.

Prohibited sale of devices

17. A person shall not sell, prepare, package, treat, process or store a device under insanitary conditions.

Sale and preparation of devices under insanitary conditions

18. A person shall not label, package, sell or advertise a device in a manner that is false, misleading or deceptive as regards its character, value, composition, merit or safety, or in contravention of this Act.

Prohibition of deception in labelling, packaging and selling of device

| | | |
|---|--|----------------|
| Standards for devices | <p>19. Where a standard has been prescribed for a device, a person who labels, packages, sells or advertises an article in a manner that is likely to be mistaken for the device commits an offence, unless the article complies with the prescribed standard.</p> | |
| Importation of article | <p>20. (1) Subject to subsection (2), a person shall not import an article which does not comply with the provisions of this Act.</p> <p>(2) Where an article sought to be imported into the Republic would, if sold in the Republic, constitute a contravention of this Act, the article may be imported into the Republic for the purposes of satisfactorily re labelling or re conditioning it so that the provisions of this Act are complied with.</p> <p>(3) Where the re labelling or reconditioning of an article referred to in subsection (1) is not carried out within ninety days of its importation, the article shall be exported by the importer within a further period of thirty days or other period that the Minister may determine and, where it is not so exported, it shall be forfeited and disposed of as the Committee may direct.</p> | 5 10 15 |
| Warranty on article | <p>21. (1) A manufacturer or distributor of, or dealer in, an article shall not sell the article to a vendor unless the manufacturer or distributor gives a warranty, in the prescribed form, about the nature and quality of the article to the vendor.</p> <p>(2) A person who contravenes subsection (1) or gives a warranty which is false or misleading commits an offence.</p> | 20 |
| Powers of appropriate enforcement authority | <p>22. An appropriate enforcement authority may—</p> <p>(a) direct a manufacturer, an importer, exporter, distributor or seller of an article to comply with the provisions of this Act and the terms and conditions of the licence, permit, certificate or regulatory health requirement;</p> <p>(b) require a manufacturer, an importer, exporter, distributor or seller of an article to submit that information, records or articles that may be necessary to enable the enforcement authority to monitor compliance with this Act;</p> <p>(c) collect samples of an article from a manufacturer, an importer, exporter, distributor or seller for the purpose of laboratory analysis;</p> <p>(d) declare any food unsafe and order the manufacturer, distributor and seller to recall the unsafe food for purposes of disposal or reconditioning; and</p> | 25 30 35 |

(e) take the necessary steps to ensure compliance with standards issued under this Act and codes of practice aimed at ensuring standards of food safety and quality.

5 **23.** (1) An appropriate enforcement authority may, where a person carries on a business in the course of which a product, substance or materials is used in the preparation of any food or is imported, produced or sold for use in the preparation of any food, serve on that person a notice requiring the person to furnish to the appropriate enforcement authority, within the time that may be specified in respect of the product, substance or material or a class specified in the notice.

Orders in
respect
of certain
articles

(2) Without prejudice to the generality of subsection (1), a notice made under that subsection may require the furnishing of the following particulars of a substance, product or material to which it applies:

(a) the composition of the substance, product or material and the chemical formula of every ingredient of the substance, product or material;

20 (b) the manner in which the substance, product or material is used or intended to be used in the preparation of any food;

25 (c) any investigations, and over what period of time, carried out by or on behalf and to the knowledge of the person carrying on the business for the purpose of determining whether or not the substance, product or material produced when the substance, product or material is used as mentioned in paragraph (b) is injurious to or affects health and the result of the investigations; and

30 (d) any investigations or inquiries, and over what period or time, carried out by or on behalf and to the knowledge of the person carrying on the business for the purpose of determining the cumulative effect on the health of a person consuming in ordinary quantities that article or a product produced when the article is used as mentioned in paragraph (b).

35 (3) A person who fails to comply with a notice under this section commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or imprisonment for a term not exceeding two years, or to both.

(4) A person shall not disclose any proprietary information supplied to the enforcement authority in pursuance of a notice under subsection (1) except—

- (a) with the written consent of the person who supplied the information; 5
- (b) in accordance with the directions of the enforcement authority; or
- (c) for the purposes of any proceedings under this Act or any other written law.

PART IV 10

REGULATORY HEALTH REQUIREMENTS

Regulatory
clearance
system
Act No. 3 of
2014

24. (1) Where a licence, certificate or permit is obtained under any other written law in accordance with the procedures specified under the Business Regulatory Act, 2014, and requires regulatory health clearance, an authorised officer or regulatory services centre shall endorse on the licence, certificate or permit 15

- (a) the regulatory health clearance required and authorised for purposes of the licence, certificate or permit;
- (b) the conditions attached to the regulatory health clearance; and 20
- (c) any other relevant information that an authorised officer or regulatory agency may request to be endorsed for purposes of the licence, certificate or permit.

(2) An authorised officer shall be responsible for the issuance of health inspection reports, certificates of compliance and notifications of refusal for businesses that require regulatory health clearance. 25

(3) An authorised officer shall, where practicable when performing its functions under this Act, process all regulatory health requirements through a regulatory services centre. 30

Application
for health
inspection
report and
certificate of
compliance

25. (1) A person who intends to operate a business or continue to operate a business that requires regulatory health clearance shall apply to the local authority or regulatory services centre in the prescribed manner and form on payment of the prescribed fee, for a health inspection to be undertaken of the business premises. 35

(2) A local authority or regulatory agency may request for further particulars from an applicant that requires a health inspection, to be undertaken before the health inspection in the prescribed manner and form.

(3) The committee, regulatory agency or a local authority or joint inspection team shall conduct or a health inspection within fourteen days of receipt of an application, except that where the inspection is not carried out within the prescribed period the person
5 may apply to the Minister to compel the inspection within seven days of the request.

(4) A local authority or regulatory services centre shall reject an application for a health inspection if the applicant fails to comply with subsections (1) and (5).

10 (5) Subject to subsection (4), on receipt of an application, submitted under subsection (1), a health inspection of the business premises shall be carried out.

26. (1) An authorised officer or regulatory services centre shall, after a health inspection has been undertaken under section 25 (6),
15 issue a health inspection report stating

Issuance of health inspection report and certificate of compliance

(a) that the applicant—

(i) has complied with this Act and that the business activity is suitable for the purpose stated in the application form;

20 (ii) meets the regulatory health requirements; and

(iii) should be issued with a certificate of compliance;
or

(b) that the applicant —

25 (i) has not complied with this Act or any other relevant law;

(ii) requires to undertake remedial actions before the applicant can re-apply for regulatory health clearance; or

(iii) should be issued with a notification of refusal.

30 (2) The period of validity of a certificate of compliance shall be one year from the date of issue, except that during the period of validity of the certificate of compliance, an applicant shall have a valid licence, permit or certificate issued to the applicant under any other law.

(3) A local authority or regulatory services centre shall grant a certificate of compliance in respect of a business if—

- (a) it determines that the premises in respect of which the application is made are structurally designed or adapted to be used for the purpose without creating a health hazard; 5
- (b) proper provision has been made for a water and sanitation system for the operation of the business;
- (c) proper provision has been made for the handling, preservation, cooking or use of food hygienically and the food can be effectively protected against contamination or spoilage; 10
- (d) the applicant meets the prescribed standards and requirements for food premises, as may be prescribed;
- (e) the facilities on the premises in respect of which the application is made comply with the standards and requirements of the Public Health Act and this Act; and 15
- (f) the applicant meets the requirements relating to the welfare, health and safety of consumers as provided under the Public Health Act and this Act. 20

Cap. 295

Cap. 295

Notification of refusal

27. (1) Where a local authority or regulatory services centre is not satisfied with an application made under section 25 or the application does not meet the requirements of this act or relevant law, a local authority or regulatory services centre shall, within fourteen days of the date of receipt of the application, notify the applicant of the refusal to operate the business or to continue operating the business which requires regulatory health clearance. 25

(2) Despite any other law, where a local authority issues a notification of refusal, the applicant shall not be granted a licence, permit or certificate applied for under any other relevant law until the applicant obtains a certificate of compliance under this Act. 30

(3) A local authority shall, where it rejects an application under subsection (1), inform the applicant of its decision in writing, and give the reasons for the rejection.

Conditions of certificate of compliance

28. (1) A local authority or regulatory services centre may impose any or all of the following conditions on a certificate of compliance issued under section 26: 35

- (a) the holder shall allow the inspection of the premises and facilities by an authorised officer;
- (b) the holder shall facilitate an investigation undertaken by a local authority on any matter relating to the operations of the business for purposes of this Act;
- (c) the holder shall adhere to—
- (i) the period specified in the certificate of compliance for the commencement of business;
 - (ii) the minimum prescribed standards for the operation of the business; and
 - (iii) any plans, programmes, projects or other reports submitted by the holder to a local authority for the operation of the business; and
- (d) the holder shall provide an environmental assessment report and adhere to an environmental management plan or monitoring arrangements as approved under the Environmental Management Act, 2011.
- (2) A holder of a certificate of compliance shall comply with the conditions that a local authority endorses on the certificate of compliance with respect to a licence, certificate or permit issued under the single licensing system.
- 29.** (1) A certificate of compliance shall not be transferable from one person to another or from one food premises to another food premises.
- (2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding fifty thousand penalty units or to imprisonment for a term not exceeding six months, or to both.
- 30.** A business shall display the certificate of compliance issued in accordance with this Act, or a certified copy of the certificate of compliance, in a conspicuous place at the principal place of business and at every subsidiary premises of the business.
- 31.** (1) A holder of a licence, permit or certificate issued under any other law, which requires regulatory health clearance before operating or continuing to operate a business shall notify a local authority or regulatory services centre of any change of business premises or change in the nature of business, within seven days of that change.

Act No. 12
of 2011

Prohibition
of transfer of
certificate of
compliance

Display of
certificate of
compliance

Report
notices

(2) A notification made under subsection (1) shall be in the prescribed form.

(3) Subject to section 25 (4), a health inspection shall be carried out at the applicant's business premises or related premises within fourteen days of receipt of a notification under subsection (1). 5

(4) A person who fails to make a notification under subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding fifty thousand penalty units or to imprisonment for a term not exceeding six months, or to both.

Notification of occurrence of health hazard

32. (1) A business shall notify an authorised officer or local authority of a health hazard or fraud in the handling, sale or use of an article at that business. 10

(2) A person who fails to submit a notification under subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding fifty thousand penalty units, or to imprisonment for a term not exceeding six months, or to both. 15

Renewal of certificate of compliance

33. (1) A holder of a certificate of compliance shall, at least thirty days before the expiration of the period of validity of that certificate of compliance, apply to the local authority or regulatory services centre for the renewal of the certificate of compliance in the prescribed manner and form on payment of the prescribed fee. 20

(2) A local authority or regulatory services centre shall, within fourteen days of receiving the application for the renewal of the certificate of compliance, conduct a health inspection of the premises in respect of which the application is made and approve or reject the application and give reasons where it rejects the application for the renewal of the certificate of compliance. 25

(3) A holder of a certificate of compliance who submits an application for the renewal of the certificate of compliance, in accordance with subsection (1), shall continue to operate until a decision is made by the local authority or regulatory services centre on the application. 30

Suspension or cancellation of certificate of compliance

34. (1) Subject to subsection (2), an appropriate enforcement authority may suspend or cancel a certificate of compliance if the holder— 35

(a) obtained it on the basis of fraud, negligence or misrepresentation;

(b) fails to comply with any term or condition of the certificate of compliance; or

(c) operates the business in contravention of this Act or any other written law. 40

(2) An appropriate enforcement authority may, subject to subsections (3) and (4), suspend or cancel the certificate of compliance, as the appropriate enforcement authority considers to be appropriate in the circumstances of the case where the appropriate enforcement authority is satisfied, after an inspection of any food premises, that—

- (a) the business is conducted in an unclean or unsanitary manner;
- (b) the proprietor of the business encourages or condones activities on the food premises that are likely to cause a health hazard;
- (c) the proprietor is convicted of an offence under this Act; or
- (d) the facilities do not comply with the prescribed standards and requirements.

(3) The appropriate enforcement authority shall, before suspending or cancelling a certificate of compliance, in accordance with subsection (1), notify the holder of its intention to suspend or cancel the certificate of compliance, giving reasons for its decision and requesting the holder to show cause, within a reasonable period that may be specified in the notice, why the certificate of compliance should not be suspended or cancelled.

(4) Where there is a contravention under subsection (2) (a), (b) or (d), an appropriate enforcement authority may, by notice require the holder to correct the contravention within a period of thirty days from the date of the notice.

(5) An appropriate enforcement authority shall, where the holder of a certificate of compliance in respect of which the notice is issued fails to correct the contravention, within the period specified under subsection (4), suspend or cancel the certificate of compliance as the appropriate enforcement authority considers to be appropriate in the circumstances of the case after considering any representations made by the holder.

(6) Where a certificate of compliance is cancelled, in accordance with this section, the holder shall immediately close the premises and surrender the certificate of compliance to the Committee, and the appropriate enforcement authority shall cancel the certificate of compliance subject to conditions that the appropriate enforcement authority may impose with respect to the winding up of the affairs of the business.

Power of court to order cancellation of certificate of compliance and disposal of articles

35. (1) The court may, on conviction of a person of an offence under this Act, in addition to any other penalty which it may impose, order the cancellation of a certificate of compliance or health clearance permit issued to a person under this Act.

(2) The court may, on conviction of a person of an offence under this Act, order the forfeiture or disposal of an article in relation to which the offence was committed. 5

Health clearance certificate

36. A person shall not import, export, manufacture, label, store, promote, transport, advertise, pack, package, sell, distribute or dispose of an article or any material or substance used for the manufacture of an article except under, and in accordance with, a health clearance certificate issued by the Committee in the prescribed manner and form. 10

Regulatory powers of Minister

37. The Minister may, on the recommendation of the Committee, prescribe 15

(a) the criteria, terms and conditions for issuance of health inspection reports, health clearance certificates or notifications to be issued under this Act;

(b) the procedure for making an application for issuance of a health inspection report, health clearance certificate or notification; 20

(c) the information and documents to be submitted with an application for a regulatory health clearance, health clearance certificate or for making a notification;

(d) the content and form of a health inspection report, health clearance certificate, certificate of compliance or notification of refusal; 25

(e) the fee payable on the issuance of a health inspection report, health clearance certificate or certificate of compliance; 30

(f) the regulatory health requirements for purposes of this Act;

(g) the form and procedure for making an appeal under this Act;

(h) good manufacturing practices, good hygiene practices and hazard analysis critical control points; 35

(i) other matter that may be necessary to ensure an efficient and fair regulatory health clearance system and process.

38. An appropriate enforcement authority, or regulatory services centre shall keep a register of all the regulatory health clearances, notifications of refusal, health clearance certificate and certificates of compliance issued under this Act and shall send
5 notices, in writing, of that information to other relevant regulatory agencies.

Register of approved health inspection applications, notifications of refusal and certificates of compliance

PART V

THE NATIONAL FOOD LABORATORY

39. There is established the National Food Laboratory which
10 is responsible for examining, analysing and conducting research to determine the quality, efficacy and safety of articles.

National Food Laboratory

40. The functions of the Laboratory are to—

Functions of laboratory

- (a) verify the safety, quality and efficacy of an article which is manufactured or imported into the country; and
15 (b) provide analytical services to enforcement regulatory agencies.

41. (1) The Civil Service Commission shall appoint as a public officer a Director for the Laboratory who shall be responsible for the day to day administration of the Laboratory, subject to the
20 general or special directions of the Minister and Permanent Secretary in the Ministry that are consistent with the provisions of this Act .

Director and other staff

(2) The Civil Service Commission shall appoint public analysts and other officers of the Laboratory as may be necessary for
25 purposes of implementing the provisions of this Part.

(3) A person shall not be appointed as a public analyst if that person is engaged, directly or indirectly, in any trade or business connected with the sale of food and devices.

42. (1) A public analyst shall, as soon as practicable, analyse
30 or examine a sample sent to the Laboratory for analysis or examination and shall issue a certificate of analysis, in the prescribed form.

Certificate of analysis

(2) The National Food Laboratory may use an approved laboratory to verify the quality, safety and efficacy of any food or
35 device and the laboratory shall, after analysing or examining the food or device, issue a certificate of analysis.

(3) A certificate of analysis issued by a public analyst under this Part shall be *prima facie* evidence of compliance with the requirements of this Act.

PART VI

ENFORCEMENT PROVISIONS

5

Powers of
authorised
officer

43. (1) An authorised officer may—
- (a) at any reasonable time, enter on and inspect any land, premises or conveyance where an article is manufactured, prepared, preserved, packaged or stored for sale or sold, examine the article and take samples of the article for purposes of an investigation; 10
 - (b) examine anything used or capable of being used for the manufacture, preparation, preservation, packaging or storing of an article;
 - (c) demand from a person the production of a health inspection report, health clearance permit or certificate of compliance for an act done or committed by that person in relation to an article for which a health inspection report, health clearance permit or certificate of compliance is required under this Act; 15 20
 - (d) require a person found within any premises who has an article in that person's possession to give an account of the manner in which the person came in possession of the article and where the account given is not satisfactory— 25
 - (i) arrest that person without warrant, and handover that person to a police officer, or surrender that person to a police post or station within twenty-four hours; and
 - (ii) without undue delay, have the person so arrested brought before a court of competent jurisdiction; 30
 - (e) open and examine a container, conveyance, package or wrapping suspected to contain an article to which this Act applies to ensure compliance with this Act;
 - (f) inspect articles destined for import into, or export from, the Republic to determine whether the consignment is compliant with the provisions of this Act; 35

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- (g) stop, inspect and examine any conveyance which the authorised officer has reasonable grounds to believe is transporting an article to ensure compliance with this Act;
- 5 (h) require the person in charge of a conveyance entering the Republic to furnish a list of the article in the conveyance and other prescribed information which is within the power of that person to furnish for purposes of the Act;
- 10 (i) search a person whom the authorised officer has reasonable grounds to believe is carrying an article or carrying out activities contrary to this Act;
- (j) require a person to produce for inspection any document, appliance, article or anything in relation to, or in connection with, which the authorised officer has reason to believe an offence has been committed or is likely to be committed;
- 15 (k) seize, destroy, detain or dispose of an article manufactured, distributed, sold, stored, imported or exported contrary to the provisions of this Act or likely to cause harm or have adverse effects on human health or life;
- 20 (l) seize and detain an article found on any person or premises without a health clearance permit or other relevant document for purposes of this Act for purposes of an examination, analysis, investigation, trial or inquiry;
- 25 (m) take all reasonable steps to prevent the commission of an offence under this Act;
- (n) apply or order the application of measures which are necessary or prescribed for the control or prevention of food borne diseases or a health hazard or food contamination or adulteration;
- 30 (o) destroy or order the destruction at any time of an article that is adulterated, contaminated, unsafe or unsuitable or moved or used contrary to the provisions of this Act;
- 35 (p) order the adoption of measures prescribed to ensure the protection of food and devices; and
- (q) seize or order the seizure of a conveyance carrying an article in contravention of this Act or any other law.

- (2) An owner of any premises or conveyance shall allow an authorised officer access to the premises or conveyance and shall give information and provide reasonable assistance that the authorised officer may require for the purposes of data or sample collection and carrying out an inspection or investigation. 5
- (3) An authorised officer may, in the performance of any functions under this section, be accompanied and assisted by a police officer.
- (4) An authorised officer may, in the course of an inspection carried out under this section— 10
- (a) subject to subsection (8), seize, recall, destroy, detain or otherwise dispose of an article or order that any action be taken at the expense of the owner;
 - (b) obtain any sample of an article as the authorised officer considers necessary; 15
 - (c) order any person to produce for inspection, or for purposes of obtaining extracts or copies, any book, document or other information concerning any matter relevant to the administration of this Act; and
 - (d) suspend one or more activities or temporarily, partially or completely close inspected premises; 20
- (5) An inspector who removes a document or article from any premises in accordance with subsection (1) (k) and (l) shall—
- (a) issue a receipt for the article to the owner or person in control of the premises; and 25
 - (b) return the article as soon as practicable after achieving the purpose for which it was removed.
- (6) Where an authorised officer detains, disposes of or destroys an article under subsections (1) or (4), the authorised officer shall, as soon as is practicable, notify, the owner of the article of the steps taken and the reasons for those steps. 30
- (7) Where an article or conveyance is infected or is suspected of being infected with any disease or an article or conveyance has been introduced into any place in the Republic without the health clearance permit, health inspection report or certificate of 35

compliance required for that introduction, or having been introduced under a health clearance permit, health inspection report or certificate of compliance is moved or dealt with otherwise than in accordance with the permit or certificate of compliance, an authorised officer may make an order that the authorised officer considers necessary for all or any of the following purposes:

- (a) direct that the article or conveyance be seized or detained;
- (b) subject to subsection (7), direct that the article or conveyance be disposed of or destroyed; or
- (c) direct that the article or conveyance be dealt with in a manner that is considered necessary to prevent the spread of any disease.

(8) Despite anything to the contrary contained in this section, an authorised officer shall not order the recall, disposal or destruction of an article which is not infected, adulterated, contaminated or unsafe.

(9) A person who contravenes an order made under this section commits an offence and is liable, on conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a term not exceeding three years, or to both.

(10) Where a person fails or refuses to do anything which that person is required to do under an order made under this section, an authorised officer may do or cause that thing to be done.

(11) The cost of anything which an authorised officer does or causes to be done under subsection (10) shall be recoverable by the Ministry from the person who failed or refused to comply with the order.

(12) The Government shall not be liable for any loss or damage which occurs to any property during an act of seizure by an authorised officer or whilst the property is detained under this Act unless the authorised officer caused the damage negligently, maliciously or fraudulently.

44. (1) An authorised officer may, for the purposes of this Act—

- (a) take or cause to be taken any sample or specimen from an article;
- (b) take or cause to be taken from any premises or conveyance, any sample or specimen of an article for analysis by a public analyst under this Act; and
- (c) apply other tests that the authorised officer considers necessary.

Power to carry out tests and take samples

(2) An authorised officer may, for the purpose of obtaining statistics of articles weigh, measure and check any article, and any person in charge of the article shall, on demand being made to that person by an authorised officer, produce that article to the authorised officer for that purpose. 5

(3) Where an authorised officer takes a sample or specimen of an article for analysis, the article shall not be delivered to the importer, exporter, manufacturer or seller until the public analyst has reported on the samples taken.

(4) Where it appears from the report of the authorised officer 10 or the analyst that the sale of the article

(a) would be in contravention of this Act if sold in the Republic, the article shall not be admitted in the Republic for use as an article; and

(b) would not be in contravention of this Act if sold in the 15 Republic, the article shall, subject to the provisions of any other law, be admitted in the Republic for use as an article.

Arrest
without
warrant

45. (1) An authorised officer may arrest a person, without warrant, where the authorised officer has reasonable grounds to 20 believe that the person

(a) has committed an offence under this Act;

(b) is about to commit an offence under this Act and there is no other way to prevent the commission of the offence; or 25

(c) is wilfully obstructing the authorised officer in the execution of the authorised officer's duties.

(2) An authorised officer who makes an arrest under subsection (1) shall, without undue delay, have the person arrested brought to a police station. 30

Demanding
production
of certificate
of
compliance
or health
clearance
permit

46. An authorised officer may demand from any person engaged in doing or causing to be done anything for which a licence or permit is endorsed under section 24 (1) to produce the licence or permit, or for which a certificate of compliance or health clearance permit is required to produce the certificate of compliance or health 35 clearance permit and if that person fails to produce the licence, permit, health clearance permit or certificate of compliance, as the case may be, restrain that person and the employees and agents of that person from doing that thing until the relevant certificate, licence or permit is produced. 40

47. (1) Subject to subsection (2), an authorised officer may, where that authorised officer suspects that a person has committed an offence or is in possession of an article in respect of which an offence has been committed, with a warrant
- 5 (a) enter on and inspect the land or premises on, or in which, the article which is the subject of an offence may be found; or
- (b) search any baggage, package, parcel, conveyance or premises under the control of that person or the employee or agent of that person.
- 10 (2) Despite subsection (1), a private dwelling shall not be entered into except in the presence of the occupier or person over the apparent age of eighteen years who resides in the private dwelling as a member of the occupier's family.
- 15 48. (1) A person commits an offence if that person—
- (a) delays or obstructs an authorised officer in the performance of the authorised officer's duties;
- (b) refuses to give an authorised officer reasonable assistance that the authorised officer may require for the purpose of exercising the powers under this Act;
- 20 (c) gives an authorised officer false or misleading information in answer to an inquiry made by the authorised officer; or
- (d) impersonates an authorised officer or presents oneself as an authorised officer.
- 25 (2) A person convicted of an offence under subsection (1) is liable to a fine not exceeding two hundred thousand penalty units or to a term of imprisonment not exceeding two years, or to both.
- 30 49. (1) An appropriate enforcement authority shall, monitor the—
- (a) production, distribution, marketing, advertisement, importation and exportation of food and food additives to ensure that the food and food additives meet the standards of food safety;
- 35 (b) use and operation of any device to prevent health hazards or the contamination of food; and
- (c) preservation, handling, storage, quality and characteristics of food so as to determine the immediate and long term effects of contamination and unsuitable food on human health and life.
- 40

Search with warrant

Obstruction of authorised officer

Food safety monitoring

(2) An authorised officer may enter on any land or premises for the purposes of monitoring the effects of any activities carried out on that land or premises on food safety and quality.

Protection
order

50. (1) Where an appropriate enforcement authority has reasonable grounds to believe that a person is, or will be, conducting an activity, or is or will be handling or is in possession or control of an article that may result in a food borne disease outbreak or health hazard the appropriate enforcement authority may serve a protection order on that person. 5

(2) A protection order served on a person under subsection (1) may require that person to— 10

(a) prepare a written emergency response plan to reduce or eliminate the risk and provide a copy of the plan to the appropriate enforcement authority;

(b) have any necessary equipment, facilities and trained personnel available to deal with the risk; 15

(c) on an identified event or set of circumstances occurring, implement the plan; and

(d) take measures that are necessary to ensure that an emergency can be effectively dealt with. 20

(3) A person on whom a protection order is served shall comply with the requirements of the order by the date or dates specified in the order and if no date is specified, the person shall comply with the order immediately.

(4) A person who contravenes subsection (3) commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding one year, or to both, and where the person fails to comply with a requirement specified in the protection order within the specified time, to a further fine not exceeding one thousand penalty units for each day or part of a day after the date specified in the order during which the offence continues. 25 30

Prevention
order

51. (1) An appropriate enforcement authority may issue a prevention order to a person where the enforcement authority determines that— 35

(a) it is necessary to prohibit, restrict or control the importation, distribution, handling or use of an article, to prevent a health hazard;

- (b) it is necessary to protect a food source in an area;
- (c) restrictions should be imposed on the owner of premises, or the manager or person in control of the premises or conveyance where an activity is occurring or will occur that will cause a health hazard;
- (d) an area is or appears to be threatened with the occurrence of a health hazard caused by unsafe, unsuitable or contaminated food; and
- (e) it is necessary to take measures to prevent or remedy insanitary conditions or food premises likely to be injurious or dangerous to human health or to render food harmful.
- (2) A prevention order may require the person on whom it is served to—
- (a) take any measures to avoid, remedy or mitigate any health hazard and to—
- (i) stop the activity that is resulting or is likely to result in a health hazard;
- (ii) control the activity;
- (iii) assess the actual or anticipated extent of the health hazard;
- (iv) remedy any adverse impact caused by the activity; or
- (v) prevent a recurrence of the activity or the health hazard;
- (b) remove or dispose of an article to prevent the spread of the health hazard or food borne disease; or
- (c) prevent or restrict the scope of any activity in the area.
- (3) A person on whom a prevention order is served shall comply with the requirements of the prevention order by the date specified in the prevention order and if no date is specified, the person shall comply with the prevention order immediately.
- (4) A person who contravenes subsection (3) commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding one year, or to both, and where the person fails to comply with a requirement specified in the prevention order within the specified time, to a further fine not exceeding one thousand penalty units for each day after the date specified in the order during which the offence continues.

Compliance
order

52. (1) An appropriate enforcement authority may, where that enforcement authority has reasonable grounds to believe that any condition of a health clearance permit or certificate of compliance issued under this act or any other written law, licence or permit endorsed under section 24 (1) has been breached, serve a compliance order on the holder requiring the holder to remedy the breach within the period stipulated in the compliance order. 5

(2) A compliance order issued under subsection (1) may—

(a) suspend the certificate, permit or licence with immediate effect if the enforcement authority considers that the suspension is necessary to prevent or mitigate an imminent risk of significant adverse impact to human health or life; or 10

(b) require a person to take specified measures to prevent or abate any adverse impact on human health. 15

(3) An appropriate enforcement authority may, where a holder fails to comply with a compliance order—

(a) take the necessary steps to remedy the breach and recover the cost from the holder in accordance with section 59;

(b) vary the conditions of the certificate, permit or licence; or 20

(c) revoke the certificate, permit or licence.

(4) A person on whom a compliance order is served shall comply with the requirements of the compliance order by the date or dates specified in the compliance order and if no date is specified, the person shall comply with the compliance order immediately. 25

(5) A person who contravenes subsection (4) commits an offence and is liable, on conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a term not exceeding three years, or to both.

Cost order

53. (1) An appropriate enforcement authority may, where a person fails to comply with a requirement in an order, certificate, permit or licence or approval issued under this Act, cause the required measures to be taken and may issue a cost order requiring that person to reimburse the Government for the cost of taking the measures. 35

(2) A cost order shall be enforced as if it were an order of court if no application for the review of the cost order is made.

54. (1) A person may request an enforcement authority to issue an order under this act.

Orders initiated by public

(2) A request made under subsection (1) shall set out the reasons for the request, including the detailed factual grounds on which the enforcement authority would have jurisdiction to issue the order.

(3) An appropriate enforcement authority shall consider the request made under subsection (1) and within thirty days shall decide whether or not to issue an order, and shall notify the requesting person of the decision, stating the reasons thereof and, if applicable, the date on which the enforcement authority intends to issue the order.

(4) Where an appropriate enforcement authority decides not to issue an order, the requesting person may, within ten days of the date of being notified of the decision, apply to the Minister for a review of the decision.

(5) Without prejudice to any other grounds for review, an application for review made under subsection (4) may be made on the ground that the enforcement authority has failed to discharge its function under this Act to take all reasonably practicable steps to enforce the Act.

55. A defect in an order issued under this Part shall not be a bar to the compliance with an order.

Defect in order not bar to compliance Investigations by public

56. (1) A person may, verbally or in writing, request an appropriate enforcement authority to investigate an alleged contravention of this Act.

(2) A request made under subsection (1) shall set out the reasons for the request, including the detailed factual grounds for believing that a contravention has occurred.

(3) An appropriate enforcement authority shall consider the request and, within seven days, shall decide whether or not to commence an investigation, and shall notify the requesting person of that decision, stating the reasons for the decision, and, if applicable, the date on which the enforcement authority intends to commence the investigation.

(4) Where an appropriate enforcement authority decides not to commence an investigation, the requesting person may lay a charge and initiate and conduct the prosecution and may obtain the assistance of any person in doing so.

(5) A person acting under subsection (4) shall, notify the enforcement authority prior to laying the charge.

(6) A court shall not award any costs or damages against a person who initiates a prosecution after informing the enforcement authority in accordance with this section, unless the court finds that the primary motivation for the prosecution was not a concern for the public interest or for the protection of human health.

Civil action

57. (1) A person may sue for damages in respect of an act or omission that constitutes an offence or other contravention of this Act or that is likely to cause a health hazard, whether or not that person or any other person has suffered, or is likely to suffer, any loss or harm from the act or omission.

(2) The right of action in subsection (1) is without prejudice to any other legal rights or remedies available to a plaintiff or applicant.

Protection and costs orders

58. A court that convicts a person of an offence under this Act may, in addition to any other penalty imposed—

(a) order the person to take and pay for measures to avoid, remedy or mitigate any health hazard arising from, or likely to arise from, the offence; and

(b) if the person fails to comply with an order under paragraph (a), issue an order allowing an appropriate enforcement authority to take those measures, and requiring the person to pay the Government's costs of so doing.

Seizure of property

59. A law enforcement officer or an authorised person may, where that officer or authorised person reasonably believes that an offence has been committed, any article collected or removed contrary to the provisions of this Act and any tool, instrument, plant, machinery, equipment, vehicles, and other property suspected of having been used in the commission of the offence may seize and detain the article until an order of the court is made regarding the forfeiture and disposal of the article.

Restoration of property

60. (1) A law enforcement officer shall, where a person from whom an article or other property has been seized under section 59 is found not guilty or the proceedings against that person are withdrawn

(a) without unnecessary delay, restore the article or property to that person; or

- (b) where the enforcement authority is satisfied that the person cannot be found or is unwilling to receive back the article or property, apply to the court for an order of forfeiture of the article or property.
- 5 (2) The court shall make an order of forfeiture under subsection (1) if—
- (a) the enforcement authority has given notice, by publication in the *Gazette* and in one daily newspaper of general circulation in Zambia, to the effect that the article or property which has been seized under this Act shall vest in the State if it is not claimed within three months from the date of publication of the notice; and
- 10 (b) three months after the giving of the notice under paragraph (a), the article or property remains unclaimed.
- 15 (3) Where a claim is made, in writing, by any person that is lawfully entitled to the article or property seized under this Act that the article or property is not liable to forfeiture under this Act, the enforcement authority may order the release of the article or property to the claimant if satisfied that there is no dispute
- 20 concerning the ownership of the article or property and that it is not liable to forfeiture.
- (4) A law enforcement officer shall refer a claim to the court where a claim of ownership is made in relation to the article or property seized under this act and the enforcement authority finds
- 25 that—
- (a) there is dispute regarding the ownership of the article or property;
- (b) there is insufficient evidence to determine the ownership of the article or property; or
- 30 (c) an enforcement authority is unable to ascertain whether the article or property is liable to forfeiture or not.

PART VII

GENERAL PROVISIONS

- 35 **61.** (1) A person aggrieved by a decision made under this Act shall appeal to the Minister. Appeals
- (2) The Minister, may, on receipt of an appeal constitute an *ad hoc* appeals committee consisting of not more than five members within five days of receipt of the appeal.
- (3) The composition of the appeals committee at any given
- 40 time shall be determined by the nature of the appeal received by the Minister.

(4) The functions of the *ad hoc* appeals committee are to hear and determine an appeal by a person aggrieved by a decision made under this Act.

(5) A person aggrieved by a decision of the appeals committee may within thirty days of the decision appeal to the Minister 5

(6) A person aggrieved by a decision of the Minister shall appeal to the court.

General
penalty

62. A person who commits an offence under this Act for which a specific penalty is not provided for is, on conviction, liable to a fine not exceeding three hundred thousand penalty units or to 10 imprisonment for a term not exceeding three years, or to both.

Offences by
principal
officers of
body
corporate
or
unincorporate
body

63. Where an offence under this Act is committed by a body corporate or an unincorporate body, with the knowledge, consent or connivance of the director, manager, partner or shareholder of that body corporate or unincorporate body, that director, manager, 15 partner or shareholder commits an offence and is liable, on conviction, to the penalty or term of imprisonment specified for that offence.

Regulations

64. (1) The Minister may, on the recommendation of the Committee, and in consultation with other relevant public 20 institutions, by statutory instrument, make regulations for the better carrying out of the provisions of this Act.

(2) Despite the generality of subsection (1), regulations made under subsection (1) may provide for—

(a) the declaration of an article as unsafe, adulterated or 25 contaminated if any specified substance is present in the article;

(b) declare a laboratory as an approved laboratory;

(c) the labelling, packing, offering, exposing and advertising 30 for sale of an article;

(d) the size, dimensions and other specifications of the package of an article;

(e) the sale or conditions of sale of an article;

(f) the use of any substance as an ingredient in an article;

(g) the import or export of an article in order to ensure 35 compliance with this Act;

(h) the manner of preparation, preserving, packing, storing, conveying and testing of an article for the prevention of health hazards or injury to the health of the consumer;

- (i) the medical examination of any person in any premises in which an article intended for sale is prepared, collected, kept, sold, or exposed for sale, conveyed or distributed;
- 5 (j) the books and records to be kept and maintained by persons and businesses regulated under this Act for the proper administration of this Act;
- (k) the standards of composition, strength, potency, purity, quality or other property of an article;
- 10 (l) exempting an article from all or any provision of this Act and the conditions of the exemption;
- (m) the manner of labelling, packaging, advertising, handling and selling articles to prevent deceiving or misleading consumers concerning the quantity, character, value, composition and safety of the article or to prevent health
- 15 hazards;
- (n) the analysis or examination of an article for the purposes of this Act and the fees payable for the analysis; and
- (o) the fees and forms necessary for applications under this Act.

20 (3) Regulations made under this section may prescribe in respect of any contravention or failure to comply with the Regulations a fine not exceeding three hundred thousand penalty units or imprisonment for a term not exceeding three years, or to both.

25 **65.** (1) The Food and Drugs Act, 1972 and sections 79 and 83 of the Public Health Act, 1972 are repealed.

Repeal of Act No. 22 of 1972 and Sections 79 and 83 of Cap 303

(2) Despite subsection (1), the provisions of the Second Schedule applies in respect of the transfer of the rights, liabilities and obligations which immediately before the commencement of

30 the repealed Act were the assets, rights, liabilities and obligations of the Food and Drugs Board.

66. (1) Despite any other written law, a licence or permit issued under the repealed Act shall continue in force until expiry or revocation, whichever is earlier, after which the holder shall apply

35 for that licence or permit in accordance with this Act.

Savings provisions

(2) An application pending for a licence or permit at a local authority, immediately before the commencement of this Act, shall be dealt with in accordance with this Act.

FIRST SCHEDULE

(Sections 3(2))

THE FOOD SAFETY COORDINATING COMMITTEE

PART I

ADMINISTRATION OF COMMITTEE

5

Tenure of
office and
vacancy

1. (1) A member of the Committee shall hold office for a term of three years and may be re appointed for a further term of three years.

(2) A member may resign from office by giving one month's notice, in writing, to the Minister.

10

(3) The office of a member becomes vacant if the member—

(a) dies;

(b) resigns;

(c) is absent, without reasonable excuse, from three consecutive meetings of the Committee of which the member has had notice without the approval of the Committee;

15

(d) is adjudged bankrupt;

(e) is convicted of an offence under this Act or any other law and sentenced to imprisonment for a period exceeding six months without the option of a fine;

20

(f) is removed by the Minister for good cause on the following grounds:

(i) the member acts dishonourably improperly, fraudulently, dishonestly or disorderly;

(ii) the institution which the member represents withdraws its support of the member as its representative and informs the Minister accordingly; or

25

(iii) is legally disqualified from performing the functions of a member.

30

(4) A member shall, on the expiration of the period for which the member is appointed, continue to hold office until a successor is appointed but in no case shall the further period exceed three months.

(5) Whenever the office of a member becomes vacant, before the expiring of the term of office, the Minister may appoint another person to be a member in place of the member who vacates the office for the the unexpired term of that office.

35

2. (1) Subject to the other provisions of this Act, the Committee may regulate its own procedure. Proceedings of

(2) The Committee shall meet for the transaction of business at least once in every three months at places and times that the Committee may determine. Committee

(3) The Chairperson shall call a meeting of the Committee, on giving notice of not less than fourteen days, if one-third or more of the members so request in writing, except that if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called on giving a shorter notice.

(4) Seven members shall form a quorum at a meeting of the Committee.

(5) There shall preside at a meeting of the Committee—

(a) the Chairperson;

(b) in the absence of the Chairperson, the Vice Chairperson; and

(c) in the absence of the Chairperson and the Vice Chairperson, such other member as the members present may elect for the purposes of that meeting.

(6) A decision of the Committee on any question shall be by a majority of votes of the members present and voting at the meeting and in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to that persons deliberative vote.

(7) Where a member is for any reason unable to attend a meeting of the Committee, the member may, in writing, nominate another person from the same organisation to attend that meeting in that member's stead and that person shall be deemed to be a member for the purpose of that meeting.

(8) The Committee may invite a person, whose presence is in its opinion desirable, to attend and to participate in the deliberations of the meeting of the Committee, but that person shall have no vote.

(9) The validity of any proceedings, act or decision of the Committee shall not be affected by any vacancy in the membership of the Committee or by any defect in the appointment of any member or by reason that any person not entitled to do so took part in the proceedings.

(10) The Committee shall cause minutes to be kept of the proceedings of every meeting of the Committee and every meeting of any sub committee of the Committee.

Sub-Committees

3. (1) The Committee may, for the purpose of performing its functions under this Act, establish sub committees that it considers necessary and delegate to any of those sub committees functions that it considers fit. 5

(2) The Committee may appoint as members of a sub committee persons who are or are not members of the Committee except that at least one member shall be a member of a sub-Committee. 10

(3) A person serving as a member of sub committee shall hold office for a period that the Committee may determine.

(4) Subject to any specific or general direction of the Committee, a committee may regulate its own procedure.

Disclosure of interest

4. (1) A person who is present at a meeting of the Committee or any sub committee at which any matter is the subject of consideration, and that person or that person's relative or associate is directly or indirectly interested in a private capacity, shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the Committee or the sub committee otherwise directs, take part in any consideration or discussion of, or vote on any question relating to that matter. 15 20

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

(3) For the purpose of this paragraph "associate" has the meaning assigned to the word in the Anti Corruption Commission Act, 2012 and "relative" has the meaning assigned to the word in the Anti Corruption Commission Act, 2012. 25

Prohibition of publication or disclosure of information to unauthorised persons

5. (1) A person shall not, without the consent in writing given by or on behalf of the Committee, otherwise than in the course of duties of that person, publish or disclose to any other person, the contents of any document, communication or information, which relates to, or which has come to the knowledge of that person in the course of that person's duties under this Act. 30

(2) A person who contravene subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both. 35

6. An action or other proceeding shall not lie or be instituted against a member of the Committee, a member of a sub committee of the Committee or a member of staff of the Laboratory for, or in respect of, an act or thing done or omitted to be done in good faith
5 in the exercise or performance, or purported exercise or performance, of any of the powers, functions or duties conferred under this Act. Immunity

SECOND SCHEDULE

(Section 65)

SAVINGS AND TRANSITIONAL PROVISIONS

- Interpretation **1.** In this Schedule, “Board” means the Food and Drugs Board established under the Repealed Act. 5
- Staff of Food and Drugs Board **2.** On or after the commencement of this Act public officers from the Board shall—
- (a) be redeployed in the service of the Government; or
- (b) have their service terminated.
- Transfer of assets and liabilities **3.** (1) On or after the commencement of this Act, there shall be transferred to, vest in and subsist against the State by virtue of this Act and without further assurance, all assets, rights, liabilities and obligations which immediately before that date were the assets, rights, liabilities and obligations of the State. 10
- (2) Subject to subparagraph (1), every deed, bond and agreement, other than an agreement for personal service, to which the Board was a party immediately before the commencement of this Act whether or not of such a nature that rights, liabilities and obligations could be assigned, shall, unless its subject matter or terms make it impossible that it should have effect as modified, provided under this paragraph, have effect as if— 15
- (a) the State had been party to it;
- (b) for any reference to the Board there were substituted, with respect to anything falling to be done on or after the commencement of this Act, a reference to the State; 20
- or
- (c) for any reference to any officer of the Board, not being a party to it and beneficially interested therein there were substituted, as respects anything falling to be done on or after the commencement of this Act, a reference 30
- to the officer of the Authority shall designate.
- (3) Where under this Act, any assets, rights, liabilities and obligations of the Board are deemed to be transferred to the State in respect of which transfer a written law provides for the registration, the State shall make an application, in writing, to the appropriate registration State for registration of the transfer. 35

(4) The registration Authority referred to in subparagraph (3) shall make such entries in the appropriate register as shall give effect to the transfer and, where applicable, issue to the transferee concerned a certificate of title in respect of the property or make necessary amendments to the register, and shall endorse the deeds relating to the title, right or obligation concerned and no registration fees or other duties shall be payable in respect of the transaction.

4. (1) Any legal proceedings or application of the Board pending immediately before the commencement of this Act by or against the Board may be continued by or against the State.

Legal
proceedings

(2) After the commencement of this Act, proceedings in respect of a right, liability or obligation which was vested in, held, enjoyed, incurred or suffered by the Board, may be instituted by or against the State.

THIRD SCHEDULE

(Section 11)

PUBLICATIONS

The current editions of:

| <i>Name</i> | <i>Abbreviation</i> |
|--|---------------------|
| Codex Alimentarius World Health Organisation/Food and Agricultural Organisation International Organisations for Standardisation Terrestrial and Aquatic Code | ISO |
| International Organisation for Standardisation and International Electrotechnical Standards for Devices | ISO/IEC |
| The British Pharmacopoeia | (B.P.) |