

FOODSTUFFS, COSMETICS AND DISINFECTANTS ACT

NO. 54 OF 1972

Assented to: 19 May 1972

Date of commencement: 1 January 1973

ACT

To control the sale, manufacture, importation and exportation of foodstuffs, cosmetics and disinfectants; and to provide for matters connected therewith

[Long Title substituted by s. 9 of Act No. 39 of 2007]

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1. Definitions

In this Act, unless inconsistent with the context-

advertisement in relation to any foodstuff, cosmetic or disinfectant, means any written, pictorial, visual or other descriptive matter or verbal statement, communication, representation or reference-

- (a) appearing in a newspaper or other publication; or

- (b) distributed to members of the public; or
- (c) brought to the notice of members of the public in any manner,

and which is intended to promote the sale or encourage the use of such foodstuff, cosmetic or disinfectant; and **advertise** has a corresponding meaning;

analyst means a person authorised as such under section 12;

appliance means the whole or any part of any implement, machine, instrument, apparatus, equipment, robot or other object used or capable of being used for, in or in connection with the manufacture, treatment, packing, labelling, storage, conveyance, preparation, display, sale, serving or administering of any foodstuff, cosmetic or disinfectant;

[Definition of appliance substituted by s. 1(a) of Act 39 of 2007]

cosmetic means any article, preparation or substance (except a medicine as defined in the Medicines and Related Substances Act, 1965 (Act No. 101 of 1965)) intended to be rubbed, poured, sprinkled or sprayed on or otherwise applied to the human body, including the epidermis, hair, teeth, mucous membranes of the oral cavity, lips and external genital organs, for purposes of cleansing, perfuming, correcting body odours, conditioning, beautifying, protecting, promoting attractiveness or improving or altering the appearance, and includes any part or ingredient of any such article or substance;

[Definition of cosmetic substituted by s. 1(b) of Act No. 39 of 2007]

describe includes to advertise or label;

Director-General means the head of the national department;

[Definition of "Director-General" inserted by s. 1 (a) of Act No. 32 of 1981 and substituted by s. 1(c) of Act 39 of 2007]

disinfectant means any article or substance used or applied or intended to be used or applied as a germicide, preservative or antiseptic, or as a deodorant or cleansing material which is not a cosmetic;

environmental health practitioner means a person registered as such in terms of the Health Professions Act, 1974 (Act No. 56 of 1974);

export means to take or send goods, or to cause them to be taken or sent, from the Republic to a country or territory outside the Republic;

[Definitions of environmental health practitioner and export inserted by s. 1(d) of Act No. 39 of 2007]

foodstuff means any article or substance (except a medicine as defined in the Medicines and Related Substances Act, 1965 (Act No. 101 of 1965)) ordinarily eaten or drunk by a person or purporting to be suitable, or manufactured or sold, for human consumption, and includes any part or ingredient of any such article or substance, or any substance used or intended or destined to be used as a part or ingredient of any such article or substance;

[Definition of foodstuff substituted by s. 1(e) of Act No. 39 of 2007]

import means to import into the Republic by any means; and **importation** has a corresponding meaning;

importer 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 any foodstuff, cosmetic or disinfectant imported;

import harbour

[Definition of "import harbour" deleted by s. 1 (b) of Act No. 32 of 1981.]

inspector means a person authorised as such by or under section 10;

label means any brand or mark or any written, pictorial or other descriptive matter appearing on or attached to or packed with any foodstuff, cosmetic or disinfectant or its package, and referring to such foodstuff, cosmetic or disinfectant; and, when used as a verb, means to brand or mark or to attach or to provide in any other manner with, any written, pictorial or other descriptive matter;

local authority means a municipality as defined in section 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

[Definition of local authority substituted by s. 1(f) of Act No. 39 of 2007]

manufacture includes production, or preparation, processing, preservation or other manufacturing process; and **manufacture**, when used as a verb, has a corresponding meaning;

medical practitioner means a person registered as such in terms of the Health Professions Act, 1974 (Act No. 56 of 1974);

[Definition of medical practitioner inserted by s. 1(g) of Act No. 39 of 2007]

Minister means the member of Cabinet responsible for Health;

[Definition of "Minister" substituted by s. 1 (c) of Act No. 32 of 1981 and s.1(h) of Act 39 of 2007]

mollusc means any member of the phylum Mollusca and includes, but not limited to squids, clams snails and chitons and is characterised by a visceral mass, a mantle and a foot;

[Definition of mollusc inserted by s. 1(i) of Act No. 39 of 2007]

national department means the national department of Health

[Definition of national department inserted by s. 1(i) of Act No. 39 of 2007]

package means anything by or in which any foodstuff, cosmetic or disinfectant is covered, enclosed, contained or packed;

premises means land or any building or other structure and includes any train, boat, ship, aircraft or other vehicle;

prohibited, except in the definition of "prohibited article", means prohibited in terms of any regulation;

prohibited article means any foodstuff, cosmetic or disinfectant which may in terms of this Act not be sold or manufactured or imported for sale or which does not comply with the provisions of this Act in all respects;

provincial department means the provincial department responsible for health;

[Definition of provincial department inserted by s. 1(j) of Act No. 39 of 2007]

regulations means a regulation made under this Act;

sealed package means an unopened package which cannot be opened without breaking or damaging such package or any seal, adhesive label or other part of or attachment to such package;

Secretary

[Definition of "Secretary" deleted by s. 1 (d) of Act No. 32 of 1981.]

sell includes to offer, advertise, keep, display, transmit, consign, convey or deliver for sale, or to exchange, or to dispose of to any person in any manner whether for a consideration or otherwise; and **sold**, **selling** and **sale** have corresponding meanings;

this Act includes any regulation;

treated means coloured, stained, powdered, polished, coated or steamed, or mixed, preserved, flavoured, diluted or thickened with any substance, or treated in any other manner; and **treat** and **treatment** have corresponding meanings;

veterinarian means a person registered as such in terms of the Veterinary and Para-Veterinary Professions Act, 1982 (Act No. 19 of 1982).

[Definition of veterinarian inserted by s. 1(k) of Act No. 39 of 2007]

2. **Prohibition of sale, manufacture or importation of certain articles**

- (1) Subject to the provisions of subsection (2) and section 6, any person shall be guilty of an offence-
 - (a) if he sells, or manufactures or imports for sale, any foodstuff, cosmetic or disinfectant-
 - (i) which contains or has been treated with a prohibited substance; or
 - (ii) which contains a particular substance in a greater measure than that permitted by regulation or has been treated with a substance containing a particular substance in a greater measure than that permitted by regulation; or
 - (iii) which does not comply with any standard of composition, strength, purity or quality prescribed by regulation for or in respect of it or any standard so prescribed for or in respect of any of its other attributes; or
 - (iv) the sale of which is prohibited by regulation; or
 - (b) if he sells, or manufactures or imports for sale, any foodstuff or cosmetic-
 - (i) which is contaminated, impure or decayed, or is, or is in terms of any regulation deemed to be, harmful or injurious to human health; or
 - (ii) which contains or has been treated with a contaminated, impure or decayed substance or a substance which is, or is in terms of any regulation deemed to be, harmful or injurious to human health; or
 - (c) if he sells, or manufactures or imports for sale, any foodstuff-
 - (i) which contains or has been treated with a substance not present in any such foodstuff when it is in a normal, pure and sound condition; or

- (ii) to which any substance has been added so as to increase the mass or volume of such foodstuff with the object to deceive; or
 - (iii) from which any substance or ingredient has been abstracted, removed or omitted with the result that its nutritive value or other properties, in comparison with those of such a foodstuff in a normal, pure and sound condition, are diminished or otherwise detrimentally affected; or
 - (iv) which has been treated in such manner that its damaged or unsound condition or inferior quality is concealed whether entirely or partly.
- (2) The provisions of subsection (1)(c) shall not apply with reference to the sale, manufacture or importation of a foodstuff-
- (a) which contains or has been treated with a substance which is not harmful or injurious to human health and the addition or presence of which is necessary for the manufacture of such foodstuff as an article of commerce in a fit condition or form to be packed, stored, conveyed, used or consumed, and is not intended to deceive or mislead any buyer by increasing the mass or volume or concealing or lowering the quality of such foodstuff; or
 - (b) which contains, but in no greater measure than that permitted by regulation (if any), a foreign substance which is unavoidably present in such foodstuffs as a result of the process of its collection or manufacture; or
 - (c) from which a substance has been abstracted or removed, if such abstraction or removal is necessary for the manufacture of such foodstuff as an article of commerce in a fit condition or form to be packed, stored, conveyed, used or consumed, or has been effected in accordance with the provisions of the regulations.
- (3) For the purposes of subsection (1), "manufactures" includes to treat any foodstuff, cosmetic or disinfectant in a manner which, or with a substance the presence of which, renders such foodstuff, cosmetic or disinfectant a prohibited article in terms of that subsection, and to add any substance to, or abstract, remove or omit any substance or ingredient from, any foodstuff, cosmetic or disinfectant with the result that such foodstuff, cosmetic or disinfectant becomes a prohibited article in terms of that subsection.

3. **Sale of mixed, compounded or blended foodstuff**

- (1) Subject to the provisions of subsection (2) and section 6, any person shall be guilty of an offence if he sells any foodstuff which is a mixture or compound of different foodstuffs or a blend consisting exclusively of different kinds or grades of the same foodstuff, otherwise than in a package bearing a label which complies with the provisions of the regulations (if any) and which indicates clearly that the foodstuff sold is such a mixture, compound or blend and specifies the names or, as the case may be, the kinds or grades of the ingredients and the proportions or amounts in which they are present, unless such foodstuff is taken and delivered direct to the purchaser from bulk stock which, or the container of which, bears such a label.
- (2) The provisions of subsection (1) shall not apply with reference to the sale of any foodstuff-
- (a) which is the subject of a patent under the Patents Act, 1952 (Act No. 37 of 1952), and which is sold in a condition complying with the specifications of the patent, and bears a label specifying the number under which the patent is registered in terms of that Act; or

- (b) which is exempted from those provisions by regulation.

4. **Use or employment of prohibited process, method, appliance, container or object**

Subject to the provisions of section 6, any person shall be guilty of an offence if he-

- (a) employs or uses a prohibited process or method or a prohibited appliance or container or other prohibited object in or in connection with the manufacture, treatment, packing, labelling, storage or conveyance of any foodstuff, cosmetic or disinfectant; or
- (b) uses a prohibited appliance or container or other prohibited object for or in the preparation, serving or administering of any foodstuff or cosmetic in the course or as part of any trade or business.' or
- (c) sells or imports for sale any foodstuff, cosmetic or disinfectant in or in connection with the manufacture, treatment, packing, labelling, storage or conveyance of which a prohibited process or method or a prohibited appliance or container or any other prohibited object has been employed or used.

5. **False description of articles**

- (1) Subject to the provisions of subsection (2) and section 6, any person shall be guilty of an offence if he-
 - (a) publishes a false or misleading advertisement of any foodstuff, cosmetic or disinfectant; or
 - (b) for purposes of sale, describes any foodstuff, cosmetic or disinfectant in a manner which is false or misleading as regards its origin, nature, substance, composition, quality, strength, nutritive value or other properties or the time, mode or place of its manufacture; or
 - (c) sells, or imports for sale, any foodstuff, cosmetic or disinfectant described in the manner aforesaid.
- (2) The provisions of subsection (1) shall not be deemed to prohibit the description of any foodstuff by, or its sale or importation under, a geographical name which is generally accepted as a generic term for a particular type or variety of such foodstuff, provided the foodstuff described by or sold or imported under the name in question is of the type or variety indicated by that name.

6. **Special defences**

No person shall be convicted-

- (a) on a charge of selling, manufacturing or importing or otherwise dealing with any foodstuff or cosmetic in contravention of any provision of this Act, if he proves that the foodstuff or cosmetic to which the charge relates was not sold for human consumption or use, or manufactured, imported or otherwise dealt with for sale for human consumption or use, as the case may be;
- (b) on a charge of selling or importing any foodstuff, cosmetic or disinfectant in contravention of any provision of this Act, if he proves-

- (i) that he or his employer or principal acquired or imported the article in question under a written warranty complying with the provisions of section 7 and furnished to him or to his employer or principal; and
 - (ii) that he at no relevant time had reason to suspect that the article in question was a prohibited article; and
 - (iii) in the case of a sale of the article in question, that he sold it in the condition in which he acquired or imported it or if it was acquired or imported by his employer or principal, that he at no relevant time had reason to suspect that it was in any other condition than that in which it was so acquired or imported;
- (c) on a charge of publishing a false or misleading advertisement of a foodstuff, cosmetic or disinfectant, if he proves that he is not a person selling the foodstuff, cosmetic or disinfectant to which the advertisement in question relates and that he did not know, and could not reasonably be expected to have known, that the said advertisement was in any respect false or misleading, unless it is proved that the accused failed, on demand by an inspector or a member of the South African Police, to furnish the name and address of the person at whose instance that advertisement was published.

7. Warranties

- (1) A warranty referred to in section 6-
- (a) shall not be valid unless furnished by a person resident in the Republic, and, if it is furnished on behalf of a third person, unless such third person is resident or, in the case of a company, has a registered office in the Republic;
 - (b) shall reflect the name and address of the person by whom it is furnished and, if it is furnished on behalf of a third person, the name and address (including, in the case of a company, the registered office) of such third person;
 - (c) shall guarantee that any foodstuff, cosmetic or disinfectant to which it applies, is not a prohibited article in terms of this Act and complies in all respects with the provisions of this Act; and
 - (d) shall contain particulars by which any article to which it applies can be identified, including the mass and size of any such article or its container and the number of such articles or containers.
- (2) Any person who furnishes a warranty which is false or misleading in any respect, shall be guilty of an offence.
- (3) Any court within whose area of jurisdiction the place is situated where a warranty has been furnished (including any address reflected on such warranty for the purposes of subsection (1) (b)) or where any article to which such warranty applies is sold or where a sample of such article is obtained in terms of this Act, shall have jurisdiction in respect of any offence committed in respect of such warranty under subsection (2).

8. Liability of employer or principal

- (1) An act or omission of an employee, manager or agent which constitutes an offence under this Act shall be deemed to be the act or omission of his employer or principal and the said employer or principal may be convicted and sentenced in respect of it unless he proves—
 - (a) that he did not permit or connive at such act or omission; and
 - (b) that he took all reasonable measures to prevent an act or omission of the nature in question; or
 - (c) that an act or omission, whether legal or illegal, of the nature in question did not under any condition or in any circumstances fall within the course of the employment or the scope of the authority of the employee, manager or agent concerned.
- (2) For the purposes of subsection (1)(b) the fact that an employer or principal forbade an act or omission of the nature in question shall not of itself be regarded as sufficient proof that he took all reasonable measures to prevent such an act or omission.
- (3) The provisions of subsection (1) shall not be deemed to relieve the employee, manager or agent concerned from liability to be convicted and sentenced in respect of the act or omission in question.

9. **Liability of importer, manufacturer or packer**

- (1) The person who, according to the label of any foodstuff, cosmetic or disinfectant which is sold in a sealed package and which does not comply with the provisions of this Act, imported, manufactured or packed the article in question, shall be presumed to have imported, manufactured or packed, as the case may be, such article and may be convicted and sentenced accordingly unless he proves—
 - (a) that he did not import, manufacture or pack, as the case may be, such article; or
 - (b) that the non-compliance of such article with the provisions of this Act is due to deterioration or some other change which occurred after such article left his possession and over which he had no control.
- (2) The provisions of subsection (1) shall not be deemed to relieve any person from liability incurred by him in terms of this Act in respect of the sale of any article referred to in that subsection.

10. **Inspectors**

- (1) The Director-General may authorise—
 - (a) any employee of the national department;
 - (b) after consultation with a head of provincial department, any employee of a provincial administration or local authority; or
 - (c) any other person,

that he or she considers fit, as and inspector who is, subject to his or her control, vested with the powers, duties and functions conferred or imposed on inspectors by this Act.

[Sub-s. (1) substituted by s. 2(a) of Act No. 39 of 2007]

- (2) Each person authorised under subsection (1) shall be provided with a letter of authority signed by or on behalf of the Director-General and certifying that such person has been authorised as an inspector in terms of this Act.
- (3) Despite subsection (1), the powers, duties and functions of an inspector in terms of this Act may be exercised or performed—
[Sub-s. (3) substituted by s. 2(b) of Act No. 39 of 2007]
 - (a) in respect of any foodstuff, cosmetic or disinfectant referred to in section 14 (3), by an officer of the Office of the Commissioner for Customs and Excise authorised thereto in writing, either in general or in a particular case, by the Commissioner for Customs and Excise;
[Para. (a) substituted by s. 2 (a) of Act No. 32 of 1981.]
 - (b) for the purposes of the administration of any provision of this Act by a local authority under section 23, or by any medical practitioner, environmental health practitioner, veterinarian or other person considered fit and authorised thereto in writing by such local authority;
[Para (b) substituted by s. 2(c) of Act No. 39 of 2007]
 - (c) by any member of the South African Police Service, of or above the rank of sergeant;
[Para (c) substituted by s. 2(d) of Act No. 39 of 2007]
 - (d) by any member of the South African Police Service below the rank of sergeant authorised thereto in writing by a member referred to in paragraph (c);
[Para (d) substituted by s. 2(e) of Act No. 39 of 2007]
 - (e) in respect of any foodstuff, by any person appointed under section 28 of the Standards Act, 1993 (Act No. 29 of 1993), as an inspector for the purposes of that Act.
[Para. (e) added by s. 2 (b) of Act No. 32 of 1981 and substituted by 2(f) of Act No. 39 of 2007]

11. Powers, duties and functions of inspectors

- (1) An inspector may at all reasonable times enter upon any premises on or in which any foodstuff, cosmetic or disinfectant is or is suspected to be manufactured, treated, graded, packed, marked, labelled, kept, stored, conveyed, sold, served or administered or on or in which any other operation or activity with or in connection with any foodstuff, cosmetic or disinfectant is or is suspected to be carried out, and may, subject to the provisions of this Act-
 - (a) inspect or search such premises, or examine, or extract, take and remove samples of, any foodstuff, cosmetic or disinfectant found in or upon such premises, or any appliance, product, material, object or substance so found which is or is suspected to be used, or to be destined or intended for use, for, in or in connection with the manufacture, treatment, grading, packing, marking, labelling, storage, conveyance, serving or administering of any foodstuff, cosmetic or disinfectant, or for, in or in connection with any other operation or activity with or in connection with any foodstuff, cosmetic or disinfectant, or open any package or container of such foodstuff, cosmetic, disinfectant, product, material, object or substance;
 - (b) demand any information regarding any such foodstuff, cosmetic, disinfectant, appliance, product, material, object or substance from any person in whose possession or charge it is or from the owner or person in charge of such premises;

- (c) weigh, count, measure, mark or seal any such foodstuff, cosmetic, disinfectant, appliance, product, material, object or substance or its package or container, or lock, secure, seal or close any door or opening giving access to it;
 - (d) examine or make copies of, or take extracts from, any book, statement or other document found in or upon such premises and which refers or is suspected to refer to such foodstuff, cosmetic, disinfectant, appliance, product, material, object or substance;
 - (e) demand from the owner or any person in charge of such premises or from any person in whose possession or charge such book, statement or other document is, an explanation of any entry in it;
 - (f) inspect any operation or process carried out in or upon such premises in connection with any activity referred to in paragraph (a);
 - (g) demand any information regarding such operation or process from the owner or person in charge of such premises or from any person carrying out or in charge of the carrying out of such operation or process;
 - (h) seize any foodstuff, cosmetic, disinfectant, appliance, product, material, object, substance, book, statement or document which appears to provide proof of a contravention of any provision of this Act.
- (2) An inspector referred to in section 10(1) or (3)(a), (b) or (d) shall exhibit the written authority by virtue of which he is authorised as an inspector to any person affected by the exercise or performance of any power, duty or function of such inspector under this Act.
 - (3) The procedure to be followed by an inspector in obtaining, transmitting for analysis or examination or otherwise dealing with any sample, shall be prescribed by regulation.

12. Analysts

- (1) The Director-General may in writing authorise such persons as he may deem fit, as analysts to analyse or examine samples of any article or substance for the purposes of this Act.
- (2) An analyst shall for the purpose of analysing or examining any such sample or reporting the result, employ or use such methods or forms, or complete such certificates or reports as may be prescribed by regulation, and shall be vested with such other powers, duties or functions as may be so prescribed.

13. Further analysis or examination of sample

- (1) If evidence of an analysis or examination of a sample by an analyst is adduced in a prosecution under this Act, the court, on its own motion or at the request of the prosecutor or, subject to the provisions of subsection (3), at the request of the accused, may order a further analysis or examination of the remaining portion of the sample used for the first analysis or examination or, if there is no such remaining portion and the inspector who obtained the sample has retained any part of it in accordance with the regulations, of the part so retained by him.

- (2) Such further analysis or examination shall be carried out by an analyst designated by the court or, if an analyst is not readily available, by any competent person so designated.
- (3)(a) A request by the accused for such a further analysis or examination shall be granted only on condition that he or she deposits such sum as may be determined by the Director-General by notice in the *Gazette*.

[Para (a) substituted by s. 3 of Act No. 39 of 2007]

- (b) Such deposit shall be returned to the accused if he is acquitted on the charge to which the evidence relates, but if he is convicted the court may declare such deposit or such part of it as the court may consider sufficient to defray the cost of the further analysis or examination, to be forfeited to the State,

14. **Examination, control and disposal of certain imported articles**

- (1) If any foodstuff, cosmetic or disinfectant is in terms of paragraph (a) of section 107 (2) of the Customs and Excise Act, 1964 (Act No. 91 of 1964), under the control of the Commissioner for Customs and Excise because he has not yet satisfied himself that the provisions of this Act relating to the importation of foodstuffs, cosmetics or disinfectants have been complied with in respect thereof, the said Commissioner may, notwithstanding the provisions of that paragraph but subject to the provisions of subsection (2) of this section, with the concurrence of the Director-General allow such foodstuff, cosmetic or disinfectant and similar articles in the same consignment to pass from his control on condition that they are removed to a place approved by the Director-General and are there detained, at the expense and risk and under the control of the importer, for examination or analysis thereof or of a sample thereof under the provisions of this Act or until the result of any such examination already commenced or carried out is known and, under the circumstances contemplated in subsection (3), until the Director-General has made an order in respect thereof.
- (2) The Commissioner for Customs and Excise shall not under subsection (1) allow any foodstuffs, cosmetics or disinfectants to pass from his control unless the importer has furnished the Director-General with a guarantee, to the satisfaction of the Director-General, that he will pay to the Director-General for the benefit of the State Revenue Fund an amount determined by agreement between himself and the Director-General and specified in the guarantee, if in the opinion of the Director-General he fails to comply with any condition referred to in that subsection in relation to such foodstuffs, cosmetics or disinfectants.
- (3) If as a result of the examination or analysis of any foodstuff, cosmetic or disinfectant which in terms of the Customs and Excise Act, 1964, is under the control of the Commissioner for Customs and Excise or in terms of subsection (1) of this section is detained under the control of an importer, or of a sample thereof, it appears that it is a prohibited article, the Director-General may by order in writing at his discretion direct that such foodstuff, cosmetic or disinfectant and all similar articles in the same consignment-
 - (a) shall be confiscated and destroyed; or
 - (b) shall be returned to the port of shipment or place of origin; or
 - (c) may be imported on compliance by the importer with such conditions as may be specified by the Director-General in such order, including any condition requiring the substitution of a label approved by the Director-General for any existing, label; or

- (d) shall be dealt with or disposed of in such other manner as may be specified by the Director-General in such order.

[S. 14 substitute by s. 3 of Act No. 32 of 1981.]

15. Regulations

- (1) The Minister may make regulations-

- (a) prescribing the nature and composition of any foodstuff, cosmetic or disinfectant, or standards for the composition, strength, purity or quality or any other attribute of any foodstuff, cosmetic or disinfectant or any ingredient or part of a foodstuff, cosmetic or disinfectant;
- (b) prescribing, prohibiting, restricting or otherwise regulating-
 - (i) the use or employment of any substance or any appliance, container or other object or any process or method for, in or in connection with the manufacture, treatment, packing, labelling, storage, conveyance, serving or administering of any foodstuff, cosmetic or disinfectant; or
 - (ii) the abstraction or removal of any substance from any foodstuff;
- (c) prescribing the circumstances under which or the manner in which the fact that a particular substance, process or method has been used or employed for, in or in connection with the manufacture or treatment of any foodstuff, cosmetic or disinfectant or the fact that any substance has been abstracted or removed from any foodstuff, shall be revealed to a buyer of the article in question;
- (d) prescribing any foreign substance, or the nature of foreign substances, that may be considered as unavoidably present in any foodstuff or cosmetic as a result of the process of its collection, manufacture or treatment, or the greatest measure in which any such substance or substances of such nature may be present in any foodstuff or cosmetic;
- (e) prescribing any foodstuff, cosmetic or substance as a foodstuff, cosmetic or substance which shall for the purposes of this Act be deemed to be harmful or injurious to human health;
- (f) declaring any foodstuff to be a perishable foodstuff for the purposes of this Act;
- (g) prohibiting the sale of any particular foodstuff, cosmetic or disinfectant, or of any foodstuff, cosmetic or disinfectant of a particular nature or class;
- (h) prescribing the name under which any particular foodstuff, cosmetic or disinfectant may be sold, or prohibiting the sale of any particular foodstuff, cosmetic or disinfectant under a name other than a name so prescribed or under a specified name;
- (i) prohibiting, restricting or otherwise regulating the manufacture, importation, possession, sale or use of any appliance, container or other object-
- (i) which is or can be used, or is intended or destined for use, in or in connection with the manufacture, treatment, packing, labelling, storage, conveyance, serving or administering of any foodstuff or cosmetic and which is in such a condition, or which consists of or contains or has been treated with any substance of such nature, that if it should come into contact with

- any foodstuff or cosmetic, such foodstuff or cosmetic would thereby become or is likely thereby to become harmful or injurious to human health; or
- (ii) which is or can be used or employed, or is intended or destined for use or employment, in or in connection with a prohibited process or method of manufacture, treatment, packing, labelling, storage or conveyance of any foodstuff, cosmetic or disinfectant,
 - (j) prescribing, prohibiting, restricting or otherwise regulating-
 - (i) the packing of any foodstuff, cosmetic or disinfectant or the packing of any such article in a specified manner or in a manner other than a specified manner; or
 - (ii) the use for the packing of any such article of any package of a specified condition, form or nature or made from or treated with any specified material or substance;
 - (k) prescribing the manner in which any foodstuff, cosmetic or disinfectant or its package, or the bulk stock from which it is taken for sale, shall be labelled, the nature of the information to be reflected on any label, the manner or form in which such information shall be so reflected or shall be arranged on the label, or the nature of information which may not be reflected on any label;
 - (l) exempting any foodstuff, cosmetic or disinfectant specified or of a specified nature or class, from the requirements of this Act relating to labelling, and prescribing the conditions or prerequisites (if any) in connection with any such exemption;
 - (m) prescribing powers or duties to be exercised or performed by an inspector, including powers or duties in connection with the obtaining or transmitting of samples for analysis or examination, or otherwise dealing with samples for the purposes of this Act;
 - (n) prescribing powers or duties to be performed or exercised by an analyst, methods of analysis or examination of samples for the purposes of this Act, the form of any certificate or report to be furnished in connection with such analysis or examination, or the nature or arrangement of particulars to be reflected in such a certificate or report:
 - (nA) regarding the control, restriction or prohibition of the use of any premises that are connected with the handling, processing, production, manufacturing, packing, storing, preparing, conveyance, displaying, sale or serving of any foodstuff;
 - (nB) regarding the provision of a sewerage and drainage system for premises that are connected with the handling, processing, production, manufacturing, packing, storing, preparing, conveyance, displaying, sale or serving of any foodstuff;
 - (nC) regarding the control, restriction or prohibition of water, washing and sanitary conveniences, lighting and ventilation at premises that are connected with the handling, processing, production, manufacturing, packing, storing, preparing, conveyance, displaying, sale or serving of any foodstuff;
 - (nD) prescribing the structural requirements and the material used in the construction of any building on premises that are connected with the handling, processing, production, manufacturing, packing, storing, preparing, conveyance, displaying, sale or serving of any foodstuff, to ensure conformity;

- (nE) prescribing uniform norms and standards to which appliances, storing spaces, working surfaces and places used in connection with the handling of any foodstuff must adhere;
- (nF) prescribing uniform norms and standards to which the cleansing of facilities, the vehicles used for the transport of various foodstuffs, the container in which any foodstuff is stored, processed, displayed or transported and the clothing worn by persons handling any foodstuff must adhere;
- (nG) regarding the examination, control and supervision of the manufacturing and preparation processes, storage, keeping and dispatch of any foodstuff that is intended to be sold in, or to be exported from, the Republic;
- (nH) relating to the prohibition of the manufacture, preparation, storage, keeping, dispatch or sale in or export from the Republic of any foodstuff which is, or contains an ingredient which is, diseased, unsound or unfit for human consumption, or which has been exposed to any infection or contamination;
- (nI) regarding the removal or detention of animals or foodstuffs which; pending an examination or analysis, are suspected to be diseased, unsound, unwholesome or unfit for human consumption;
- (nJ) relating to the manner in which any foodstuff which is found to be unwholesome, unsound, infected or contaminated and any diseased animals sold or intended to be sold for human consumption must be seized, destroyed, treated or disposed of;
- (nK) regarding the contents of a warning and the manner in which such warning must be given to any person that sells, keeps or dispatches any foodstuff which has been found to be below the standard of composition, strength, purity or quality prescribed in terms of this Act;
- (nL) pertaining to the requirements relating to the issue of an order that prohibits the sale or the keeping of foodstuffs;
- (nM) pertaining to the requirements for an application for an order to close any premises where any foodstuff is sold or kept, after an analysis has found the foodstuff in question to be below the required standard of composition and where a warning, in writing, has been issued;
- (nN) regarding the inspection of dairy cattle and animals intended for human consumption and of the premises where any foodstuff is handled, processed, manufactured, prepared, kept, packed, conveyed, displayed, sold or served;
- (nO) regarding the—
 - (i) medical examination of a person employed in the food industry with that person's consent for any notifiable medical condition contemplated in the National Health Act, 2003 (Act No. 61 of 2003), or any adverse health condition such as a suppurating abscess, sore, cut or abrasion which may pose a food safety risk;
 - (ii) method of protective covering of any adverse health condition contemplated in subparagraph (i) to exclude the risk of contamination to foodstuffs;
 - (iii) type of protective clothing to be worn by employees in the food industry;

- (iv) standard of examinations, the persons who must carry out the examination and the frequency with which the examination must be carried out;
- (nP) regarding the control, restriction or prohibition of the provision of water intended for food processing and originating from any specified source or the blending of such water originating from different specified sources;
- (nQ) prescribing the requirements relating to purity, chemical composition and quality with which water must comply;
- (nR) regarding the taking of samples of water and the analysis of such samples;
- (nS) regarding the reporting of pollution or suspected pollution of water;
- (nT) regarding the keeping of records in connection with water provision;
- (nU) regarding the payment of fees for the taking of any sample, the examination or analysis of any sample taken or any inspection or medical examination performed in terms of this Act;

[Para (nA) to (nU) inserted by s. 4(a) of Act No. 39 of 2007]

- (o) with regard to any matter which in terms of this Act may be prescribed or otherwise dealt with by regulation,

and, in general, with regard to any matter which the Minister considers necessary or expedient to prescribe or regulate in order to attain or further the objects of this Act, and the generality of this provision shall not be limited by the preceding paragraphs of this subsection.

- (1A) The records of any medical examination performed in terms of this Act must be kept confidential and may be made available only—
 - (a) in accordance with the ethics of medical practice;
 - (b) if required by law or court order; or
 - (c) if the employee referred to in paragraph (nO) has in writing consented to the release of that information.

[Sub-s. (1A) inserted by s. 4(b) of Act No. 39 of 2007]

- (2) No regulation shall be made under subsection (1)(h) which will have the effect of prohibiting the sale of any foodstuff, cosmetic or disinfectant under a trade mark or trade name under which it is sold at the date of the coming into operation of this Act, save in such cases where the Minister is satisfied that the trade mark or trade name falsely or misleadingly describes the foodstuff, cosmetic or disinfectant.
- (2A) Regulations made under subsection (1)(a) may prescribe for the composition, strength, purity or quality or any other attribute of any foodstuff, cosmetic or disinfectant or any ingredient or part thereof, any standard set out in any publication which in the opinion of the Minister is generally recognised as authoritative.

[Sub-s. (2A) inserted by s. 4 of Act No. 32 of 1981.]

- (3) Regulations made under subsection (1)(n) may for the analysis or examination of a sample prescribe any method set out in any publication which in the opinion of the Minister is generally recognised as authoritative.
- (4) Any regulation may be expressed to apply only in such area as may be specified in it and different regulations may be made under subsection (1) in respect of different classes of premises, appliances and vehicles used for conveying any foodstuff and in respect of different categories of person handling any foodstuff.
[Sub-s. (4) inserted by s. 4(c) of Act No. 39 of 2007]
- (5) The regulations may prescribe penalties for any contravention of or failure to comply with its provisions, not exceeding the penalties prescribed by section 18.
- (6) The Minister shall, not less than three months before making any regulation under this Act, cause the text of the proposed regulation to be published in the *Gazette* together with a notice declaring his intention to make such a regulation and inviting interested persons to furnish him with any comments on or representations they may wish to make in regard to, the proposed regulation.
- (7) The provisions of subsection (6) shall not apply in respect of-
- (a) a regulation which, after the provisions of that subsection have been complied with, has been amended by the Minister in consequence of comments or representations received by him in pursuance of the notice published in terms of that subsection;
- (b) any regulation in respect of which the Minister is of the opinion that the public interest requires it to be made without delay.
- (8) Any medical practitioner, environmental health practitioner or veterinarian who has reasonable grounds to suspect that any foodstuff is unsound or unwholesome or that an animal is diseased may in the prescribed manner seize, detain or destroy such unsound or unwholesome foodstuff or diseased animal.
- (9) Regulations made under subsection (1) apply, to the extent to which they can be applied, in respect of the quality, ingredients, preparation, manufacture, packing, conveying and storing of any article of food prepared or manufactured in a private dwelling with the purpose of selling it to the public.
[Sub-s. (8) and (9) inserted by s. 4(d) of Act No. 39 of 2007]

Regulations relating to mollusc farming and fish farming

- 15A. The Minister may, after consultation with the Minister for Agriculture and Land Affairs, the Minister of Environmental Affairs and Tourism and the Minister of Water Affairs and Forestry, make regulations relating to—
- (a) the control, restriction or prohibition of the supply for human consumption of molluscs, crustaceans, echinoderms, algae or fish originating from mollusc nurseries, fish breeding stations or fish farms;
- (b) the purity, chemical composition and source of and the addition of substances to water used in the cultivation or breeding of molluscs, crustaceans, echinoderms, algae or fish intended for human consumption;

- (c) the location of mollusc nurseries, fish breeding stations or fish farms; and
- (d) the control, restriction or prohibition of the cultivation, breeding, storage or transport of molluscs, crustaceans, echinoderms, algae or fish cultivated or bred for the purposes of human consumption.

[Section 15A) inserted by s. 5 of Act No. 39 of 2007]

16. **Preservation of secrecy**

[Section 16 repealed by s. 6 of Act No. 39 of 2007]

17. **Offences**

Any person who-

- (a) obstructs or hinders an inspector in the performance of his functions or duties or the exercise of his powers under this Act; or
- (b) when an inspector demands of him an explanation or particulars or information relating to a matter within his knowledge, refuses or fails to give such explanation, particulars or information or gives an explanation or particulars or information which is false or misleading knowing it to be false or misleading; or
- (c) otherwise than in the exercise or performance of a power, duty or function under this Act, removes, obliterates, alters, damages, breaks or opens a mark, seal or fastening placed by an inspector on any foodstuff, cosmetic or disinfectant or its package or container or on or over any door or opening giving access to it; or
- (d) falsely holds himself out to be an inspector; or
- (e) retakes any sample or other article obtained or seized under this Act, or hinders or obstructs the obtaining or seizure of any such sample or other article; or
- (f) falsely makes use of in connection with, or applies to, any foodstuff, cosmetic or disinfectant, any warranty, certificate, report, invoice or other document; or
- (g) for purposes of business or trade makes use of any report or certificate furnished in terms of this Act by an inspector or any analyst,

shall be guilty of an offence.

18. **Penalties**

- (1) Any person convicted of an offence under this Act shall, subject to the provisions of subsection (2), be liable-
 - (a) on a first conviction, to a fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment;
 - (b) on a second conviction, to a fine or to imprisonment for a period not exceeding twelve months or to both a fine and such imprisonment;

- (c) on a third or subsequent conviction, to a fine or to imprisonment for a period not exceeding twenty-four months or to both a fine and such imprisonment.

[Para (a), (b) and (c) substituted by s. 7 of Act No. 39 of 2007]

- (2) Where a penalty is specifically prescribed by regulation for a contravention of or failure to comply with any regulation, a person convicted of any such contravention or failure shall be liable only to the penalty so prescribed.

19. **Jurisdiction**

A magistrate's court shall have jurisdiction to impose any penalty provided for by this Act.

20. **Forfeiture**

- (1) The court convicting any person of an offence under this Act may declare any foodstuff, cosmetic, disinfectant, appliance, product, material, substance or other object in respect of which the offence has been committed or which was used for, in or in connection with the commission of the offence, to be forfeited to the State.
- (2) Anything forfeited under subsection (1) shall be destroyed or otherwise dealt with as the Director-General may direct.

21. **Time limits and other requirements in connection with prosecution**

- (1) In any criminal proceedings under this Act the period between the service of the summons and the commencement of the trial shall not be less than ten days.
- (2)(a) Subject to the provisions of paragraph (b), no prosecution for a contravention of a provision of this Act disclosed by the analysis or examination of a sample shall be instituted after sixty days, or in the case of a sample of a foodstuff declared by regulation to be a perishable foodstuff, after thirty days from the date on which the sample was obtained for the purpose of such analysis or examination.
- (b) The provisions of paragraph (a) shall not apply to proceedings against any person who furnished a warranty in respect of the article of which the sample in question was obtained.
- (3) A copy of any certificate or report furnished by an analyst on the analysis or examination of a sample and which the prosecutor intends to produce in evidence in any prosecution under this Act, shall be served on the accused with the summons.
- (4) If the accused has within three days after having been served as aforesaid with a copy of a certificate or report, demanded in writing that the analyst who furnished the certificate or report shall be called as a witness at the trial, and has paid or tendered to the prosecutor a sum of money sufficient to defray the expenses incidental to the calling and attendance of the said analyst as a witness, and if the prosecutor produces the certificate or report in evidence at the trial, the prosecutor shall call the said analyst as a witness at such trial.
- (5) The accused may, instead of requiring the calling of the said analyst as a witness, submit to him written interrogatories approved by the court, and such interrogatories and any reply thereto, purporting to be a reply from the said analyst, shall be admissible in evidence in the proceedings.

22. **Proof of facts, and presumptions**

In any prosecution under this Act-

- (a) a copy of or extract from a book, statement or other document, made by an inspector under section 11(1)(d) and certified by him to be true and correct, shall unless the contrary is proved, be presumed to be a true and correct copy of or extract from the relevant book, statement or other document, and shall on its production in court be prima facie proof of any entry to which it relates;
- (b) a certificate or report on the analysis or examination of a sample and purporting to be signed by an analyst, shall on its production in court be prima facie proof of the facts stated in it;
- (c) any quantity of a foodstuff, cosmetic or disinfectant in or upon any premises at the time a sample of it is obtained by an inspector for the purposes of this Act, shall, unless the contrary is proved, be presumed to be in the same condition or possess the same properties as such sample;
- (d) a sample of a foodstuff, cosmetic or disinfectant obtained by an inspector for analysis or examination in terms of this Act, shall be presumed to have been sold to him by the person selling the foodstuff, cosmetic or disinfectant of which it is a sample,
- (e) if it is proved that any person has manufactured, treated or imported any foodstuff, cosmetic or disinfectant, it shall be presumed, unless the contrary is proved, that lie manufactured, treated or imported the article in question for purposes of sale;
- (f) any appliance, product, material, substance or other object found in or upon any premises where any foodstuff, cosmetic or disinfectant is manufactured, treated, packed, labelled, stored or conveyed or where any foodstuff or cosmetic is served or administered, shall, unless the contrary is proved, be presumed to be used for, in or in connection with the manufacture, treatment, packing, labelling, storage or conveyance of such foodstuff, cosmetic or disinfectant or the serving or administering of such foodstuff or cosmetic, as the case may be;
- (g) any person who sells, manufactures or imports any foodstuff, cosmetic or disinfectant which contains any other foodstuff, cosmetic or disinfectant or in or on which any other foodstuff, cosmetic or disinfectant is present, shall be presumed to sell, manufacture or import, as the case may be such other foodstuff, cosmetic or disinfectant.

23. **Administration of Act by authorised local authority**

- (1) The Minister may by notice in the *Gazette* authorise any local authority to enforce within its area of jurisdiction and through its duly authorised officers, such provisions of this Act as the Minister may specify in the notice.
- (2) The Minister may restrict such authority to such articles or classes of articles as he may specify in the notice, and may grant the authority subject to such further restrictions or such conditions as he may so specify.

- (3) The Minister may by notice in the *Gazette* withdraw or amend any notice published under subsection (1), after having given not less than three months' notice of his intention to do so to the local authority concerned.
- (4) The Director-General may in writing permit a local authority authorised as contemplated in subsection (1), to transmit to any analyst, for analysis or examination free of charge, such number of samples as the Director-General may specify, and may at any time amend or withdraw such permission.

24. **Right to prosecute**

- (1) A local authority authorised under section 23 to administer any provision of this Act in its area of jurisdiction may, through any person generally or specially authorised by it, prosecute in respect of any contravention of or failure to comply with the provision in question which is alleged to have taken place in the said area.
- (2) Any fines recovered pursuant to a prosecution in terms of subsection (1) shall be paid to the local authority concerned.
- (3) The provisions of subsection (1) shall not affect the authority of an attorney-general to prosecute in respect of the offence in question.

25. **Delegation of powers by Director-General**

- (1) Subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999), the Director-General may delegate a power or assign a duty vested in him or her by or under this Act to—
 - (a) the holder of an office in the national department; or
 - (b) after consultation with a provincial head of department, an officer in that provincial administration or local authority.
- (2) A delegation referred to in subsection (1)—
 - (a) must be in writing;
 - (b) may be subject to conditions;
 - (c) does not prevent the exercise of the power or the performance of the duty by the Director-General himself or herself; and
 - (d) may be withdrawn by the Director-General.

[S. 25 amended by s. 5 of Act No. 32 of 1981 and s. 8 of Act No. 39 of 2007]

26. **Defect in form not to invalidate**

A defect in the form of a notice, order certificate, report or other document issued, made or furnished in terms of this Act shall not invalidate any administrative proceedings to which

such notice, order, certificate, report or other document relates or be a ground for exception in legal proceedings, provided the requirements for such a notice, order, certificate, report or other document are substantially complied with and its meaning is clear.

27. Restriction of liability

No person, including the State, shall be liable in respect of anything done in good faith in the exercise or performance of a power or duty conferred or imposed by or under this Act.

28. Application of Act to articles imported in transit

The Minister may, at the request of the government or administration of a state or territory which is not part of the Republic, by notice in the *Gazette* apply any provision of this Act to any foodstuffs, cosmetics or disinfectants which arrive at or are imported through an import harbour or other place in the Republic and which are addressed to or intended for transmission to such State or territory, and may at any time withdraw or amend such notice by notice in the *Gazette*.

[S. 28 amended by ss. 46 and 47 of Act No. 97 of 1986.]

29. Repeal of Act 13 of 1929

- (1) The Food, Drugs and Disinfectants Act, 1929, is hereby repealed.
- (2) Any proclamation, regulation, notice, authority or order issued, made or granted or any other thing done in terms of any provision of the said Act, shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been issued, made, granted or done in terms of the corresponding provision of this Act,

30. Short title and commencement

- (1) This Act shall be called the Foodstuffs, Cosmetics and Disinfectants Act, 1972, and its provisions shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette*.
- (2) Different dates may under subsection (1) be fixed in respect of different provisions of this Act or in respect of such provisions in so far as they relate to foodstuff or to cosmetics or to disinfectants or to any two of the said articles.

AMENDMENTS

Foodstuffs, Cosmetics and Disinfectants Amendment Act, No. 32 of 1981

Transfer of Powers and Duties of the State President Act, No. 97 of 1986

Foodstuffs, Cosmetics and Disinfectants Amendment Act, No. 39 of 2007