
Food Control Act 1981

NIUE LAWS LEGISLATION AS AT DECEMBER 2006

FOOD CONTROL ACT 1981

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**To protect the public against health hazards in the sale and use of food to supplement
the public Health Act 1965**

**PART 1
PRELIMINARY**

1. Short title

This is the Food Control Act 1981.

2. Interpretation

In this Act –

"advertisement" includes any representation by any means whatsoever for the purpose of promoting directly or indirectly the sale or disposal of any food;

"article" includes –

(a) any food and any labeling or advertising materials in respect; or

(b) anything used for the preparation, preservation, packing or storing of any food;

"certificate of registration" includes every renewal of it;

"Director" means the Director of Health

"engaged in the handling of food" means the handling of food as employer or employee or sole proprietor or in any capacity whatsoever whether for remuneration or not;

"food" means any article manufactured sold or represented for use as food or drink for human consumption;

"handling of food" means taking part in the manufacture, preparation, storage, packing, carriage or delivery of food for sale or in the retail of food;

"Inspector" means any Food Inspector appointed under section 7 of the Public Health Act 1965;

"unsanitary conditions" means such conditions or circumstances as might cause contamination of any food with dirt or filth or might render the same injurious or dangerous to health;

"label" includes any tag, brand, mark, pictorial or other descriptive matter, written, printed, stenciled, marked, embossed or impressed on, or attached to or included in, belonging to, or accompanying any food;

"package" includes anything in which any food is wholly or partly placed or packed and includes any basket, pail, tray or receptacle of any kind whether open or closed;

"premises" means and includes any premises or buildings or any room or other part thereof or any place in or on which food is handled; "preparation" includes manufacture processing and any form of treatment; "sell" includes to barter or to offer or attempt to sell or receive for sale or send forward for sale or deliver for sale or cause or suffer or allow to be sold, offered or exposed for sale and to supply meals at any restaurant, hotel or boarding-house;

"ship" includes any boat or craft "vehicle" has the meaning as in section 3 of the Transport Act 1965.

PART 2 GENERAL

3 Prohibition against sale of poisonous, unwholesome or adulterated food

Any person who prepares or sells any food that –

- (a) Has in or upon it any substance which is poisonous, harmful or otherwise injurious to health; or
- (b) Consists in whole or in part of any filthy, putrid, rotten, decomposed or diseased substance or foreign matter, is unwholesome or is otherwise unfit for human consumption; or
- (c) Is adulterated; commits an offence.

4 Misleading or deceptive labeling

Any person who labels, packages, prepares, sells or advertises 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 any regulation made under this Act, commits an offence.

5 Standards for foods

Where a standard has been prescribed by regulation under this Act for any food, any person who labels, packages, prepares, sells or advertises any food which does not comply with that standard, in such a manner that it is likely to be mistaken for food of the prescribed standard, commits an offence.

6 Prohibition against sale of food not of the nature, substance or quality demanded

Any person who sells to the prejudice of the purchaser any food which is not of the nature, substance or quality of the article demanded by the purchaser commits an offence.

7 Sale and preparation of food under unsanitary conditions

Any person who sells, prepares, packages or stores for sale any food under unsanitary conditions commits an offence.

8 Medical examination for persons engaged in the handling of food

(1) Every person who is engaged in the handling of food shall undergo such medical examinations as is prescribed by the Director, who shall certify the suitability or otherwise of that person.

(2) No person shall be engaged in the handling of food unless he has received a certificate

declaring him to be suitable to be so engaged.

(3) Every certificate issued under this section shall be renewable annually.

(4) The costs of any medical examination pursuant to this section shall be met by the employer of the person to be engaged in the handling of food.

PART 3 IMPORTATION, WARRANTIES AND DEFENCES

9 Importation

(1) Subject to subsection (2), the importation of any article which does not comply with this Act or any regulations made under this Act, is prohibited.

(2) Where an article sought to be imported into Niue would, if sold in Niue, constitute a contravention of this Act or any regulation made under this Act, the article may be imported into Niue for the purpose of satisfactorily relabelling or reconditioning the same so that this Act or the regulations are complied with and, where such relabelling or reconditioning is not carried out within 3 months of the importation, such article shall be exported by the importer within a further period of one month or such other period as Cabinet may direct and, where it is not so exported, it shall be forfeited and disposed of as the Director may direct.

10 Warranties

(1) No manufacturer or distributor of, or dealer in, any article shall sell such article to any vendor unless he gives a warranty in writing in the prescribed form as to the nature and quality of such article to the vendor specifying that the article may lawfully be sold under this Act or the regulations.

(2) Any person who contravenes subsection (1) or gives a warranty which is false commits an offence.

11 Defences

In any proceedings for an offence under this Act it shall be a sufficient defence for the defendant to prove –

(a) That he purchased the food from another person who furnished a written warranty in compliance with section 9, and sold the food in the same condition the article was in at the time he purchased it; and

(b) That he could not, with reasonable diligence, have ascertained, that the sale of the article would be in contravention of this Act or the regulations;

(c) In relation to an offence concerning the publication of an advertisement, that he received the advertisement for publication in the ordinary course of business and had no reason to believe that an offence would be committed.

PART 4 REGULATIONS

12 Regulations

- (1) Cabinet may make regulations for the purposes of this Act.
- (2) Without prejudice to the generality of subsection (1), the Cabinet may make regulations –
 - (a) Declaring that any food or class of food is adulterated if any prescribed substance or class of substance is presented in it or has been added to it or extracted or omitted from it;
 - (b) In respect of –
 - (i) the labeling and packing and the offering, exposing and advertising for sale of food;
 - (ii) the size, dimension, fill and other specifications of packages of food;
 - (iii) the sale or the conditions of sale of any food; and
 - (iv) the use of any substance as an ingredient in any food, to prevent the consumer or purchaser of it from being deceived or misled as to its quality, quantity, character, value, composition, effect, merit or safety or to prevent injury to the health of the consumer or purchaser;
 - (c) Prescribing standards of composition, strength, potency, purity, quality or other property of any food;
 - (d) In respect of the importation or exportation of food, in order to ensure compliance with this Act;
 - (e) In respect of the method of preparation, preserving, packing, storing, conveying and testing of any food, in the interests of, or for the prevention of injury to, the health of the consumer, user or purchaser, and for the observance of adequate standards of hygiene in the carrying out of these activities;
 - (f) In respect of the carriage of goods subject to this Act, including the licensing of vehicles used in such carriage;
 - (g) Requiring persons who sell food to maintain such books and records as Cabinet considers necessary for the proper enforcement and administration of this Act;
 - (h) Providing for the analysis or examination of food for the purposes of this Act or for any other purpose and prescribing methods of analysis;
 - (i) Providing for the taking of samples of any articles for the purpose of this Act or for any other purposes;
 - (j) Exempting any food from all or any of the provisions of the Act and prescribing the

conditions of such exemption;

(k) In respect of the premises in which foods are prepared, packaged, stored or sold;

(l) Providing for the registration of premises in which food is prepared;

(m) Prescribing anything which is to be or which may be prescribed under this Act.

(3) (a) Before making any regulations Cabinet shall consult with such organizations as appear to them to be representative of interests substantially affected by the regulations.

(b) In cases of urgency they may make regulations without such consultations.

(4) It shall be an offence for any person to commit any act in contravention of any regulation made under this section.

PART 5 ADMINISTRATION

13 Powers of Inspectors

(1) An Inspector may, at any reasonable hour for the proper performance of his duty –

(a) Enter any premises where he believes any article to which this Act applies is prepared, preserved, packaged, stored or conveyed, examine any such article and take samples and examine anything that he believes is used or capable of being used for such preparation, preservation, packaging, storing, or conveying;

(b) Stop or search or detain any aircraft, ship or vehicle in which he believes on reasonable grounds that any article subject to this Act is being conveyed and examine any such article and take samples for the purpose of this Act;

(c) Open and examine any receptacle or package which he believes contains any article to which this Act applies;

(d) Examine any books, documents or other records found in any premises mentioned in paragraph (a) that he believes contain any information relevant to the enforcement of this Act with respect to any article to which this Act applies and make copies or take extracts; and

(e) Seize and detain for such time as may be necessary any article by means of or in relation to which he believes this Act or the regulations has been contravened.

(2) An Inspector acting under this section shall, if so required, produce his authority.

(3) Any owner, occupier or person in charge of any premises entered by an inspector under subsection (1) (a), or any person found there, who does not give to the inspector all reasonable

assistance in his power and furnish him with such information as he may reasonably require, commits an offence.

(4) Any person who obstructs or impedes any inspection in the course of his duties or prevents or attempts to prevent the execution by the inspector of his duty under this Act commits an offence.

(5) Any person who knowingly makes any false or misleading statement either orally or in writing to any inspector engaged in carrying out his duties under this Act commits an offence.

(6) An Inspector shall release any article seized by him under this Act when he is satisfied that all the provisions of this Act or the regulations with respect to it have been complied with.

(7) Where an Inspector has seized an article under this Act and the owner or the person in whose possession the article was at the time of seizure consents to its destruction, the article may be destroyed or otherwise disposed of as the Inspector may direct; if the owner or the person does not consent to the destruction of the article, the Inspector may apply to the court for the destruction or disposal of such article and the court may make such order as it thinks fit.

(8) Where any article has been seized under subsection (1)(e) and the owner has been convicted of an offence under this Act, the article may be destroyed or otherwise disposed of as the court may direct.

(9) Any person who removes, alters, or interferes in any way with any article seized under this Act without the authority of an Inspector commits an offence.

(10) Any article seized under this Act may at the option of an Inspector be kept or stored in the premises where it was seized or may at the direction of an inspector be removed to any other place.

(11) Any Inspector may submit any article seized by him or any sample from it or any sample taken by him to a laboratory for analysis or examination.

14 Analysis of samples

Any sample taken under this Act shall be analysed or examined as soon as practicable by a suitably qualified person, and the person carrying out the analysis or the examination shall give the inspector who took the sample a certificate specifying the results of the analysis or examination, and such certificate shall be in such form as may be prescribed by the Director.

15 Restriction on appointment of Inspectors

No person shall be appointed as an Inspector for any area in which he is engaged directly or indirectly in any trade or business connected with the sale of food.

16 Power of Director to obtain particulars of certain food ingredients

(1) The Director may direct any person who at the date of the direction or at any subsequent

time carries on a business which includes the production, importation or use of any substances to which this Act applies to furnish to him within such time as may be specified in such direction, such particulars, as may be so specified, of the composition, and use of any such substance sold or for sale in the course of that business or used in the preparation of food.

(2) Without prejudice to the generality of subsection (1), a direction made under it may require the following particulars to be furnished in respect of any substance –

(a) Particulars of the composition and chemical formula of the substance;

(b) Particulars of the manner in which the substance is used or proposed to be used in the preparation of food;

(c) Particulars of any investigations carried out by or to the knowledge of the person carrying on the business in question, for the purpose of determining whether and to what extent the substance or any product formed when the substance is used as aforesaid is injurious to or in any other way affects health;

(d) Particulars of any investigations carried out by or to the knowledge of the person carrying on the business in question, for the purpose of determining the cumulative effect on the health of a person consuming the substance in ordinary quantities.

PART 6 LEGAL PROCEEDINGS

17 Power of Cabinet

(1) On the conviction of any person for any offence under this Act, Cabinet may, direct that any licence issued to such person under any regulations made under this Act, be revoked.

(2) Where a person has been convicted of an offence under this Act, the court may order that any article by means of or in relation to which the offence was committed or anything of a similar nature belonging to or in the possession of the convicted person or found with such article, be forfeited, and upon such order being made such articles and things may be disposed of as the Court may direct.

18 Prosecution

(1) Where a person having analysed or examined any article to which this Act applies, has given his certificate and from that certificate it appears that an offence under this Act has been committed, an Inspector may take proceedings under this Act before the court.

(2) In any proceedings under this Act, the contents of any package appearing to be intact and in the original state of packing by the manufacturer shall be deemed, unless the contrary is proved, to be an article of the description specified on the label.

(3) In any proceedings taken under this Act, it shall not be necessary to prove knowledge or intention on the part of the accused.

19 Offences

(1) A person found guilty of an offence under this Act for which no special penalty is provided shall be liable on conviction –

(a) In the case of a first offence, to a fine not exceeding 1 penalty unit or to an imprisonment for a term not exceeding 3 months, or to both such fine and imprisonment;

(b) In the case of a subsequent offence, to a fine not exceeding 5 penalty units or to imprisonment for a term not exceeding 6 months, or to both such fine and imprisonment.

(2) If a person found guilty of an offence is found to have committed the offence with the intent to defraud or mislead he shall be fined a sum not exceeding 5 penalty units or imprisonment for a term not exceeding 6 months or both.

20 Certificate of analysis

(1) In any proceedings under this Act –

(a) A certificate or analysis purporting to be signed by a person carrying out an analysis or examination shall subject to subsection (2) be accepted as prima facie evidence of the facts stated in it;

(b) Evidence that the package containing any article to which this Act applies, bore a name, address or registered mark of the person by whom it was manufactured or packed shall be prima facie evidence that such article was manufactured or packed by that person;

(c) Any substance commonly used for human consumption if sold or offered, exposed or kept for sale, shall be presumed, until the contrary is proved, to have been sold or to have been or to be intended for sale for human consumption;

(d) Any substance commonly used for human consumption which is found on premises used for the preparation, storage or sale of that substance and any substance commonly used in the manufacture of produces for human consumption which is found on premises used for the preparation, storage or sale of those products, shall be presumed, until the contrary is proved, to be intended for sale, or for manufacturing products for sale, for human consumption;

(e) Any substance capable of being used in the composition or preparation of any substance commonly used for human consumption which is found on premises on which that substance is prepared shall until the contrary is proved, be presumed to be intended for such use.

(2) (a) The party against whom a certificate or analysis is produced under subsection (1) may require the attendance of the person performing the analysis for the purpose of cross-examination; the accused, if found guilty, will be liable for the costs of the attendance at the proceedings of the person performing the analysis.

(b) No certificate under subsection (1) of a person carrying out an analysis or examination shall be received in evidence unless the party intending to produce it has before the trial given the party against whom it is intended to be produced reasonable notice of such intention together with a copy of the certificate.

PART 7 SAVINGS

21 Savings

This Act shall be additional to and not in derogation of any other legislation.