



ANALYSIS

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1992-93, No. 23

An Act to control the importation, processing, packaging, preparation, storage, transport, advertising and sale of food.

(13 July 1993)

Price \$2.50

BE IT ENACTED, by the Parliament of the Cook Islands in Session assembled and by the authority of the same, as follows:

1. Short Title and commencement - (1) This Act may be cited as the Food Act 1992-93.
(2) This Act shall come into force on the 1st October 1993.

PART 1 - PRELIMINARY

2. Interpretation - In this Act, unless the context otherwise requires -
"Abattoir" means premises used for the slaughter of animals for sale for human consumption;

"Advertisement" includes any oral, written or visual representation used to offer or promote the sale of any food, article or package;

"Analyst" means any suitably qualified person who has been authorised in writing by the Board to carry out duties under this Act;

"Article" includes anything used for the preparation, preservation, packing or storing of food for sale;

"Authorised officer" means any suitably qualified person authorised in writing by the Board to carry out duties under this Act;

"Board" means the Cook Islands Health Board constituted by the Ministry of Health Act 1991;

"Committee" means the Food Safety Advisory Committee established by section 4 of this Act;

"Court" means the High Court of the Cook Islands;

"Communicable disease" means any disease caused by an infective agent and which is transferable directly or indirectly to man, or any animal;

"Food" means any thing prepared or made available for sale, or sold for human consumption, and includes every ingredient or additive thereof, but does not include medicine;

"Insanitary conditions" means such conditions or circumstances as might cause contamination of food with dirt or filth or might render the same unwholesome, 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;

"Package" includes anything in which any food for sale is wholly or partly placed or packed and includes any carton, basket, bucket, tray or receptacle of any kind whether open or closed;

"Premises" includes -

- (a) 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 includes any vehicle, conveyance or vessel, used for the sale of food;

- (b) any street, open space or place of public resort, or vehicle used for the sale of food or the preparation, manufacture, preservation, packaging, storage or conveyance of any food for sale;

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

"Proprietor" in relation to any premises, means the owner of the premises or if the owner is not the occupier, then the occupier thereof, and includes any person in charge or apparently in charge of the premises;

"Sell" means offer, advertise, keep, expose, transmit, convey, deliver or prepare or possess for sale, barter or exchange, or dispose of for any consideration whatsoever, and "sale" and "sold" shall be construed accordingly;

"Vehicle" means device, whether or not operational, that is used as a means of conveyance by land, water or air and includes any cart, caravan, trailer, bicycle, motor vehicle, ship, boat and aircraft.

PART II - ADMINISTRATION

3. Duties of the Board - The Board shall be responsible to the Minister of Health for the administration of this Act.

4. Appointment of a Food Safety Advisory Committee - (1) The Board may from time to time appoint a Food Safety Advisory Committee to advise the Board on food standards and food safety matters and to carry out such functions as the Board may determine.

(2) The Committee shall comprise the Director of Public Health who shall be chairman, and such officials from the Ministry of Health as the Board may determine, together with such number of persons as may be appointed by the Minister with expertise and credibility in -

- (a) food production, manufacture and distribution;
- (b) consumer affairs;
- (c) food science, technology and nutrition;
- (d) administration or commercial matters affecting food.

5. Appointment of authorised officers - (1) The Board shall appoint such employees of the Ministry as it thinks fit as authorised officers to administer and enforce the provisions of this Act.

(2) The Director of Public Health from time to time shall, by virtue of being appointed to that office, be the senior authorised officer.

6. Duties of authorised officers - The Board shall lay down the duties of authorised officers who shall carry warrants of appointment signed by the Chairman of the Board.

7. Powers of authorised officers - (1) An authorised officer may, at any hour reasonable for the proper performance of his duty -

- (a) enter any premises where it is believed any food is prepared or stored or sold, and examine any food, article or package and take samples thereof;
- (b) stop or search or detain any vehicle in which it is believed on reasonable grounds that any food is being conveyed, and examine any food, article or package, and take samples thereof;
- (c) open and examine any receptacle or package which is believed to contain any food;

- (d) examine any books, accounts, documents or other records found on any premises that he believes contain any information relevant to the enforcement of this Act and make copies thereof or take extracts therefrom;
 - (e) seize and detain for such time as may be necessary any food, article or package by means of or in relation to which he believes any provision of this Act has been contravened;
 - (f) destroy or otherwise dispose of any food article or package which in the opinion of the authorised officer is decayed, putrified, or which if used in conjunction with food would render that food unfit for human consumption;
 - (g) call for aid from a member of the police whereupon it shall be the duty of such member so called to aid the authorised officer as required;
 - (h) question any person to ascertain if this Act is being complied with and require that person to answer any question.
- (2) An authorised officer acting under this section shall, if so requested, produce his warrant of appointment.

8. Limitations on authorised officers - Authorised officers shall not act in any matter in which they directly or indirectly have an association, familial or otherwise, with the individual, premises, trade or concern involved.

9. Assistance rendered to authorised officers - Every proprietor of any premises entered by an authorised officer and every person therein, who when asked to do so does not give to the authorised officer all reasonable assistance and furnish such information as may reasonably be required, shall be guilty of an offence.

10. Obstructing an authorised officer - Any person who obstructs an authorised officer in the course of his duties or prevents or attempts to prevent the execution of duties by the authorised officer under this Act shall be guilty of an offence.

11. False or misleading statements to authorised officers - Any person who makes any false or misleading statement either orally or in writing to any authorised officer engaged in carrying out his duties under this Act shall be guilty of an offence.

12. Collection of samples - (1) An authorised officer may demand, select, take or obtain samples of any food, article, or package required by him for the purposes of this Act, on payment or tender of the advertised value, but if there is no such value, then the market value, to the proprietor or to the agent or servant of the proprietor.

(2) Where food or article is kept for sale in a closed package, an authorised officer shall not demand less than the whole package.

13. Analysis of samples - (1) An authorised officer may submit any food article or package obtained or any sample therefrom to an analyst for analysis or examination.

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

(3) An authorised officer shall release any food article or package obtained under this Act when satisfied that all provisions of this Act with respect thereto have been complied with.

14. Duties of analysts - An analyst shall as soon as practicable analyse or examine any sample obtained in pursuance of this Act, and shall give an authorised officer a certificate specifying the result of the analysis or examination.

15. Destruction of seized articles (1) Where an authorised officer has either obtained or seized any food article or package, and the owner thereof or the person in whose possession it was when obtained or seized consents to the destruction thereof, then it may be destroyed or otherwise disposed of as the authorised officer may direct.

(2) If the owner or that person does not so consent to the destruction of the food article or package, the owner or his agent may apply within 72 hours to a Court to prevent the destruction or disposal thereof.

(3) Where any food, article or package has been obtained or seized under the provisions of this Act and that food article or package is the subject of or relevant to any Court proceedings under this Act, the Court may, in addition to any other order made or conviction entered, also order that the food article or package be destroyed or otherwise disposed of as the Court may direct.

(4) Any food article or package obtained or seized under this Act may at the option of an authorised officer be kept or stored in the premises where it was obtained or seized or may at the direction of an authorised officer be removed to any other proper place. The costs of removal and storage of any article seized shall be borne by the owner of such article.

16. Liabilities of authorised officers - No authorised officer who does any act in pursuance or intended pursuance of any of the functions conferred by or under this Act shall be under any civil or criminal liability in respect of the act, whether on the grounds of want of jurisdiction, or mistake of law or fact, or on any other ground unless such person has acted in bad faith.

17. Power to declare a food dangerous or injurious - (1) If, in the opinion of the Minister of Health, any food article or package may be dangerous or injurious to health, the Minister may declare it to be dangerous or injurious and may, upon being satisfied that the food is no longer dangerous or injurious to health, revoke any declaration.

(2) Every person who shall advertise, prepare, store or sell any food, article or package contrary to a declaration made under this section that shall be in force, shall be guilty of an offence.

18. Power to declare an area closed to food production - The Minister of Health may by order prohibit the cultivation, taking, harvesting, or otherwise obtaining, any food from any area (including any lagoon or reef) if, in the opinion of the Minister, that food may be dangerous or injurious to persons who consume that food. Any person who does not comply with an order made under this section shall be guilty of an offence.

19. Power to obtain particulars of certain food ingredients - (1) An authorised officer may direct any person who obtains particulars of the manufacture or importation or use of any substance to which this Act applies, to furnish to him, within such time as may be specified in such direction, such particulars as may be specified, of the composition and use of any substance sold or for sale in the course of business, or used in the preparation of food.

(2) Without prejudice to the generality of subsection (1), a direction made thereunder may require the following particulars to be furnished in respect of any substance, that is to say-

- (a) particulars of the composition and chemical formula of the substance;
- (b) particulars of the manner in which the substance is used or proposed to be used in the preparation of food;
- (c) particulars of any investigations carried out by, or to the knowledge of the person carrying on the business in question, for the purpose of determining whether and to what extent the substance, or any product formed when the substance is used, is injurious to, or in any other way affects human health;
- (d) particulars of any investigations carried out by, or to the knowledge of the person carrying on the business in question, for the purpose of determining the cumulative effect on the health of a person consuming the substance in ordinary quantities.

(3) No information relating to any business obtained by means of this section shall, without the previous consent in writing of the person carrying on the business in question, be disclosed by any person except in his 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.

PART III - LICENSING OF PREMISES

20. Premises to be licensed - (1) No person shall use or allow any place to be used as premises unless a Food Premises Licence has been issued under this Act to such person in respect thereof.

(2) No owner, occupier, or other person for the time being in charge of any premises shall except as provided by this Act, use or allow those premises to be used as an abattoir, unless an Abattoir Licence has been issued under this Act to such person in respect of those premises.

(3) Every application for a Food Premises Licence or for an Abattoir Licence shall be made to the Board in such form and containing such particulars, and accompanied by such fee as shall be prescribed by regulations made under this Act.

(4) Every Licence shall remain in force for a period not exceeding one year, and shall expire on the 30th June each year, unless sooner surrendered, suspended or cancelled under the provisions of this Act.

(5) A Licence may be surrendered by the holder thereof at any time, and shall not be transferable to any other person or place.

(6) Every proprietor who uses or allows any place to be used as premises without being the holder of a Licence in respect thereof commits an offence, and on conviction shall be liable to a fine of \$2,000, and in addition to such fine to a further fine of \$100 for each day that the offence shall have been committed.

21. Criteria for licensing - (1) Where an application is made to the Board in accordance with section 20, and is accompanied by the prescribed fee, a report shall be obtained from an authorised officer in respect of the premises, and as to the suitability of the applicant, and if the Board is satisfied that -

(a) The premises are constructed and equipped to such standards as are required by this Act or as may be prescribed; and

(b) The applicant -

(i) is capable of complying with such conditions as may be imposed or attached to the licence; and

(ii) is in all respects a suitable person to be granted a licence,

the Board may issue a Food Premises Licence or an Abattoir Licence (as the case may require) subject to such terms and conditions as the Board may impose, in such form as the Board may specify, for the premises in respect of which the application is made.

(2) Where the Director of Public Health is satisfied on reasonable grounds that -

(a) Any premises licensed under this Act no longer comply with the requirements of this Act or any regulations made hereunder; or

(b) The licensee has failed to comply with the terms of his licence or this Act, or with any regulations made under this Act -

the Director of Public Health may, after giving the licensee the opportunity of being heard or making representations, by notice in writing require him before a date specified in the notice, to remedy to the satisfaction of the Director of Public Health, the defects specified in the notice.

(3) If the licensee fails to comply with the requirements of a notice under subsection (2) before the date specified therein, the Director of Public Health after calling upon the licensee to show cause why his licence should not be suspended, may suspend his licence until the licensee has complied with the notice.

(4) The licensee of any premises may appeal to the Board against the suspension of a licence issued in respect to such premises.

(5) Every such appeal shall be made in writing within 21 days of the communication to the licensee of such suspension.

(6) Upon receipt of any appeal, the Board shall hear any representations made in writing by the licensee and the Director of Public Health, and thereupon determine the appeal.

- (7) In the exercise of its power to determine an appeal the Board may -
 - (a) dismiss such appeal;
 - (b) quash any suspension of a licence.
- (8) The decision of the Board under this section shall be final.

PART IV - GENERAL PROVISIONS

22. Unfit, unsafe, adulterated, damaged, deteriorated or perished food - (1) Any person who prepares or sells any food that is:

- (a) unfit or unsafe for human consumption;
- (b) adulterated; or
- (c) damaged, deteriorated or perished;

shall be guilty of an offence.

(2) For the purposes of subsection (1), food shall be deemed to be adulterated if:

- (a) it contains or is mixed with any substance which diminishes in any manner its nutritive or other beneficial properties as compared with such food in a pure, normal or in an undeteriorated condition;
- (b) any substance or ingredient has been extracted wholly or in part or removed from it so that its properties as compared with those of the food in a pure state and in an undeteriorated condition, are diminished;
- (c) it contains any substance which is prohibited by regulation;
- (d) it contains a greater proportion of any substance than is permitted by regulation;
- (e) it is prepared in a manner whereby damage, deterioration, or inferiority is or may be concealed;
- (f) it is wholly or partly the product of a diseased animal or of an animal which has died -
 - (i) naturally; or
 - (ii) in the case of a warm blooded animal, other than by slaughter;
- (g) it is injurious to health, dangerous or offensive;
- (h) a package or a thing included in a package or any thing or matter with which the food comes into contact consists wholly or partly of a substance which may render the food concerned injurious or dangerous to health;
- (i) it contains a foreign substance or matter that is dangerous or injurious to health;
- (j) it is in a sealed package and the package is damaged and can no longer ensure protection to its contents from contamination or deterioration;
- (k) it is in any package, and the contents of the package as originally packed have been removed in whole or in part and other injurious or harmful contents have been placed in the package.

23. False, misleading or deceptive representation - 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.

24. Food standards - Where a standard has been prescribed for any food, article or package any person who labels, packages, prepares, sells or advertises any food article or package which does not comply with that standard, in such a manner that it is likely to be mistaken as being food of the prescribed standard, shall be guilty of an offence.

PART V - FOOD HYGIENE PROVISIONS

25. Personal cleanliness and habits - (1) No person shall be engaged upon premises in the preparation, storage or sale of food while -

- (a) that person's clothing or body is unclean;

- (b) smoking or chewing tobacco or gum;
- (c) suffering from any communicable disease or any skin eruption;
- (d) wearing unclean or medicated bandages;
- (e) not in possession of a medical certificate that is less than 12 months old, permitting that person to be so engaged.

(2) Every proprietor who shall permit (whether knowingly or not) any person to be so engaged contrary to subsection (1) shall be guilty of an offence.

26. Insanitary conditions - Any person who prepares, or sells food under insanitary conditions shall be guilty of an offence.

27. Food contamination or spoilage - (1) No person who is engaged upon premises shall do or omit to do anything whereby any food becomes, or is likely to become contaminated, infected, polluted, tainted, spoiled or in any way becomes a risk to public health.

(2) No person shall use any premises or permit any premises to be used for or in connection with the sale, preparation, packaging, or storage of food, if such premises are used for any other purpose that is likely to affect the quality of the food.

(3) Any person who contravenes the provisions of subsections (2) or (3) is guilty of an offence.

28. Equipment and facilities - (1) No person shall use any premises or permit any premises to be used for or in connection with the sale, preparation, or storage of food, or to be used as an abattoir unless the premises -

- (a) have walls, floors, and ceilings that are suitably constructed, in good repair, and easy to clean;
- (b) have food contact surfaces which are smooth, easily cleaned and in such repair as to be readily maintained in a clean and sanitary condition;
- (c) are kept adequately lighted at all times when work is being carried out;
- (d) are kept adequately ventilated at all times when work is being carried out;
- (e) are provided with adequate means of drainage for the removal of waste liquids, and such drains are maintained in clean, working order;
- (f) are provided with sinks and other sanitary fittings necessary for cleaning articles, and such sanitary fittings are maintained in clean, working order;
- (g) are provided with an adequate supply of hot and cold water, and soap and other suitable detergents;
- (h) are provided with adequate conveniently located toilet facilities for all persons engaged or employed in or about the premises. All toilet facilities shall have proximate access to adequate hand washing facilities, including adequate hot water, hand cleansing soap or detergent, and disposable towels or other sanitary means for hand drying.
- (i) are provided with leak-proof, non-absorbent containers for the sanitary storage of all solid waste and other garbage, with all such waste stored so as to be inaccessible to vermin and animals and disposed of in such a manner as to prevent the creation of any nuisance or objectionable odours;
- (j) are provided with adequate means of preventing the entrance of vermin into food handling and storage areas, and receive regular treatment designed to protect against the breeding or presence of rodents, flies, cockroaches, ants and other pests;
- (k) are at all times kept clean and free from foul odours and as far as practicable, free from dust;

(2) Every person who contravenes any part of subsection (1) shall be guilty of an offence.

PART VI SLAUGHTER OF MEAT

29. Animals to be slaughtered at an abattoir - (1) On the island of Rarotonga, no person shall slaughter any animal for sale for human consumption, unless the slaughter shall be undertaken at an abattoir licensed for that purpose pursuant to this Act.

(2) Notwithstanding subsection (1), on islands other than Rarotonga where abattoir facilities are not available, no person shall slaughter any animal for sale for human consumption unless that slaughter shall be undertaken at a slaughterhouse approved for that purpose by an authorised officer on that island.

(3) Any person who contravenes subsections (1) or (2) shall be guilty of an offence.

30. Abattoirs to be kept clean - (1) Every abattoir and every slaughterhouse shall be kept clean and free from rodents, insects, and animals other than those animals intended for slaughter.

(2) Any person who contravenes subsection (1) shall be guilty of an offence.

31. Ante mortem inspection of animals - (1) No person may slaughter any animal for sale for human consumption unless that animal has undergone ante-mortem inspection by an authorised officer.

(2) Any person who contravenes subsection (1) shall be guilty of an offence.

32. Inspection of carcasses - (1) No person may sell meat or offal until that meat or offal has been passed as fit for human consumption by an authorised officer.

(2) Any person who contravenes subsection (1) shall be guilty of an offence.

33. Transport of meat - (1) All meat and offal removed from an abattoir or slaughterhouse shall be transported in clean vehicles or containers, and protected from insects, animals, dust and sunlight.

(2) All vehicles and containers used for the transport of meat and offal shall, as far as practicable, be used for that purpose only.

(3) Any person who contravenes subsection (1) shall be guilty of an offence.

PART VII- IMPORTATION

34. Importation - (1) Subject to the provisions of subsection (2), the importer of any article which does not comply with the provisions of this Act shall be guilty of an offence.

(2) Where an article sought to be imported into the Cook Islands would, if sold in the Cook Islands, constitute a contravention of this Act, the article may be imported into the Cook Islands for the purpose of satisfactory repackaging, relabelling or reconditioning the same so that the provisions of this Act are complied with, and where such repackaging, relabelling or reconditioning is not carried out within one month of the importation, such article shall be exported by the importer within a further period of one month or such period as the Director of Public Health may determine, and where it is not exported, it shall be forfeited and disposed of as the Director of Public Health may direct.

PART VIII- PROCEEDINGS

35. Power of Court to dispose of articles - (1) Where a person has been convicted of an offence under this Act, the Court in addition to any other penalty, may order that any article in relation to which the offence was committed be forfeited, and upon such an order being made such articles may be disposed of as the Court may direct and the cost of disposal shall be borne by the convicted person.

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

- (a) in the case of a first offence, to a fine not exceeding \$1,000;
- (b) in the case of a subsequent offence, to fine not exceeding \$2,000.

(2) If a person found guilty of an offence is found to have committed the offence with the intent to defraud or mislead, the person may be fined a further sum not exceeding \$2,000.

(3) Where the person convicted is the holder of a licence issued pursuant to section 20, the Court may, in addition to any other penalty, cancel the licence.

37. Evidence - In any proceedings under this Act -

- (a) a certificate of analysis purporting to be signed by an analyst shall be accepted as prima facie evidence of the facts stated therein, provided that no such certificate 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;
- (b) evidence that a package contains any article to which this Act applies, bore a name and address 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;
- (c) any substance commonly used for human consumption, if sold, 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
- (d) any substance commonly used for human consumption which is found on premises used for the preparation, storage or sale of that substance shall be presumed, until the contrary is proved, to be intended for sale, for human consumption; and
- (e) any substance capable of being used in the composition or preparation of any substance commonly used for human consumption which is found on premises on which that substance is prepared shall, until the contrary is proved, be presumed to be intended for such use.
- (f) 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.

38. Regulations - (1) The Queen's Representative may from time to time by Order in Executive Council make regulations providing for all matters as are contemplated by this Act.

(2) Without limiting the generality of subsection (1), the Queen's Representative may make regulations:

- (a) 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;
- (b) regulating -
 - (i) the labelling and packaging and the offering, exposing and advertising for sale of food;
 - (ii) the size, dimensions and other specifications of packages of food;
 - (iii) the sale or the conditions of sale of any food; and
 - (iv) the use of any substance as an ingredient in any food, to prevent the consumer or purchaser 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;
- (c) prescribing standards of composition, strength, potency, purity, quality or other property of any food;
- (d) regulating the importation or exportation of food, in order to ensure compliance with this Act;

- (e) regulating the method of preparation, preserving, packing, storing, conveying, and testing of any food, in the interests of, or for the prevention of injury to, the health of the consumer, user or purchaser, and for the observance of adequate standards of hygiene in the carrying out of these activities;
 - (f) providing for the analysis or examination of food and the method of analysis;
 - (g) providing for the taking of samples of any articles for the purposes of this Act;
 - (h) exempting any food, from all or any of the provisions of this Act and prescribing the conditions of such exemption;
 - (i) providing standards for the microbiological quality of foods;
 - (j) requiring procedures for the recall of foods;
 - (k) providing specifications for any materials in contact with food, including packaging, to avoid contamination both from the environment and the materials themselves; and
 - (l) exempting any class of person or premises from all or any of the provisions of this Act or regulations made hereunder, and different exemptions may be prescribed in respect of different islands.
- (3) Regulations made pursuant to this section may prescribe offences, and penalties for such offences, not exceeding a fine of \$1000.

PART IX - MISCELLANEOUS

39. Consequential amendments - Part I of the Schedule to the Ministry of Health Act 1991 is amended, by adding to that Part, the words "Food Act 1992-93".

40. Repeals - The enactments set out in the Schedule to this Act are repealed.

This Act is administered by the Ministry of Health.

SCHEDULE**(Section 44)****(Enactments repealed)**

- Manufacture and Sale of Food Ordinance 1949
 - Manufacture and Sale of Food Amendment Ordinance 1951
-