

FOOD AND DRUGS ACT

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ARRANGEMENT OF SECTIONS

1	Short title	15	Offences under section 13
2	Interpretation	16	Enforcement of Act
3	Restrictions on additions	17	Powers of sampling
4	Restrictions on abstraction	18	Right to have samples analysed
4A	Spirits	19	Division of and dealings with samples
5	Food or drug not of quality demanded	20	Power to enter premises
6	Defences in proceedings under section 5	21	Obstruction of sampling officer
7	Provisions as to labels	22	Penalties
8	Incorrect labels and advertisements	23	Prosecution
9	Evidence as to injurious nature of food	24	Presumptions
10	Food regulations	25	Court may require joint analysis
11	Regulations for bread and flour	26	Warranty pleaded as a defence
12	Adulterants in bakehouses	27	Warranty and certificate offences
13	Restrictions on importation	28	Saving
14	Sampling of imported food		

1 Short title

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

2 Interpretation

In this Act—

“article”, in relation to food, does not include a live animal or bird, but includes, in the case of an animal, bird or fish, the whole or any part of it;

“Comptroller” means the Comptroller of Customs;

“container” includes a package or receptacle of any kind, whether open or closed;

“drug” includes medicine for internal or external use;

“food” means any article used as food or drink for human consumption, other than drugs or water, and includes—

- (a) any substance which is intended for use in the composition or preparation of food;
- (b) any flavouring matter or condiment;
- (c) any colouring matter intended for use in food; and
- (d) colouring or flavouring matter or condiment added to an article used as food or drink;

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

“premises” includes any land, tenement or building;

“prepare”, in relation to food, includes manufacture;

“sampling officer” has the meaning assigned to it in section 17;

“substance” includes a liquid;

“transit” includes all stages of transit in Mauritius, from the place of manufacturer or other source of origin to the consumer.

3 Restrictions on additions

(1) No person shall add, or direct or permit any other person to add—

- (a) any substance to any food so as to render the food injurious to health; or
- (b) any substance to any drug so as to affect injuriously the quality or potency of the drug, with the intent that the food or drug may be sold in that state.

(2) No person shall sell, or have in his possession for the purpose of sale, any food or drug to which any substance has been so added.

(3) Any person who contravenes this section shall commit an offence.

4 Restrictions on abstraction

(1) No person shall abstract, or direct or permit any other person to abstract, from any food any constituent so as to affect injuriously the nature, substance, or quality of the food with intent that it may be sold in its altered state—

- (a) without notice to the purchaser of the alteration; or
- (b) whether with or without such notice, if in that state the food does not comply with any relevant provisions contained in regulations made under this Act for prescribing the composition of food.

(2) Any person who contravenes this section shall commit an offence.

4A Spirits

(1) No spirit shall be imported, manufactured, offered or stored for sale or sold as whisky, matured whisky, brandy, matured brandy, cognac, matured cognac, rum, matured rum unless—

- (a) in the case of whisky, it has been obtained from a mash of cereal grains saccharified by a diastase of malt;
- (b) in the case of brandy or cognac, it has been obtained by the distillation, in grape growing countries, of fermented grape juice only;
- (c) in the case of rum, it has been obtained by the direct distillation, in sugar cane growing countries, of sugar cane products;
- (d) in the case of matured whisky, matured brandy, matured cognac or matured rum, the spirit besides answering the requirements of paragraph (a), (b) or (c), as the case may be, has in addition been stored in wood for not less than 3 years.

(2) (a) No person shall affix or cause to be affixed to any container of spirit for sale any label on which the words whisky, matured whisky, brandy, matured brandy, cognac, matured cognac, rum or matured rum appear unless the spirit answers the requirements laid down in subsection (1).

(b) Any person who is found in possession of any container of spirit for sale to which any such label has been wrongly affixed shall commit an offence unless he proves that he did not know, and could not with reasonable diligence have ascertained, the real quality of the spirit.

(3) In any proceedings under this section, the burden of proving that any spirit was not for sale shall lie on the person charged.

(4) (a) Any person who acts in breach of this section shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500 rupees and to imprisonment for a term not exceeding 3 months.

(b) The spirit in respect of which the offence has been committed together with its containers shall be seized and forfeited.

5 Food or drug not of quality demanded

(1) Where a person sells to the prejudice of the purchaser any food or drug which is not of the nature, nor of the substance, nor of the quality, of the food or drug demanded by the purchaser, he shall, subject to section 6, commit an offence.

(2) Where regulations made under this Act contain provisions prescribing the composition of, or prohibiting or restricting the addition of any substance to, any food, a purchaser of that food shall, unless the contrary is proved, be deemed for the purposes of this section to have demanded food complying with the regulations.

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

6 Defences in proceedings under section 5

(1) Subject to subsection (2), in any proceedings under section 5 it shall be a defence for the defendant to prove—

- (a) where some substance has been added to the food or drug in question—
 - (i) in the case of food, that the substance is not, and the addition has not rendered the food, injurious to health, or, in the case of a drug, that the addition has not affected injuriously the quality or potency of the drug;
 - (ii) that the addition was not made fraudulently to increase the bulk, weight or measure, or conceal the inferior quality of the food or drug; and
 - (iii) either—
 - (A) that the addition was required for the production or preparation of the food or drug as an article of commerce in a state fit for carriage or consumption; or
 - (B) that a label satisfying the requirements of section 7 was attached to, or printed on the wrapper or container of, the article sold;
- (b) where some constituent has been abstracted from the food or drug in question—
 - (i) that the abstraction has not rendered the food injurious to health, or, as the case may be, affected injuriously the quality or potency of the drug, and was not made fraudulently to conceal the inferior quality of the food or drug; and
 - (ii) either—
 - (A) that the abstraction was required for the production or preparation of the food or drug as an article of commerce in a state fit for carriage or consumption; or
 - (B) that a label satisfying the requirements of section 7 was attached to, or printed on the wrapper or container of, the article sold;
- (c) where the food or drug in question is the subject of a patent in force, that it was supplied in the state required by the specification of the patent;
- (d) where the food or drug in question contains some extraneous matter, that the presence of that matter was an unavoidable consequence of the process of collection or preparation;
- (e) that the article supplied was a proprietary medicine and was supplied in response to a demand for that medicine;
- (f) where the proceedings are—
 - (i) in respect of diluted whisky, brandy, rum or gin, imported into Mauritius in casks, that the spirit in question had been diluted with water only and that its strength was still not lower than 30 degrees under proof by Syke's hydrometer;
 - (ii) in respect of diluted local spirits, as defined in the Excise Act, whether compounded or not, that the spirits in question had been diluted with water only and that their strength was still not lower than 50 degrees true reading by Gay Lussac's alcoholometer.

(2) The defences specified in subsection (1)(a) to (d) shall not be available in the case of any food which does not comply with regulations made under this Act for prescribing the composition of, or prohibiting or restricting the addition of any substance to, food.

7 Provisions as to labels

A label shall afford no defence under section 6(1)(a)(iii)(B) or section 6(1)(b)(ii)(B) unless—

- (a) it states explicitly what substance has been added to, or what constituent has been abstracted from, the food or drug; and
- (b) it is of adequate size, and has the notice of addition or abstraction distinctly and legibly printed and conspicuously visible.

8 Incorrect labels and advertisements

(1) A person who gives with any food or drug sold by him a label, whether attached to or printed on the wrapper or container or not, which falsely describes that food or drug, or is otherwise calculated to mislead as to its nature, substance or quality, shall commit an offence, unless he proves that he did not know, and could not with reasonable diligence have ascertained, that the label was of such a character.

(2) Subject to subsection (3), a person who publishes, or is a party to the publication of, an advertisement (not being a label given by him under subsection (1)) which falsely

describes any food or drug, or is otherwise calculated to mislead as to its nature, substance or quality, shall commit an offence.

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

- (a) that he did not know, and could not with reasonable diligence have ascertained, that the advertisement was of that character; or
- (b) that, being a person whose business it is to publish, or arrange for the publication of, advertisements for publication in the ordinary course of business, provided he discloses the name of the person from whom he received such advertisement.

(4) In any such proceedings against the manufacturer, producer or importer of the food or drug, it shall be for the defendant to prove that he did not publish, and was not a party to the publication of, the advertisement.

9 Evidence as to injurious nature of food

Where regulations made under this Act contain provisions prohibiting or restricting the addition of any substance to any food, the addition of that substance, if made in contravention of any regulations which are expressed to be made for the prevention of danger to health, shall, for the purposes of this Act, be deemed to render the food injurious to health, unless such addition does not exceed any limit specified by the regulations.

10 Food regulations

(1) The Minister may, subject to this section, make regulations for—

- (a) authorising measures to be taken for the prevention of danger to health from the importation, preparation, transport, storage, exposure for sale, and delivery of food of various kinds intended for sale or sold for human consumption;
- (b) requiring wrappers or containers enclosing or containing food of various kinds to be labelled or marked in accordance with the regulations;
- (c) prohibiting or restricting the addition of any substance to, and regulating generally the composition of, any food.

(2) Regulations shall not be made under this section in respect of bread or flour.

(3) Regulations made under subsection (2) may provide that any person who contravenes them shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500 rupees and to imprisonment for a term not exceeding 3 months.

11 Regulations for bread and flour

(1) The Minister may make regulations for—

- (a) prescribing the kinds of flour other than wheat flour and the other substances which may be used in the making of bread for sale;
- (b) prescribing the descriptions under which bread made of flour other than wheat flour may be sold, and the manner in which any such bread is to be made;
- (c) prohibiting or restricting the addition of any substance, or the application of any treatment, to flour intended for sale or for use in the making of bread for sale;
- (d) prescribing the descriptions under which, and conditions subject to which, flour may be sold; and
- (e) preventing danger to health from the importation, preparation, transport, storage, exposure for sale, and delivery of bread or flour.

(2) Regulations made under subsection (1) may provide that any person who contravenes them shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500 rupees and to imprisonment for a term not exceeding 3 months.

12 Adulterants in bakehouses

Where any flour or other substance which under regulations made under section 11 may not be used in the making of bread for sale or flour intended for sale, is found in the bakehouse or on the premises where the flour is kept, the occupier of the bakehouse or of such premises, as the case may be, shall commit an offence, unless he proves that the substance in question was not intended to be used in the making of bread for sale or, as the case may be, was not intended to be added to the flour intended for sale.

13 Restrictions on importation

Where there is imported into Mauritius any food which is injurious to health or does not comply with any regulations made under this Act or any other enactment with respect to the importation of food, the importer shall commit an offence under this Act.

14 Sampling of imported food

(1) The Comptroller of Customs or any officer of his department acting under his authority, may take such samples of consignments of imported food as may be necessary for the enforcement of section 13.

(2) Where the Comptroller or any of his officers takes a sample of any consignment, he shall divide it into not less than 3 parts, and send one part to the importer, one part to the Government Chemist and retain one part.

(3) The Comptroller may detain any consignment of imported food, a sample of which, has been taken under this section until receipt of the certificate of the Government Chemist.

(4) Where a sample taken under this section has been analysed and it appears from the certificate of the Government Chemist that an offence under this Act has been committed, the Comptroller shall forthwith send a copy of the certificate to the importer and shall communicate to the Permanent Secretary, Ministry of Health, the name of the importer and such other facts as he may have or obtain, and he shall further detain the consignment of food in question for such action as the Permanent Secretary, Ministry of Health, thinks fit to take under the Public Health Act.

15 Offences under section 13

(1) Prosecutions for offences under section 13 shall be undertaken by the Comptroller or any officer of his department deputed by him in writing or any police officer.

(2) For the purposes of this section, a document purporting to be a certificate of the Government Chemist and produced by the prosecution shall, until the contrary is proved, be taken to be such a certificate.

16 Enforcement of Act

The Permanent Secretary, Ministry of Health, or any sanitary authority as defined in the Public Health Act, shall carry into execution and enforce this Act with a view to securing that food and drugs are sold only in a pure and genuine condition.

17 Powers of sampling

(1) Any such sanitary authority, or any Government medical officer, or any sanitary or market inspector authorised by the Permanent Secretary, Ministry of Health in writing, may exercise such powers as may be necessary for procuring samples of food and drugs for analysis, or for bacteriological or other examination as are conferred upon him by this section and when so acting shall be a sampling officer.

(2) A sampling officer may purchase samples of any food or drug.

(3) A sampling officer may take samples of any food or substance capable of being used in the preparation of food found on premises which he has entered in the execution of his duties under this Act.

(4) A sampling officer may, at the request or with the consent of the purchaser, consignee or consumer, take at the place of delivery samples of any food delivered, or about to be delivered, to the purchaser, consignee or consumer in pursuance of a contract for its sale to him.

18 Right to have samples analysed

(1) A sampling officer who has procured a sample of any food or drug for analysis shall submit it to be analysed by the Government Chemist.

(2) A person, other than a sampling officer, who has purchased any food or drug may submit a sample of it to be analysed by the Government Chemist.

(3) Subject to subsection (4), the Government Chemist shall analyse as soon as practicable any sample sent to him under this section, and give to the person by whom it was submitted a certificate specifying the result of the analysis.

(4) Where the sample is submitted by a person who is not a sampling officer, the Government Chemist may demand in advance the fee prescribed by law for such analysis.

19 Division of and dealings with samples

(1) A person who purchases a sample of any food or drug with the intention of submitting it to be analysed by the Government Chemist, or taking a sample of food on any premises with the intention of submitting it to be so analysed shall, after the purchase has been completed, or the sample has been taken, forthwith inform the seller or his agent who sold the sample, or, as the case may be, the occupier of the premises or the person for the time being in charge of them, of his intention to have the sample analysed by the Government Chemist, and shall then and there divide it into 3 parts, each part to be marked, and sealed or fastened up, in such manner as its nature will permit, and shall—

- (a) where required so to do, deliver one part to the seller or his agent, or, as the case may be, to the occupier of the premises or the person for the time being in charge of them;
- (b) retain one part for future comparison; and
- (c) submit one part to the Government Chemist.

(2) In relation to samples taken in the circumstances specified in subsection (3), subsection (1), with respect to the giving of information and the manner of dealing with samples, shall have effect as modified by that subsection.

(3) A person taking a sample of any food while it is in transit, or at the place of delivery to the purchaser or consumer shall, when submitting it to be analysed by the Government Chemist, deal with it in the manner provided by subsection (1), except that he shall retain the first mentioned part of the sample unless the name and the address of the seller appear on the container containing the article sampled, in which case he shall forward that part of the sample to the seller by registered post or otherwise, together with a notice informing that person that he intends to have part of the sample analysed by the Government Chemist.

20 Power to enter premises

- (1) (a) Subject to this section, the Permanent Secretary, Ministry of Health, or any officer of his department deputed by him in writing, may enter any premises at all reasonable hours generally for the purpose of ascertaining whether there is or has been on, or in connection with, the premises any contravention of this Act.
- (b) Premises used only as a private dwelling house shall not be entered without a warrant signed by a Magistrate unless the occupier consents to the entry.
- (2) (a) Subject to paragraph (b), where it is shown to the satisfaction of any Magistrate on sworn information in writing—
 - (i) that admission to any premises has been refused, or that refusal is apprehended, or that the premises are unoccupied or the occupier is temporarily absent, or that the case is one of urgency, or that an application for admission would defeat the object of the entry; and
 - (ii) that there is reasonable ground for entry into the premises for any such purpose,such Magistrate may, by warrant under his hand, authorise the Permanent Secretary, Ministry of Health or any other officer of his department as described in subsection (1) to enter the premises, if need be, by force.
- (b) No warrant shall be issued under this section unless the Magistrate is satisfied either that notice of the intention to apply for a warrant has been given to the occupier, or that the premises are unoccupied or that the occupier is temporarily absent, or that the case is one of urgency, or that the giving of such notice would defeat the object of the entry.

(3) The Permanent Secretary, Ministry of Health, or any other officer of his department as described in subsection (1) who enters any premises by virtue of this section, or of a warrant issued under it, may take with him such other persons, as may be necessary, and on leaving any unoccupied premises which he has entered by virtue of such a warrant shall leave them as effectively secured against trespassers as he found them.

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

21 Obstruction of sampling officer

- (1) (a) Where a sampling officer applies to purchase any food or drug exposed for sale, or on sale by retail, and tenders the price for the quantity which he requires as a sample, and the person exposing the food or drug for sale, or having it for sale, refuses to sell to the officer such quantity, or where the seller or consignor, or any person having for the time being the charge of any food of which an officer is empowered to take a sample, refuses to allow the officer to take the quantity which he requires as a sample, the person so refusing shall be deemed to have wilfully obstructed the officer.
- (b) Where any food or drug is exposed for sale in an unopened container duly labelled, no person shall be required to sell it except in the unopened container in which it is contained.
- (2) (a) Any person who fails to give to any person, acting in the execution of this Act or of any regulations, order or warrant made or issued under it, any assistance which that person may reasonably request him to give, or any information which that person may reasonably require, or who, when required to give such information, knowingly makes any misstatement shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100 rupees.
- (b) Nothing in this section shall be construed as requiring a person to answer any question or give any information, if to do so might incriminate him.

22 Penalties

A person who commits an offence under this Act shall, unless a special penalty for that offence is provided by this Act, be liable on conviction in the case of a first offence to a fine not exceeding 500 rupees and, in the case of a subsequent offence, to a fine not exceeding 1,000 rupees and to imprisonment for a term not exceeding 3 months.

23 Prosecution

- (1) (a) Where a sample has been procured under this Act, no prosecution in respect of the article sampled shall be commenced after the expiration of 2 months from the time when the sample was procured.
- (b) The time within which proceedings may be commenced under section 27 in respect of the giving of a false warranty shall be 12 months.
- (2) (a) Subject to paragraph (b), where a sample has been procured under this Act, any proceedings in respect of the article sampled shall be taken before the District Court having jurisdiction in the district where the sample was procured.
- (b) Where the article sampled was sold and actually delivered to the purchaser, proceedings may, if the prosecutor so elects, be taken before the District Court having jurisdiction in the district within which the delivery was effected.
- (3) In any proceedings under this Act, where a sample has been procured in such circumstances that its division into parts is required by this Act, the part of the sample retained by the person who procured it shall be produced at the hearing.

24 Presumptions

For the purposes of this Act—

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

25 Court may require joint analysis

(1) The court before which any proceedings are taken under this Act may, if it thinks fit, and upon the request of either party shall, cause the part of any sample produced before the court under section 23(3), to be sent for a joint analysis and report to the Government Chemist and some other chemical analyst who shall make the analysis, and transmit to the court a certificate of the result, and the costs of the analysis shall be paid by the prosecutor or the defendant as the court may order.

(2) Where, in a case where an appeal is brought, no action has been taken under subsection (1), its provisions shall apply also in relation to the court by which the appeal is heard, notwithstanding the District and Intermediate Courts (Criminal Jurisdiction) Act.

26 Warranty pleaded as a defence

(1) Subject to this section, in the case of any prosecution under this Act in respect of selling, exposing, offering for sale, or having in his possession for sale, an article which was not of a nature, substance or quality entitling a person to sell or otherwise deal with it under the description or in the manner under, or in, which the defendant dealt with it, it shall be a defence for the defendant to prove—

- (a) that he purchased it as being an article of such a nature, substance and quality as would have so entitled him and with a written warranty to that effect;
- (b) that he had no reason to believe at the time of the commission of the alleged offence that it was otherwise; and
- (c) that it was then in the same state as when he purchased it.

(2) A warranty shall only be a defence to proceedings under this Act, where the defendant has, within 7 days of the service of the summons, sent to the prosecutor a copy of the warranty with a notice stating that he intends to rely on it and specifying the name and address of the person from whom he received it, and—

- (a) has sent a like notice of his intention to that person if that person resides in Mauritius;
- (b) in the case of a warranty given by a person resident outside Mauritius, the defendant proves that he had taken reasonable steps to ascertain, and did in fact believe in, the accuracy of the statement contained in it.

(3) Where the defendant is a servant of the person who purchased the article under a warranty, he shall be entitled to rely on this section in the same way as his employer would have been entitled to do if he has been the defendant.

(4) The person by whom the warranty is alleged to have been given shall be entitled to appear at the hearing and to give evidence, and the court may, if it thinks fit, adjourn the hearing to enable him to do so.

(5) For the purposes of this section and of section 27, a name or description entered in an invoice shall be deemed to be a written warranty that the food or drug to which the entry refers is of such a nature, substance and quality that a person can sell, or otherwise deal with it under that name or description without contravening this Act.

27 Warranty and certificate offences

(1) A defendant who, in any proceedings under this Act, wilfully applies to any food or drug a warranty or certificate of analysis given in relation to any other food or drug shall commit an offence.

(2) A person who, in respect of any food or drug sold by him, gives to the purchaser a false warranty in writing, shall commit an offence, unless he proves that when he gave the warranty he had reason to believe that the statements or description contained in it were accurate.

(3) Where the defendant in a prosecution under this Act relies successfully on a warranty given to him or to his employer, any proceedings under subsection (2) in respect of the warranty may, at the option of the prosecutor, be taken either before the District Court having jurisdiction in the place where a sample of the food or drug to which the warranty relates was procured, or before the District Court having jurisdiction in the place where the warranty was given.

28 Saving

This Act shall be in addition to, and not in derogation from, the Public Health Act and the Pharmacy Act 1983.