

CHAPTER 65:05
FOOD CONTROL
ARRANGEMENT OF SECTIONS

SECTION

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Act 11, 1993.

An Act to ensure the provision of clean, safe and wholesome food to consumers.

[Date of Commencement: 3rd September, 1993]

1. Short title

This Act may be cited as the Food Control Act.

2. Interpretation

In this Act, unless the context otherwise requires-

"adulterate" means to make impure, usually in order to give a false value or to hide defects, by the addition of a foreign, inferior or inert substance, or by the removal or extraction of a valuable or necessary ingredient;

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

"article" includes-

- (a) any food, and any labelling or advertising materials used in connection with food;
- (b) anything used in the preparation, preservation, packaging or storing of any food;

"authorized officer" means any health officer, or any suitably qualified person authorized in writing by the Permanent Secretary, or by a council with the approval of the Permanent Secretary, a police officer of or above the rank of sergeant, or a customs and excise officer, for the purposes of this Act, and for the purpose of taking samples under section 6 and sending them to a public analyst;

"Board" means the National Food Control Board established under section 3 of this Act;

"council" means:-

- (a) a city council;
- (b) a town council;
- (c) a township authority; or
- (d) a district council;

"health officer" includes any health officer so appointed under section 4 of the Public Health Act, any medical practitioner registered under the Botswana Health Professions Act, any health inspector, and any public health nurse employed by or so designated by the Minister;

"food" means any animal product, fish, fruit, vegetable, condiment, beverage and any

other substance whatever, in any form, state or stage of preparation which is intended or ordinarily used for human consumption, and includes any article produced, manufactured, sold or presented for use as food or drink for human consumption, including chewing gum, and any ingredient of such food, drink or chewing gum;

"ingredient" means any substance, including a food additive used in the manufacture or preparation of a food, and present in the final product;

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

"nutrition officer" means a health officer who applies the science of nutrition to the promotion of health and the control of disease;

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

"premises" includes any building or tent or other structure, permanent or otherwise, together with the land on which the same is situated and any adjoining land used in connection therewith, and for the purposes of sections 6 and 11, shall be deemed to include any street, open space, or place of public resort, and any vessel, bicycle or other vehicle, used for the sale, packaging, preparation, preservation, transport or storage of any article;

"preparation" includes manufacture and any form of treatment of food, and "prepare" shall be construed accordingly;

"public analyst" means any suitably qualified person appointed by the Minister to be a public analyst for the purposes of this Act;

"sell" includes offer, advertise, keep, expose, display, transmit, convey, deliver, or prepare for sale or exchange, dispose of for any consideration whatsoever, or transmit, convey or deliver in pursuance of such sale, exchange, or disposal;

"ship" includes boat or craft;

"substance" includes any solid, liquid or gas;

"wholesome" in relation to food means to be natural, clean, safe, good for health, and without any harmful or harmless adulterants, and not misrepresented in any respect.

3. Establishment of National Food Control Board

(1) There is hereby established a Board, to be known as the National Food Control Board, which shall advise the Minister on all matters arising out of the administration of the provisions of this Act, and perform such other functions as may be assigned to it by or under this Act.

(2) The Board shall consist of the following members-

- (a) the Director of Health Services, Ministry of Health, who shall be Chairman of the Board;
- (b) the Chief Nutritionist, Ministry of Health;
- (c) the Chief Health Inspector, Ministry of Health;
- (d) the Director of Crop Production, Ministry of Agriculture;
- (e) the Director of Animal Health Production, Ministry of Agriculture;
- (f) the Director of Commerce and Consumer Affairs, Ministry of Commerce and Industry;
- (g) the Director of the Food Resources Department of the Ministry of Local Government, Lands and Housing;
- (h) the Manager, Food Technology Research;
- (i) a public analyst appointed by the Minister;
- (j) two persons appointed by the Minister from the private sector one representing the food industry and one representing consumer interests;
- (k) one person appointed by the Minister and representing the institute prescribing national standards.

(3) Any member referred to in paragraphs (a) to (h) of subsection (2), unable to attend a meeting of the Board, may be represented by his nominee.

(4) A member of the Board other than an *ex officio* member shall hold office as such member for two years, but shall be eligible to be re-appointed.

(5) Any seven members of the Board shall constitute a quorum at any meeting, and if the Chairman is absent from the meeting the members present shall elect one of their number to act as Chairman for that meeting.

(6) The Minister shall appoint a public officer to be the Executive Secretary to the Board, who will assist the Board in all its functions under this Act, and as the Board may from time to time require.

(7) The Board may invite any person to attend any meeting of the Board, to assist or advise it in respect of any of its responsibilities under this Act, but such person shall have no right to vote on any matter before the Board.

(8) The Board may appoint from among its members a committee or committees, for any purpose in connection with its functions and responsibilities under this Act, and such committee or committees shall carry out such duties, or exercise such powers of the Board as the Board may, subject to its own over-riding control, confer on it or them.

4. Functions of the Board

The functions of the Board shall be to advise the Minister with regard to all matters concerning food and food safety, and without prejudice to the generality of the foregoing, such advice shall include advice as to-

- (a) the promotion and protection of personal and public health by ensuring the provision of safe and wholesome food to consumers;
- (b) the prevention of and protection against commercial fraud in connection with imported or domestically available or produced unsafe and potentially hazardous foods;
- (c) the advice and assistance to be given to councils in matters concerning food safety;
- (d) the promotion or carrying out of research and investigation into all matters pertaining to food safety and control;
- (e) the preparation and publication of reports and statistics and any other information or literature pertaining to food safety or food control, and the principles thereof;
- (f) the appointment of advisory and technical bodies to assist in all matters concerning food safety and control.

5. Public analysts

(1) The Minister shall appoint such public analysts from among suitably qualified persons as may be required for the purposes of this Act.

(2) A person shall not be appointed to be a public analyst for any area in which he is engaged directly or indirectly in any trade or business connected with the sale or processing of food.

(3) A public analyst shall as soon as possible analyse or examine any sample sent to him by an authorized officer under the provisions of this Act, and shall issue in respect thereof a certificate specifying the results of such analysis or examination.

(4) In any proceedings under this Act, a certificate purporting to be signed by a public analyst shall be accepted as *prima facie* evidence of the facts stated therein:

Provided that-

- (i) such certificate shall not be accepted unless the party against whom it is to be produced has been given reasonable prior notice, and a copy thereof; and
- (ii) the court and the party against whom it is to be produced may require the public analyst to attend court for the purposes of cross-examination.

6. Powers of authorized officer

(1) An authorized officer may, in the proper execution of his duties under this Act, and at any time which is, in all the circumstances, reasonable-

- (a) enter any premises where he believes any food is sold, prepared, preserved, packaged, stored or conveyed, examine such food and take samples thereof and

- examine anything that he believes is used or capable of being used for such preparation, packaging, storing, or conveying;
- (b) stop or search or detain any aircraft or vehicle in which he believes, on reasonable grounds, that any food intended for consumption by or sale to members of the public is being conveyed, and may take samples of such food;
 - (c) open and examine any receptacle or package which he believes, on reasonable grounds, to contain any food intended for consumption by or sale to members of the public;
 - (d) examine any books, documents or records found in any premises that he believes, on reasonable grounds, to contain any information relevant to the enforcement of the provisions of this Act, and may make copies of such books or documents;
 - (e) seize and detain for such time as may be necessary any food or article in respect of which, or by means of which he believes, on reasonable grounds, that any provision of this Act has been or is being contravened.

(2) An authorized officer, acting in accordance with the provisions of this section, shall, if so required, provide proof of his authority.

(3) Any owner, occupier or person in charge of any premises entered by an authorized officer, or any person found therein, shall give to the authorized officer all reasonable assistance which is in his power to give, and shall furnish him with such information as the officer may reasonably require.

(4) Any person who obstructs or impedes any authorized officer in the course of the performance of duties or prevents or attempts to prevent the execution by him of his duties under this Act, shall be guilty of an offence.

(5) Any person who knowingly makes any false or misleading statement, either verbally or in writing, to any authorized officer engaged in carrying out his duties under this Act shall be guilty of an offence.

(6) An authorized officer who has seized any food or other article under the provisions of this Act, shall release it if and when he is satisfied that there has been no breach of the provisions of this Act in respect thereof.

(7) Where an authorized officer has seized any food or other article under the provisions of this Act in respect of which he is satisfied that a breach of the provisions of this Act has been committed, and the owner or the person in whose possession the article was at the time of seizure consents to the destruction thereof, such food or article may be destroyed or otherwise disposed of as the authorized officer may direct; if the owner or the person does not consent to the destruction or disposal of the food or article, the authorized officer may apply to the court of a Magistrate Grade I, Senior Magistrate or Principal Magistrate, for permission to destroy any such food or article, and the court may make such order as it may deem fit.

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

(9) Any food or article seized under the provisions of this Act may, at the option of the authorized officer, be kept or stored in the premises where it was seized or may be removed to any other suitable place.

(10) Any person who removes, alters or interferes in any way with any food or article seized under the provisions of this Act, without the authority of an authorized officer, shall be guilty of an offence.

(11) An authorized officer may submit any food or article seized by him, or any sample therefrom, or any other sample taken by him, to a public analyst for analysis or examination.

7. Duties of councils

(1) Councils shall appoint suitably qualified officers to carry out the functions of authorized officers under the provisions of this Act.

(2) Where the Minister is satisfied that a council is failing to execute or enforce any of the provisions of this Act, and that the failure affects or is likely to affect the interests of consumers, he may, in writing, empower any other authorized officer to execute or enforce those provisions, and any expenses incurred thereby may be recovered from the council concerned.

8. Particulars of ingredients

(1) The Minister may, in writing, require any manufacturer, importer, distributor, preparer or seller of any food, or any ingredient thereof, to furnish to him, within such reasonable time as he may specify,-

- (a) particulars of the composition and chemical formula of such food or ingredients;
- (b) particulars of the manner in which any ingredients are used or are to be used in the preparation of food;
- (c) particulars of any investigations or tests carried out in respect of such food or ingredients and their effect upon or after ingestion.

(2) Any particulars supplied in accordance with the provisions of this section shall be treated in strict confidence.

9. Warranty

(1) A manufacturer or distributor of, or dealer in, any food or article who sells such food or article to a vendor, shall give to such vendor, on request, a warranty in writing in such form as may be prescribed, describing the nature and quality of such food or article.

(2) Any manufacturer, distributor or dealer who contravenes or fails to comply with the provisions of subsection (1), or gives a warranty that is false in any material particular, shall be guilty of an offence.

10. Clean water supply

(1) It shall be the duty of every authorized officer to take all lawful, necessary and reasonably practicable measures to ensure the purity of any supply of water which the public has a right to use, or which is made available for use by the public, or which the public does use for drinking or for domestic purposes, and to take all necessary measures against any person so polluting any such supply, or polluting any stream so as to be a nuisance or a danger to health.

(2) Any person knowingly polluting any supply of water referred to in subsection (1), or who persists in polluting any such supply contrary to any instructions given by an authorized officer in accordance with his duties under subsection (1), shall be guilty of an offence.

11. Premises used for food

(1) All warehouses or premises of whatever nature used for the preparation, sale or exposure for food or the storage of food shall be constructed in such manner as shall, to the satisfaction of an authorized officer, render it rat-proof.

(2) Where any warehouse or premises intended for the preparation, sale or exposure for sale, or the storage of food has fallen into a state of disrepair, or does not afford sufficient protection against invasion by rats by reason of the materials used in its construction being defective, an authorized officer may, by written notice, require the owner, or occupier, or the person in charge thereof to effect such repairs and alterations as shall be specified in the notice, within such period of time as shall also be specified, and if such notice is not complied with the person upon whom the notice was served shall be guilty of an offence.

(3) No person shall reside or sleep in any kitchen or room in which food is prepared or stored for sale or exposed for sale.

(4) If it appears to an authorized officer that any such kitchen or room is being used in contravention of the provisions of subsection (3), or that any part of the premises adjoining the kitchen or room in which such food is prepared, stored or sold or exposed for sale is being used for sleeping purposes in such circumstances that the food is likely to be contaminated or made unwholesome, the authorized officer may serve upon the offender, or upon the owner or occupier of the house, or upon all of them, a notice requiring such measures to be taken as

shall prevent the improper use of such kitchen or room, within a time to be specified in the notice, and if the notice is not complied with the person upon whom it was served shall be guilty of an offence.

12. Offences and penalties

(1) Any person who sells any food that has in or upon it any poisonous or harmful substance, or consists in whole or in part of any filthy, dirty, tainted, putrid, rotten, decomposed, or diseased substance or foreign matter, or is in any way adulterated or otherwise unfit for human consumption, shall be guilty of an offence.

(2) Any person who labels, packages, treats, processes, 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 contradiction of any regulations made under this Act, shall be guilty of an offence.

(3) Where a standard has been prescribed for any food, such food shall contain only the ingredients included in that standard, in such quantities or within such limits as may be prescribed, and any person who labels, packages, sells or advertises any food which does not comply with the standard prescribed for that food, or who labels, packages, sells or advertises such food in such a manner that it is likely to be mistaken for food of the prescribed standard, shall be guilty of an offence.

(4) Any person who, to the prejudice of the purchaser, sells any food which is not of the nature, or is not of the substance, or is not of the quality promised by the seller or as demanded by the purchaser, shall be guilty of an offence.

(5) Any person who sells, prepares, packages or stores for sale any food under unhygienic conditions shall be guilty of an offence.

(6) A package intended or customarily considered suitable to hold food shall be used for no other purpose, and a package not intended to, or not customarily considered suitable to hold food, shall not be used to hold food, and any person who uses a package in contravention of the provisions of this subsection shall be guilty of an offence.

(7) Any person who imports any food or article which to his knowledge, or which he reasonably ought to know, does not comply with the provisions of this Act, shall be guilty of an offence.

(8) Any person guilty of an offence under this Act shall be liable-

- (a) for a first offence, to a fine of P1 000 and to imprisonment for 3 months, and where the offence is a continuing offence, to an additional fine of P500 and imprisonment for one month for each day on which the offence continues; and
- (b) for a second or subsequent offence, to a fine of P5 000 and to imprisonment for 6 months, and where the offence is a continuing offence, to an additional fine of P2 000 and imprisonment for two months for each day on which the offence continues.

(9) On the conviction of any person for any offence under this Act, the court may, in addition to any other penalty which it may lawfully impose, cancel or suspend any licence issued to such person which is relevant to the offence committed.

(10) Where a person has been convicted of an offence under this Act, the court convicting him may order that any article relevant to the offence be forfeited and that it be destroyed or otherwise disposed of, as the court deems fit.

13. Regulations

(1) Subject to the provisions of subsection (2) the Minister may after consultation with the Board, make regulations for the better carrying out of the provisions and purposes of this Act, and without prejudice to the generality of the foregoing, such regulations may provide for all or any of the following-

- (a) the labelling, packaging, and the offering, exposing and advertising for sale of food;
- (b) the size, dimensions and other specifications of packages of food;
- (c) the sale and conditions of sale of any food;

- (d) the use of or prohibition of any substance as an ingredient in any food;
- (e) standards of hygiene to be maintained in food premises;
- (f) declaring that any food or class of food shall be deemed to be adulterated if any prescribed substance or class of substance is present therein, or is extracted or omitted therefrom;
- (g) prescribing standards of composition, purity, quality, or other property of any food;
- (h) controlling the importation or exportation of food to ensure compliance with the Act;
- (i) prescribing the places at which, and the conditions under which animals are slaughtered for human consumption;
- (j) controlling the places at which, and the conditions under which, dairy products, bread and any other foodstuffs are produced, processed or packaged;
- (k) preventing the spread of communicable diseases by persons employed in slaughter houses, dairies, bakeries or any other places where food is sold, prepared, processed or packaged;
- (l) prescribing the method of preparing, preserving, packing, storing, conveying and testing of any food in the interests of consumer health;
- (m) regulating the carriage or transport of food;
- (n) prescribing books and records to be kept and maintained for the purposes of this Act;
- (o) prescribing methods of analysis or examination of food for the purposes of this Act, or for any other purpose, and prescribing a tariff of fees therefor; and
- (p) exempting any food from all or any of the provisions of this Act and prescribing the conditions of any such exemption.

(2) Where any regulations made under this Act prohibit or restrict the addition of any ingredient or material to any food, the addition of any such ingredient or material made in contravention of such regulations, shall, for the purpose of this Act, be deemed to render the food injurious to health.

(3) Where regulations made under this Act prescribe the composition of any food intended for sale, or prohibit or restrict the addition of any ingredient or material to such food, any purchaser of such food shall, unless the contrary is proved, be deemed to have demanded food complying with the provisions of such regulations.

14. Presumptions

In any proceedings under this Act-

- (a) evidence that a package containing any food or article to which this Act applies bore a name, address or registered mark purporting to be that of the person by whom it was manufactured or packed, as the case may be, shall be *prima facie* evidence that such article was manufactured or packed by that person;
- (b) any substance 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 to have been intended for sale for human consumption, as the case may be;
- (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 products for human consumption which is found on premises used for the preparation, storage or sale of those products, shall be presumed to be intended for sale, or for the manufacture of products for sale for human consumption, unless the contrary is proved;
- (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 where that substance is prepared, shall be presumed to be intended for sale for human consumption, unless the contrary is proved;
- (f) the contents of any package appearing intact and in the original state of packing by the manufacturer thereof, shall be deemed to be an article of the description specified on

the label, unless the contrary is proved.

15. Exemption

The provisions of this Act shall not apply to the preparation, preservation, packaging, storage, importation or conveyance, in or by a person in a private household, of food which is intended for consumption by the members of such household, or by guests of such members.