

FOOD (AMENDMENT) ACT 2001  
ACT A1117

An Act to amend the Food Act 1983.

**ENACTED** by the Parliament of Malaysia as follows:

1. Short title.

This Act may be cited as the Food (Amendment) Act 2001.

2. Amendment of section 2.

The Food Act 1983 [Act 281], which in this Act is referred to as the "principal Act", is amended in section 2-

(a) by inserting after the definition of "sell or sale" the following definition:

"tobacco product" means tobacco, cigarette or cigar or any other form of tobacco including any mixture containing tobacco which is designed for human consumption but excludes any medicinal product controlled under the Poisons Act 1952 [Act 366] or the Control of Drugs and Cosmetics Regulations 1984 [PU (A) 223/1984];;

(b) in the definition of "approved laboratory" by inserting after the word "Minister" the words "under section 3A";

(c) by substituting for the definition of "sell" the following definition:

"sell or sale" refers only to sale for human consumption or use and includes barter and exchange, offering or attempting to sell, causing or allowing to be sold, exposing for sale, receiving, sending, conveying or delivering for sale or exchange or in pursuance of such sale or exchange, supplying any food where consideration is to be received by the supplier for such supply either specifically or as part of a service contracted for sale, or having in possession any food for sale or exchange, or having in possession any food or appliance knowing that the food or appliance is likely to be sold or offered or displayed or exposed for sale or disposed of for any consideration, and includes electronic sale;;

(d) in the definition of "Director" by substituting for the words "Director of Health Services" the words "Deputy Director General of Health (Public Health)";

(e) in the definition of "preparation" by inserting after the word "manufacture," the word "packaging,";

(f) by inserting after the definition of "importer" the following definition:

"International Health Regulations" means the International Health Regulations as adopted by the World Health Assembly in 1969 and as amended from time to time;;

(g) by substituting for the definition of "appliance" the following definition:

"appliance" includes the whole or any part of any utensil, machinery, instrument, apparatus, or article used for or in connection with the preparation, preservation, packaging, storage, conveyance, distribution or sale of food;;

(h) by inserting after the definition of "food" the following definition:

"food premises" means premises used for or in connection with the preparation, preservation, packaging, storage, conveyance, distribution or sale of any food, or the relabelling, reprocessing or reconditioning of any food; and

(i) by inserting after the definition of "sell or sale" but before the definition of "tobacco product" the following definition:

"tobacco" means any product obtained from the leaf of the Nicotiana Tobacum plant or other related plants and includes any tobacco product;'

### 3. New section 3A.

The principal Act is amended by inserting after section 3 the following section:

"3A. Approved laboratories.

(1) The Minister may, by order, approve such number of laboratories as he may consider necessary for the purposes of this Act.

(2) A laboratory approved under subsection (1) shall be issued with a Certificate of Approval which certificate shall, in any legal proceedings under this Act, be admissible in evidence and shall be prima facie evidence of the facts so certified.

(3) The Minister shall prepare or cause to be prepared a list of approved laboratories and revise it as the circumstances may require."

### 4. Amendment of section 4.

Section 4 of the principal Act is amended-

(a) in subsection (1)-

(i) by substituting for the words "may, at any hour reasonable" the words "may at any time";

(ii) by substituting for paragraph (a) the following paragraph:

"(a) enter any premises which he believes to be food premises and examine any food found therein and take samples of such food, and examine anything that he believes is used or capable of being used for the preparation, preservation, packaging, storage, conveyance, distribution or sale of the food;"

(iii) in paragraph (b) by inserting after the words "for the purposes of this Act" the words ", except an aircraft, ship or vehicle making an international voyage in respect of which the International Health Regulations apply";

(iv) in paragraph (d) by substituting for the words "premises mentioned in paragraph (a)" the words "food premises"; and

(v) in paragraph (f) by inserting after the word "food" the words "or appliance";

(b) by inserting after subsection (1) the following subsections:

"(1A) In the course of the exercise of his powers under subsection (1) an authorised officer may examine orally the owner, occupier or person in charge of the food premises, or any person found in the food premises, whom he believes to be acquainted with the facts and circumstances of any matter under this Act.

(1B) A person examined under subsection (1A) shall be legally bound to answer truthfully all questions put to him:

Provided that a person examined under this subsection may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or penalty or forfeiture.

(1C) An authorised officer examining a person under subsection (1A) shall first inform that person of the provisions of subsection (1B).

(1D) A statement made by a person under subsections (1A) and (1B) shall, whenever possible, be reduced into writing and signed by the person making it or affixed with his thumb print, as the case may be, after it has been read to him in the language in which he made it and after he has been given an opportunity to make any correction he may wish.

(1E) Any statement made and recorded under this section shall be admissible as evidence in any proceedings in Court.";

(c) in subsection (3) by inserting after the words "in charge of any" the word "food";

(d) in subsection (8) by inserting after the words "disposal of the food" the words "or any appliance";

(e) in subsection (10) by inserting after the words "any food" and "the food" the words "or appliance"; and

(f) by deleting subsection (15).

5. Amendment of section 8.

Section 8 of the principal Act is amended-

(a) in subsection (1) by inserting after the words "relating to the" the words "importation, preparation,"; and

(b) in the English language text, in paragraph 4(b), by substituting for the word "whomsoever" the word "except".

6. Amendment of section 10.

Section 10 of the principal Act is amended-

(a) in the marginal note by substituting for the words "premises or appliances be put into clean" the words "food premises or appliances to be put into hygienic";

(b) by substituting for subsection (1) the following subsection:

"(1) Where the Director or an officer authorised by him in this particular respect is satisfied, by his own inspection or the report of an authorised officer, that any food premises, or any appliance used for or in connection with the preparation, preservation, packaging, storage, conveyance, distribution or sale of food, is in a condition that fails to comply with any hygiene and sanitary requirements specified in regulations made under this Act, he may, by instrument in writing served on the proprietor, owner or occupier of such premises, or the proprietor or owner of such appliance, order that the premises or appliance be put into a hygienic and sanitary condition to the satisfaction of an authorised officer within a period specified in the instrument."; and

(c) in subsections (2), (3), (4), (5) and (6) by inserting before the word "premises" wherever it appears in the subsections the word "food".

7. New section 12A.

Part III of the principal Act is amended by inserting before section 13 the following section:

"12A. Meaning of "owner of the rights of the manufacturer or packer".

(1) For the purposes of this Part, the term "owner rights of the manufacturer or packer" means:-

(a) the packer in the case of foreign manufactured or packed food, any person who owns the exclusive rights to distribute or sell the food in Malaysia by way of licence, agreement or franchise from the foreign manufacturer; or

(b) in the case of locally manufactured or packed food, any person who, not being the manufacturer or packer, has proprietary rights over the distribution and sale of the food, or who, being the manufacturer or packer, distributes or sells the food through and in the name of a marketing agent.

(2) The term "owner of the rights of the manufacturer or packer" in subsection (1) extends also to any person who, in relation to food, claims or holds himself out as one, whether the food is imported or locally manufactured or packed.'

8. Amendment of section 13.

The principal Act is amended by substituting for section 13 the following section:

"13. Food containing substances injurious to health.

(1) Any person who prepares or sells any food that has in or upon it any substance which is poisonous, harmful or otherwise injurious to health commits an offence and shall be liable, on conviction, to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding ten years or to both.

(2) In determining whether any food is injurious to health for the purpose of subsection (1), regard shall be had not only to the probable effect of that food on the health of a person

consuming it but also to the probable cumulative effect of the food of substantially the same composition on the health of a person consuming the food in ordinary quantities."

9. New sections 13A, 13B and 13C.

The principal Act is amended by inserting after section 13 the following sections:

"13A. Food unfit for human consumption.

(1) Any person who prepares or sells any food that consists wholly or in part of-

(a) any diseased, filthy, decomposed or putrid animal or vegetable substance;

(b) any portion of an animal unfit for food; or

(c) the product of an animal which has died otherwise than by slaughter or as game,

whether manufactured or not, commits an offence and shall be liable, on conviction, to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding eight years or to both.

(2) Any person who prepares or sells any food that contains or upon which there is any matter foreign to the nature of such food, or is otherwise unfit for human consumption, whether manufactured or not, commits an offence and shall be liable, on conviction, to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding five years or to both.

(3) Any person who prepares or sells any food whether manufactured or not that is enclosed in a sealed package and the package is damaged and can no longer ensure protection to its contents from contamination or deterioration, commits an offence and shall be liable, on conviction, to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding five years or to both.

13B. Adulterated food.

(1) No person shall prepare or sell any adulterated food.

(2) For the purposes of and without prejudice to the generality of subsection (1), any food shall be deemed to be adulterated if-

(a) it contains or is mixed or diluted with any substance which diminishes in any manner its nutritive or other beneficial properties as compared with such food in a pure, normal or specified state and in an undeteriorated and sound condition, or which in any other manner operates or may operate to the prejudice or disadvantage of the purchaser or consumer;

(b) any substance or ingredient has been extracted, wholly or in part, or omitted, from the food and by reason of such extraction or omission, the nutritive or other beneficial properties of the food are less than those of the food in its specified state, or the food operates or may operate to the prejudice or disadvantage of the purchaser or consumer;

(c) it contains or is mixed or diluted with any substance of lower commercial value than such food in a pure, normal or specified state and in an undeteriorated and sound condition;

(d) it contains any substance the addition of which is not permitted by this Act or any regulations made under this Act;

(e) it does not comply with the standard or specification prescribed by any regulations made under this Act;

(f) it contains a greater proportion of any substance than is permitted by this Act or any regulations made under this Act;

(g) it is mixed, coloured, powdered, coated, stained, prepared or otherwise treated in a manner whereby damage or inferiority may be concealed; or

(h) it is in a package, and the contents of the package as originally packed have been removed in whole or in part and other contents have been placed in the package.

(3) For the purposes of and without prejudice to the generality of paragraph (d) of subsection (2), the addition of any substance to the food shall be deemed to be not permitted or shall be deemed to be prohibited by or under this Act if the standards or specifications prescribed for the food by regulations made under this Act do not expressly provide for the addition of such substance.

(4) A person who contravenes any of the provisions of this section commits an offence and shall be liable, on conviction, to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding five years or to both.

### 13C. Removal of food from premises.

(1) Where any food is found to have contravened or reasonably suspected to have contravened any provision of this Act or any regulations made under this Act, the Director or any authorised officer authorised by the Director may, by notice in writing, order any of the persons in section 24 to recall, remove, or withdraw from sale such food from any food premises within such time as may be specified in the notice.

(2) Notwithstanding subsection (1), it shall be the duty of any of the persons in section 24, if he knows or has reason to believe or it has come to his knowledge that any food imported, manufactured, packed, farmed, prepared or sold by him has contravened section 13, 13A or 13B, to recall, remove or withdraw from sale such food from any food premises with immediate effect.

(3) A person who contravenes subsection (1) or (2) commits an offence and shall be liable, on conviction, to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding ten years or to both."

### 10. Amendment of section 19.

Section 19 of the principal Act is amended-

(a) in subsection (1) by inserting after the word "may" the words ", subject to section 377 of the Criminal Procedure Code [Act 593] and section 32A,";

(b) by inserting after subsection (1) the following subsection:

"(1A) The certificate of the analyst referred to in subsection (1) shall be issued to the Director or any authorised officer within ninety days from the date the food was sent for analysis."; and

(c) in subsection (2) by substituting for the word "ninety" the words "one hundred and fifty".

11. Amendment of section 20.

Section 20 of the principal Act is amended in paragraph (i) by inserting after the word "cross-examination" the words "if a notice requiring the attendance of the analyst has been given to the prosecution three clear days before the trial."

12. Amendment of section 22.

Section 22 of the principal Act is amended by substituting for paragraph (a) the following paragraph:

"(a) evidence that the package containing any food to which this Act applies bore the name, address or registered mark of an importer, manufacturer or packer, or of the owner of the rights of the manufacturer or packer, or of an agent of any of them, shall be prima facie evidence that the food was imported, manufactured or packed, as the case may be, by each of the persons whose name, address or registered mark is borne on the package;"

13. New section 23A.

The principal Act is amended by inserting after section 23 the following section:

"23A. Advance notice of expert evidence in court.

In any proceedings for an offence under this Act, no expert evidence shall be received in evidence unless, within a period ending ten clear days before the trial, the person charged with the offence has served on the prosecution notice in writing that he intends to adduce expert evidence, and shall disclose in the notice the name of the expert and the nature of the expert evidence; and shall also furnish a copy of any document that the expert proposes to adduce at the hearing."

14. Amendment of section 24.

Section 24 of the principal Act is amended by inserting after subsection (2) the following subsection:

"(3) In the case of a sale of any food in contravention of this Act or any regulations made under this Act by a retailer or seller, or his servant or agent, the retailer, seller, servant or agent effecting the sale shall, for the purpose of this Act, be deemed to be the agent of the importer, manufacturer, packer, farmer, person who prepares the food or owner of the rights of the manufacturer or packer, or the agent to the agent of any of them, and each of those persons shall be under the same liability as that of the retailer or seller or the servant or agent as if he had himself effected the sale unless such person proves that he could not have been responsible for such contravention."

15. Amendment of section 28.

The principal Act is amended by substituting for section 28 the following section:

"28. Liability of manufacturer, packer, etc..

Where food in connection with which there is a contravention of any provision of this Act or any regulations made under this Act is sold in an unopened package, any person who appears from any statement appearing on the package or attached to the package to have imported or manufactured or prepared the food or to have enclosed it in such package, or to be the owner of the rights of the manufacturer or packer, or to be the agent of any of them, shall, unless the contrary is proved, be deemed to have so imported, manufactured, prepared or enclosed the food in the unopened package and shall be liable to the same penalty as if he had actually sold the food in such package."

16. Amendment of section 32.

Subsection 32(2) of the principal Act is amended by substituting for the word "ninety" the words "one hundred and fifty".

17. New section 32A.

Part V of the principal Act is amended by inserting before section 33 the following section:

"32A. Prosecution.

No prosecution shall be instituted for an offence under this Act or any regulation made under this Act without the consent in writing of the Public Prosecutor."

18. Amendment of section 33.

The principal Act is amended by substituting for section 33 the following section:

"33. Power to compound.

(1) The Director or any authorised officer authorised by the Director may, with the consent in writing of the Public Prosecutor, compound any compoundable offence committed by any person by making a written offer to the person suspected of having committed the offence to compound the offence upon payment to the Director or the authorised officer of an amount of money not exceeding fifty per centum of the amount of maximum fine for that offence within the time specified in the offer.

(2) An offer under subsection (1) may be made at any time after the offence has been committed, but before any prosecution for it has been instituted, and if the amount specified in the offer is not paid within the time specified in the offer or within such extended period as the Director or the authorised officer may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.

(3) If an offence has been compounded under subsection (1)-

(a) no prosecution shall be instituted after that in respect of the offence against the person to whom the offer to compound was made; and

(b) any food or appliance seized shall be forfeited, destroyed or returned to that person, as the Director or the authorised officer deems fit after taking into consideration the nature of the

offence and the condition of the food or appliance, and no further proceedings shall be taken in respect of the food.

(4) All sums of money received by the Director or the authorised officer under this section shall be paid into and form part of the Federal Consolidated Fund.

(5) In this section, "compoundable offence" means an offence under this Act or any regulation made under this Act and prescribed to be a compoundable offence by regulations made under this Act."

19. New sections 33A, 33B and 33C.

The principal Act is amended by inserting after section 33 the following sections:

"33A. Offence by body corporate.

Where a body corporate commits an offence under this Act or any regulations made under this Act any person who, at the time of the commission of the offence, was a director, manager, secretary or other similar officer of the body corporate or was purporting to act in any such capacity, or was in any manner or to any extent responsible for the management of any of the affairs of the body corporate, or was assisting in such management-

(a) may be charged severally or jointly in the same proceedings with the body corporate; and

(b) where the body corporate is found guilty of the offence, shall be deemed to be guilty of that offence unless, having regard to the nature of his functions in that capacity and to all circumstances, he proves-

(i) that the offence was committed without his knowledge, consent or connivance; and

(ii) that he took all reasonable precautions and had exercised due diligence to prevent the commission of the offence.

33B. Protection against legal proceedings.

No action, suit, prosecution or other proceedings shall be brought, instituted or maintained in any court against any authorised officer on account of or in respect of any act done or omitted to be done for the purpose of carrying into effect this Act unless it can be proven that the act was done or omitted to be done in bad faith and not in a reasonable belief that it was necessary for the purpose intended to be served thereby.

33C. Indemnity.

(1) The Government shall not be liable to make good any damage which an owner or occupier or person in charge of any food premises may sustain as a result of an entry, search or seizure under this Act, unless the damage was caused by the wilful neglect or default of a public officer.

(2) In the event of any dispute as to the amount of compensation in respect of any damage so caused, the amount shall be summarily ascertained and determined by a Magistrate's court."

20. Amendment of section 34.

Section 34 of the principal Act is amended-

(a) by substituting for paragraph (h) the following paragraph:

"(h) to regulate food premises and persons engaged in or occupied with any of the activities in relation to food premises or employed in such premises;"

(b) by deleting paragraph (i);

(c) by inserting after paragraph (r) the following paragraph:

"(ra) to provide for any matter relating to the recalling, removal or withdrawal from sale of food from food premises;" and

(d) by substituting for paragraph (w) the following paragraph:

"(w) to prescribe penalties of a fine not exceeding ten thousand ringgit or imprisonment for a term not exceeding two years for a contravention of any regulations made under this Act;"

21. Amendment of section 36.

The principal Act is amended by substituting for section 36 the following section:

"36. Application to tobacco, etc.

(1) The provisions of this Act so far as they are applicable shall apply, with such modifications as may be provided in regulations made under this Act, to tobacco, cigars, cigarettes, snuff and other like substance in the same manner as the provisions apply to food.

(2) Without prejudice to the powers of the Minister to make regulations under this Act, the Minister may make regulations providing for all or any of the following:

(a) the regulation of or prohibition against the advertising or sponsorship of tobacco products;

(b) the mode of labelling of cigarette containers and the matters to be contained or not to be contained in such labels;

(c) the procedure for the taking of samples of tobacco products for analysis;

(d) the prohibition against smoking of tobacco products in specified buildings and the declaration of any place as a no smoking place and for notices to be placed at such place;

(e) the prohibition against the sale to, or having in possession, buying, smoking or chewing by, persons below the age of eighteen years of tobacco products; and

(f) any other matter which the Minister deems expedient or necessary for giving full effect to the control and regulation of the preparation, sale, purchase, use or consumption of tobacco products."