

FAO/WHO MODEL FOOD LAW

This is an example of a possible structure of a food law. Since different countries place responsibility for food control with different Ministries or agencies, the draft has been prepared in a general way so that it can be adapted to local conditions. In the draft law responsibility for preparation of regulations and overall enforcement of the act is with the Central Government, but reliance is placed upon local authorities for most enforcement within local authority boundaries. If a country wishes to retain all authority at the national level, those provisions concerning local authorities can be removed. In any case all authority for preparation of all regulations, and for general direction of the food control programme should be retained at the national level to avoid creation of divergent regulations and rules at the local, provincial or state level. This model food law has been developed by the FAO/WHO Food Standards Programme and is based on a number of food laws currently in force in developed and developing countries. It has been reviewed and endorsed by Joint FAO/WHO meetings of countries of the Africa and Asia regions.

THE FOOD ACT

Arrangement of sections

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Date of Assent: _____

An Act to protect the public against health hazards and
fraud in the sale and use of food, and for matters incidental
thereto or connected therewith.

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ENACTED by _____ Enactment

PART I

PRELIMINARY

1. This Act may be cited as the Food Act, and shall come into operation on such dates as the Minister may, by statutory order, appoint. Short title and commencement

2. In this Act, unless the context otherwise requires “advertisement” includes any representation by any means whatsoever for the purpose of promoting directly or indirectly the sale or disposal of any food; “article” includes –

- (a) any food and any labelling or advertising materials in respect thereof; or
- (b) anything used for the preparation, preservation, packing or storing of any food; “**authorised officer**” means any suitably qualified person authorised in writing by the Minister or by a local authority with the approval of the Minister for the purpose of this Act, and – (a) for the purpose to taking of samples under sections twelve and fourteen and sending them to an official laboratory and for receiving reports thereof under section thirteen includes a policy officer of or above the RANK OF Assistant Inspector and an officer of the Department of Customs and Excise authorised in that behalf by the Controller of Customs and Excise; “**Board**” means the Food Board established by section twelve; “**food**” includes any article manufactured, sold or represented for use as food or drink for human consumption, chewing substances and any ingredient of such food, drink or chewing substances; “**insanitary conditions**” means such conditions or circumstances as might cause contamination of a food, with dirt or filth or might render the same injurious or dangerous to health;

“**label**” includes any tag, brand, mark, pictorial or other descriptive matter, written, printed, stencilled, marked, embossed or impressed on, or attached to or included in, belonging to, or accompanying any food; “**local authority**” means –

- (a) a municipal council; or
- (b) a township council; or
- (c) a rural council;

“**official laboratory**” means a laboratory operated by authorised officers under this Act, “**package**” includes anything in which any food is wholly or partly placed or packed and includes any basket, pail, tray or receptacle of any kind whether open or closed; “**premises**” includes –

- (a) any building or tent or other structures permanent or otherwise together with the land on which the same is situated and any adjoining land used in connection therewith and includes any vehicle, conveyance or vessel; and
- (b) for the purpose of section twelve, a reference to premises shall be deemed to include reference to any street, open space or place of public resort, bicycle or other vehicle used of the preparation, p reservation, packaging, storage or conveyance of any article; “**preparation**” includes manufacture, processing and any form of treatment and “**prepare**” shall be construed accordingly; “**sell**” includes offer, advertise, keep, expose, transmit, convey, deliver or prepare for sale or exchange dispose o for any consideration whatsoever, or transmit, convey or deliver in pursuance of a sale, exchange, or disposal, as aforesaid; “**ship**” includes any boat or craft;

* Date on which the Act shall come into operation

PART II

GENERAL PROVISIONS

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| <p>3. Any person who prepares or sells any food that
(a) has in or upon it any substance which is poisonous, harmful or otherwise injurious to health; or
(b) consists in whole or in part of any filthy, putrid, rotten decomposed or diseased substance or foreign matter, or otherwise unfit for human consumption; or
(d) is adulterated;
shall be guilty of an offence.</p> | <p>Prohibition against sale of poisonous unwholesome or adulterated food</p> |
| <p>4. Any person who labels, packages, prepares, sells or advertises any food in a manner that is false, misleading or deceptive as regards its character, nature, value, substance, quality, composition, merit or safety, or in contravention of any regulations made under this Act, shall be guilty of an offence.</p> | |
| <p>5. Where a standard has been prescribed for any food, any person who labels, packages, prepares, sells or advertises any food which does not comply with, that standard, in such a manner that it is likely to be mistaken for food of the prescribed standard, shall be guilty of an offence.</p> | <p>Standards of food</p> |
| <p>6. Any person who sells to the prejudice of the purchaser any food which is not of the nature, or is not of the substance or is not of the quality, of the article demanded by the purchaser, shall be guilty of an offence.</p> | <p>Prohibition against sale of food not of the nature, substance or quality demanded</p> |
| <p>7. Any person who sells, prepares, packages or stores for sale any food under insanitary conditions shall be guilty of an offence.</p> | <p>Sale and preparation of food under insanitary conditions</p> |

PART III

IMPORTATION, WARRANTY & DEFENCES

7. (a) Subject to the provisions of subsection (b), the importation of any article which does not comply with the provisions of this Act is hereby prohibited.
(b) Where an article sought to be imported into _____ would, if sold in _____, constitute a contravention of this Act, the article may be imported into _____ for the purpose of satisfactorily relabelling or reconditioning the same so that the provisions of this Act are complied with, and where such relabelling or reconditioning is not carried out within three months of the importation, such article shall be exported by the importer within a further period of one month or such other period as the Minister may determine and, where it is not so exported, it shall be forfeited and disposed of as the Minister may direct.

Importation

9. (a) No manufacturer or distributor of, or dealer in, any article shall sell such article to any vendor unless he gives a warranty in writing in the prescribed form about the nature and quality of such articles to the vendor specifying that the article may lawfully be sold under the provisions of this Act.
(b) If any person contravenes the provisions of subsection (a) or gives a warranty which is false, he shall be guilty of an offence.

Warranty

10. In any proceedings for an offence under this Act, it shall be a defence for the defendant to prove: that he purchased the food from another person who furnished a written warranty in compliance with Section 9 of this Act, and sold the food in the same condition the article was in at the time he purchased it, and
(b) that he could not with reasonable diligence have ascertained that the sale of the article would be in contravention of this Act or the regulations, and
(c) that in relation to an offence relating to the publication of an advertisement, he received the advertisement for publication in the ordinary course of business and had no reason to believe that an offence would be committed.

Defences

PART IV

REGULATIONS RELATING TO FOOD STANDARDS, FOOD SAFETY AND OTHER MATTERS

Regulations

11. (a) The Minister may by regulations provide for standards in relation to food and in particular but, without prejudice, may make regulations in relation to any of the matters in the next sub-sections;
- (b) the Minister may make regulations for:
- (i) declaring that any food or class of food is adulterated if any prescribed substance or class of substance is present therein or has been added thereto or extracted or omitted therefrom;
 - (ii) respecting -
 - (a) the labelling and packing and the offering, exposing and advertising for sale of food;
 - (a) the size, dimensions and other specifications of packages of food;
 - (b) the sale or the conditions of sale of any food, and
 - (c) the use of any substance as an ingredient in any food, to prevent the consumer or purchaser thereof from being deceived or misled as to its quality, quantity, character, value, composition, effect, merit or safety or to prevent injury to the health of the consumer or purchaser;
 - (iii) prescribing standards of composition, strength, potency, purity, quality or other property of any food;
 - (iv) respecting the importation or exportation of food, in order to ensure compliance with this Act;
 - (v) respecting the method of preparation, preserving, packing, storing, conveying and testing of any food, in the interests of, or for the prevention of injury to, the health of the consumer, user or purchaser, and for the observance of adequate standards of hygiene in the carrying out of these activities;
 - (vi) respecting the carriage of goods subject to the provisions of this Act, including the licensing of vehicles used in such carriage;
 - (vii) requiring persons who sell food, to maintain such books and records as the board considers necessary for the proper enforcement and administration of this Act;
 - (viii) providing for the analysis or examination of food, for the purposes of this Act or for any other purposes and prescribing a tariff of fees to be paid for such analysis and for prescribing methods of analysis;
 - (ix) providing for the taking of samples of any articles for the purposes of this Act or for any other purpose;
 - (x) exempting any food from all or any of the provisions of this Act and prescribing the conditions of such exemption;
 - (xi) respecting the licensing of premises where foods are prepared, and or persons preparing such foods; and

(xii) prescribing anything which is to be or which may be prescribed under this Act.

(c) Before making any regulations, the Minister shall consult with the Board and with such organisations as appear to him to be representative of interests substantially affected by the regulations, except in cases of urgency he may make regulations without such consultations being made.

(d) It shall be an offence for any person to commit any act in contravention of any provision of a regulation made under this Section.

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

(f) Where any regulations made under this Act or any other Act prescribe the composition of any article of food intended for sale, or prohibit or restrict the addition of any ingredient or material to any such article, the purchase of such article shall, unless the contrary is proved, be deemed for the purpose of this section to have demanded an article complying with the provisions of the the regulations as regards the presence or amount of any constituent, ingredient or materials specified in the regulations.

(g) The Minister, consultation with the Board, may make regulations generally for carrying out any of the purposes or provisions of this Act.

PART V

ADMINISTRATION AND ENFORCEMENT

12. (a) The Minister shall constitute a Board to advise the Minister and to carry out such functions as he may determine.

(b) The Board shall consist of such persons with experience of manufacturing, distributing or consuming food or of the science, technology, administration or commercial matters affecting food and such officials from departments as he may determine.

(c) The Board shall make reports to the Minister from time to time and unless he determines otherwise those reports shall be published.

(d) If the Minister so determines, he may establish groups under the auspices of the Board to deal with particular matters or with aspects of food standards and food safety.

13. (a) An authorised officer may, at any hours reasonable for the proper performance of his duty-

Powers of
authorised officer

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

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

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

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

(v) seize and detain for such time as may be necessary any article by means of, or in relation to, which he believes any provisions of this Act has been contravened.

(b) An authorised officer acting under this section shall, if so required, produce his authority.

(c) Any owner, occupier or person in charge of any premises entered by an authorised officer pursuant to paragraph (i) of subsection (a), or any person found therein, who does not give to the authorised officer all reasonable assistance in his power and furnish him with such information as he may reasonably require, shall be guilty of an offence.

(d) Any person who obstructs or impedes any authorised officer in the course of his duties or prevents or attempts to prevent the execution by the authorised officer of his duty under this Act shall be guilty of an offence.

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

(f) An authorised officer shall release any article seized by him under this Act when he is satisfied that all the provisions of this Act with respect thereto have been complied with.

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

(h) Where any article has been seized under the provisions of paragraph (a) of subsection (1) and owner thereof has been convicted of an offence under this Act, the article may be destroyed or otherwise disposed of as the Court may direct.

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

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

(k) An authorised officer may submit any article seized by him or any sample therefrom or any sample taken by him to an official laboratory for analysis or examination.

14. (a) No person shall be appointed to be an authorised officer for any area in which he is engaged directly or indirectly in any trade or business connected with the sale of food;

Appointment and duties of authorised officers for official labs.

(b) An authorised officer designated by the Minister as Director employed in an official laboratory shall as soon as practicable analyse or examine any sample taken in pursuance of this Act and shall give the authorised officer who took the sample a certificate specifying the result of the analysis or examination, and such certificate shall be in such form as may be prescribed by the Minister on the advice of the Board.

15. The Minister may, in relation to any matter appearing to him to affect the general interests of the consumer, direct a public officer to procure for analysis samples of any food, and thereupon that officer shall have all the powers of an authorised officer under this Act, and this Act shall apply as if the officer were an authorised officer.

Other authorised officers

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

(b) Without prejudice to the generality of subsection (a), a direction made thereunder may require the following particulars to be furnished in respect of any substance, that is to say -

(i) particulars of the composition and chemical formula of the substance;

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

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

(iv) particulars of any investigation of enquiries carried out or to the knowledge of the person carrying on the business in question for the purpose of determining the cumulative effect on the health of a person consuming the substance in ordinary quantities.

(c) No particulars furnished in accordance with a direction under this section and no information relating to any individual business obtained by means of such particulars shall, without the previous consent in writing of the person carrying on the business in question, be disclosed except in due discharge of his duties under this Act, and any person who discloses any such particulars or information in contravention of this subsection shall be guilty of an offence.

Power of Minister
to obtain particulars
of certain food
ingredients

PART VI

LEGAL PROCEEDINGS

17. (a) 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 any licence issued to such person under any written law.

Power of court to order licence to be cancelled and articles to be disposed of

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

18. (a) Where an official laboratory having analysed or examined any article to which this Act applies, has given its certificate and from that certificate it appears that an offence under this Act has been committed, an authorised officer may take proceedings under this Act before any Subordinate Court having jurisdiction in the place where the article sold was actually delivered to the purchase or the sample thereof taken.

Prosecution

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

19. (a) In any prosecution under this Act, the summons shall state the particulars of the offence or offences alleged and also the name of the prosecuting officer and shall not be made returnable before fourteen days from the date on which it is served.

(a) A person found guilty of an offence under this Act for which no special penalty is provided shall be liable to conviction -

(i) in the case of a first offence, to a fine not exceeding _____ or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment;

(ii) in the case of a subsequent offence, to a fine not exceeding _____* or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

(b) If a person found guilty of an offence is found to have committed the offence with the intent to defraud or mislead, he shall be fined a sum not exceeding _____ or imprisonment of a term not exceeding _____ or both.

* Here should be inserted the amount.

20. In any proceedings under this Act –

(a) a certificate of analysis purporting to be signed by the director of an official laboratory shall be accepted as prima facie evidence of the facts stated therein provided that –

(i) the party against whom it is produced may require the attendance of the authorised officer performing the analysis for the purpose of cross-examination; and

(ii) no such certificate of an official laboratory shall be received in evidence unless the party intending to produce it has before the trial given the party, against whom it is intended to be produced, reasonable notice of such intention together with a copy of the certificate.

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

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

(c) 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 or 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;

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

21. The provisions of this Act shall be in addition to and not in derogation of the provisions of any other written law.

Saving of
other written
laws