Reprint
as at 5 August 2013

Food Act 1981

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Note
Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the Ministry for Primary Industries.

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Exemptions from Food Hygiene Regulations 1974

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An Act to consolidate and amend the law relating to the sale of food

1 Short Title and commencement

(1) This Act may be cited as the Food Act 1981.

(2) This Act shall come into force on a date to be appointed by the Governor-General by Order in Council, and different dates may be so appointed in respect of different provisions of this Act.

Section 1(2): this Act brought into force, on 1 August 1984, by the Food Act Commencement Order 1984 (SR 1984/178).

2 Interpretation

In this Act, unless the context otherwise requires,—

advertisement means—

(a) any words, whether written, printed, or spoken; and

(b) any pictorial representation, design, or device; and

(c) any transmitted images or sounds, or both such images and sounds in association with one another,—

used or appearing to be used to promote the sale of any food or appliance; and includes any trade circular, any label, and any advertisement in any trade journal

advertising material means material used or intended to be used as an advertisement

agent, in relation to any food, includes any person who, not being the owner of the food, or a person appointed or employed as the agent or employee of the owner, is, with the consent or acquiescence of the owner, for the time being in possession or control of the food

analyst means a person appointed to be an analyst under section 7

appliance includes the whole or any part of any utensil, container, vessel, machinery, instrument, apparatus, or article used or represented for use in or for the preparing, processing, manufacturing, packing, storing, carrying, delivering, or selling of any food; and includes any utensil, container, vessel, machinery, instrument, apparatus, or article used or capable of being used in the cleaning of any such appliance

approved auditor means a person for the time being approved under section 8ZV to carry out periodic audits of food safety programmes adopted by persons who hold exemptions

Australia - New Zealand Joint Food Standards Agreement means the Agreement Between the Government of

New Zealand and the Government of Australia Establishing a System for the Development of Joint Food Standards, done at Wellington on 5 December 1995

bulk cargo container means an article of transport equipment, being a lift van, movable tank, or other similar structure,—

(a) of a permanent character and accordingly strong enough to be suitable for repeated use; and

(b) specially designed to facilitate the carriage of goods by 1 or more modes of transport, without immediate repacking; and

(c) fitted with devices permitting its ready handling and its transfer from one mode of transport to another; and

(d) so designed as to be easy to fill and empty; and

(e) having an internal volume of 1 cubic metre or more;—

and includes the normal accessories and equipment of the container, when imported with the container and used exclusively with it; but does not include any vehicle, or any ordinary packing case, crate, box, or other similar article used for packing

Customs or **the Customs** has the meaning given to it by section 2(1) of the Customs and Excise Act 1996

description includes any pictorial representation; and **described** has a corresponding meaning

designated officer, in any provision of this Act, means an officer for the time being designated by the Director-General for the purposes of that provision, or any provision or provisions of which it forms part; and includes the Director

Director means the person for the time being designated as Director under section 7A

Director-General means the chief executive of the Ministry

district means the district of a territorial authority

enforcement authority, in Part 1A, means,—

(a) in relation to an exemption granted by the Director-General, the Director-General:

(b) in relation to an exemption granted by a territorial authority, that territorial authority

entertainment includes any social gathering, amusement, exhibition, performance, game, sport, or trial of skill

examine includes weigh, count, and measure; but does not include take or analyse samples

exemption means an exemption granted under section 8F or section 8N

food means anything that is used or represented for use as food or drink for human beings; and includes—

(a) any ingredient or nutrient or other constituent of any food or drink, whether that ingredient or nutrient or other constituent is consumed or represented for consumption by human beings by itself or when used in the preparation of or mixed with or added to any food or drink; and

(b) anything that is or is intended to be mixed with or added to any food or drink; and

(c) chewing gum, and any ingredient of chewing gum, and anything that is or is intended to be mixed with or added to chewing gum

food safety programme has the meaning given to it in section 4A

food standard means a food standard issued under section 11C and for the time being in force

guideline means a guideline issued pursuant to section 8ZK and for the time being in force

importer means any person by or for whom any goods are imported; and includes the consignee of any goods; and also includes any person who is or becomes—

(a) the owner of any goods; or

(b) entitled to the possession of any goods; or

(c) beneficially interested in any goods—

on or at any time after the importation of those goods and before they have ceased to be subject to the control of the Customs in accordance with the Customs and Excise Act 1996

label means any written, pictorial, or other descriptive matter appearing on or attached to—

(a) the exterior of any food; or

(b) any package containing a food;—

and **labelled** has a corresponding meaning

labelling material means material used or intended to be used as a label

local authority inspector means the environmental health officer of a territorial authority

Medical Officer of Health means the Medical Officer of Health appointed under the Health Act 1956 for a health district; and includes any Deputy Medical Officer of Health; and also includes any other officer acting under the direction of the Medical Officer of Health for any of the purposes of this Act

Minister means the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of this Act

Ministry means the department of State that, with the authority of the Prime Minister, is responsible for the administration of this Act

officer means an officer for the time being appointed under section 7

package includes anything in or by which goods for carriage or for sale may be cased, covered, enclosed, contained, or packed; and, in the case of goods sold or carried or intended for sale or carriage in more than 1 package, includes every such package

port means either a Customs port or a Customs airport designated as such under section 9 of the Customs and Excise Act 1996

prescribed means prescribed by or under regulations made under this Act

publish means—

(a) insert in any newspaper or other periodical publication printed or published in New Zealand; or

(b) send to any person through the Post Office or otherwise; or

(c) deliver to any person or leave upon premises in the occupation of any person; or

(d) broadcast within the meaning of the Broadcasting Act 1976; or

(e) bring to the notice of the public in New Zealand in any other manner

territorial authority means a territorial authority within the meaning of the Local Government Act 2002

vehicle includes an aircraft, a hovercraft, and a ship.

Compare: 1969 No 7 s 2; 1979 No 27 s 2; 1979 No 59 s 8(3)

Section 2 **appliance**: amended, on 18 June 2002, by section 15 of the Food Amendment Act 2002 (2002 No 26).

Section 2 **approved auditor**: inserted, on 1 July 1997, by section 2 of the Food Amendment Act (No 2) 1996 (1996 No 97).

Section 2 **Australia - New Zealand Joint Food Standards Agreement**: inserted, on 1 July 1996, by section 2 of the Food Amendment Act 1996 (1996 No 41).

Section 2 **Customs** or **the Customs**: inserted, on 1 October 1996, by section 289(1) of the Customs and Excise Act 1996 (1996 No 27).

Section 2 **designated officer**: inserted, on 1 July 2002, by section 4(1) of the Food Amendment Act 2002 (2002 No 26).

Section 2 **Director**: substituted, on 23 March 1987, by section 6 of the Health Amendment Act 1987 (1987 No 10).

Section 2 **Director-General**: substituted, on 1 July 2002, by section 4(1) of the Food Amendment Act 2002 (2002 No 26).

Section 2 **district**: substituted, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Section 2 **enforcement authority**: inserted, on 1 July 1997, by section 2 of the Food Amendment Act (No 2) 1996 (1996 No 97).

Section 2 **exemption**: inserted, on 1 July 1997, by section 2 of the Food Amendment Act (No 2) 1996 (1996 No 97).

Section 2 **food safety programme**: inserted, on 1 July 1996, by section 2 of the Food Amendment Act 1996 (1996 No 41).

Section 2 **food standard**: inserted, on 1 July 1996, by section 2 of the Food Amendment Act 1996 (1996 No 41).

Section 2 **guideline**: inserted, on 1 July 1997, by section 2 of the Food Amendment Act (No 2) 1996 (1996 No 97).

Section 2 **importer**: amended, on 1 October 1996, by section 289(1) of the Customs and Excise Act 1996 (1996 No 27).

Section 2 **local authority inspector**: substituted, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Section 2 **Minister**: substituted, on 1 July 2002, by section 4(1) of the Food Amendment Act 2002 (2002 No 26).

Section 2 **Ministry**: inserted, on 1 July 2002, by section 4(1) of the Food Amendment Act 2002 (2002 No 26).

Section 2 **officer**: substituted, on 1 July 2002, by section 4(1) of the Food Amendment Act 2002 (2002 No 26).

Section 2 **port**: substituted, on 1 October 1996, by section 289(1) of the Customs and Excise Act 1996 (1996 No 27).

Section 2 **territorial authority**: substituted, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Part 1
Application and administration of Act

Application

3 Act to bind Crown

This Act shall bind the Crown.

Compare: 1969 No 7 s 5; 1979 No 27 s 3

4 What constitutes sale

(1) In this Act, unless the context otherwise requires, **sell** means sell for human consumption or use; and includes—

(a) selling for resale for human consumption or use; and

(b) offering or attempting to sell, or receiving for sale, or having in possession for sale, or exposing for sale, or sending or delivering for sale, or causing or permitting to be sold, offered, or exposed for sale; and

(c) barter; and

(d) supplying under a contract, together with accommodation, service, or entertainment, in consideration of an inclusive charge for the article supplied and the accommodation, service, or entertainment;—

and **sale** and **sold** have corresponding meanings.

(2) For the purposes of this Act, any article of food that is part of, or supplied with, any meal or food for which payment is made or required to be made, and that is supplied for consumption in any shop, hotel, restaurant, or eating-house, or at any stall or other place, or in any vehicle, shall be deemed to have been sold or offered or exposed for sale.

(3) For the purposes of this Act, every person shall be deemed to sell or to intend to sell any food if he sells or intends to sell for human consumption or use any article of which the food is a constituent.

(4) When any food is sold or offered or exposed for sale, it shall be deemed to be sold or offered or exposed for sale for human consumption or use, unless the contrary is proved.

(5) For the purposes of this Act, the sale of any food for the purpose of being mixed with any other food, or with a food of the same kind, shall be deemed to be a sale for human consumption or use if the bulk or product produced by the mixing, or any part of the bulk or product, is intended to be sold for human consumption or use.

(6) The purchase and sale, under the provisions of this Act, of a sample of any food for the purpose of analysis shall be deemed to be a purchase and sale of the food for human consumption or use, unless the seller proves that the bulk from which the sample was taken was offered, exposed, or intended for sale for purposes other than human consumption or use.

(7) When a sample of any milk is taken from a package, the sample shall be deemed for the purposes of this Act to be a sample of any bulk of which the milk in that package forms part notwithstanding that the milk was intended to be mixed with milk in any other package or packages before being sold.

(8) For the purposes of this Act, a person packs any food or appliance for sale whether he packs the food or appliance for sale by himself or by any other person.

(9) In this section the term **use** means any use in connection with the preparation or packing of food for human consumption.

Compare: 1969 No 7 s 3

4A Meaning of food safety programme

(1) In this Act, unless the context otherwise requires, **food safety programme** means a programme designed to identify and control food safety risk factors in order to establish and maintain food safety.

(2) The food safety risk factors may relate to the production, manufacture, preparation, packaging, storage, handling, transport, distribution, or sale of food.

(3) A food safety programme may relate to—

(a) a particular part of the food industry:

(b) a particular person or group of persons within the food industry.

Section 4A: inserted, on 1 July 1996, by section 3 of the Food Amendment Act 1996 (1996 No 41).

5 Food offered as prizes

(1) Where any food that is intended for human consumption is offered as a prize or reward in connection with any entertainment to which the public are admitted, whether on payment of money or not, this Act shall apply in relation to the food, as if it were, or had been, exposed for sale by each person concerned in the organisation of the entertainment.

(2) Where any food that is intended for human consumption is offered as a prize or reward or given away for the purpose of advertisement, or in furtherance of any trade or business, this Act shall apply in relation to the food, as if it were, or had been, exposed for sale by the person offering it or giving it away.

Compare: 1969 No 7 s 4; 1979 No 27 s 4

Administration

6 Advisory and technical committees

(1) The Minister may from time to time appoint such advisory or technical committees as he thinks fit to advise him for any of the purposes of this Act, and may from time to time determine the functions of any such committee.

(2) There may be paid out of money appropriated by Parliament for the purpose to the members of any committee appointed under this section remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly as if the committee were a statutory board within the meaning of that Act.

(3) Subject to the provisions of this Act and of any regulations made under this Act, every such committee may regulate its own procedure.

Compare: 1969 No 7 s 20; 1979 No 27 s 8

7 Appointment of analysts and officers

(1) There may from time to time be appointed under the State Sector Act 1988 such analysts and officers as may be required for the purposes of this Act.

(2) The Director-General may from time to time appoint any person, not being a member of the Public Service, as an analyst or officer for the purposes of this Act.

(2A) Officers may be appointed under subsection (1) or subsection (2)—

(a) individually; or

(b) as members of a stated class.

(3) Any appointment under subsection (2) may be made either generally for the purposes of this Act or for any specified purpose, or for the exercise of any specified power or function of an analyst or officer under this Act, or for any specified period; and may be made in respect of New Zealand generally or in respect of any specified district or districts.

(4) There may be paid out of money appropriated by Parliament for the purpose to any person appointed under subsection (2) such remuneration as may be fixed by the Director-General.

(5) No person appointed as an analyst or officer under subsection (2) shall be deemed by reason of that appointment to be employed in the service of Her Majesty for the purposes of the State Sector Act 1988 or of the Government Superannuation Fund Act 1956.

Compare: 1969 No 7 s 19; 1979 No 27 s 9

Section 7(1): amended, on 1 April 1988, pursuant to section 88(2) of the State Sector Act 1988 (1988 No 20).

Section 7(2): amended, on 1 July 1993, by section 32 of the Health Reforms (Transitional Provisions) Act 1993 (1993 No 23).

Section 7(2A): inserted, on 1 July 2002, by section 5 of the Food Amendment Act 2002 (2002 No 26).

Section 7(4): amended, on 1 July 1993, by section 32 of the Health Reforms (Transitional Provisions) Act 1993 (1993 No 23).

Section 7(5): amended, on 1 April 1988, pursuant to section 88(2) of the State Sector Act 1988 (1988 No 20).

7A Designation of Director

The Director-General must from time to time designate an employee as Director for the purposes of this Act.

Section 7A: substituted, on 1 July 2002, by Schedule 1 of the Food Amendment Act 2002 (2002 No 26).

8 Exercise of powers of Director and other officers

(1) The Director and every officer must exercise and perform the powers and functions conferred by this Act—

(a) under the direction of the Director-General; and

(b) in the case of the Director, and every officer appointed under the State Sector Act 1988, under the control of—

(i) the Director-General; and

(ii) every other employee of the Ministry to whom the Director or officer is subordinate.

(1A) *[Repealed]*

(2) Where, by virtue of any provision of this Act, a reasonable belief in any particular state of affairs is a prerequisite for the exercise of any power by an officer or local authority inspector, it shall be sufficient if the officer or inspector exercises that power at the direction of any other officer or inspector who is superior to him and who, at the time of giving the direction, held such a belief in that state of affairs.

Compare: 1979 No 27 s 10

Section 8(1): substituted, on 1 July 2002, by Schedule 1 of the Food Amendment Act 2002 (2002 No 26).

Section 8(1A): repealed, on 1 July 1993, by section 32 of the Health Reforms (Transitional Provisions) Act 1993 (1993 No 23).

Part 1A
Exemptions from Food Hygiene Regulations 1974

Part 1A: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

Purpose

Heading: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8A Purpose

The purpose of this Part is to facilitate a voluntary transition from compliance with the Food Hygiene Regulations 1974

(SR 1974/169) to the adoption, by the food industry, of food safety programmes.

Section 8A: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8AA Relationship between this Part and Animal Products Act 1999

(1) The following persons are exempt from the requirements of the Food Hygiene Regulations 1974, and therefore from the application of this Part, in respect of any operations carried out under a risk management programme registered under Part 2 of the Animal Products Act 1999:

(a) primary processors of animal material, dual operator butchers, and other persons required by that Act to operate under a registered risk management programme:

(b) secondary processors of animal products that are food who have elected, by registering a risk management programme as provided in section 32 of that Act, to be subject to the provisions of that Act rather than the Food Act regime:

(ba) dairy processors (as defined in section 4(1) of the Animal Products Act 1999):

(c) subject to subsection (2), secondary processors of animal products that are food who have, in accordance with section 34 of the Animal Products Act 1999, registered a food safety programme as a risk management programme for the purpose of operating under the 2 programmes alternatively or intermittently.

(2) A person who is subject to any regulated control scheme under the Animal Products Act 1999 is also exempt from the requirements of the Food Hygiene Regulations 1974, and therefore from the application of this Part, in respect of any operations that are covered by the regulated control scheme, unless the regulated control scheme specifically states that such operations are not to be treated as exempt from the Food Act regime.

(3) The exemption from the requirements of this Part or of the Food Hygiene Regulations 1974 of secondary processors referred to in subsection (1)(c) relates only to operations carried

out under the registered risk management programme in accordance with the terms and conditions of its registration.

(4) Any food safety programme that is so registered as a risk management programme is to be subject to whichever audit or verification regime is specified for it under section 34(3) of the Animal Products Act 1999.

(5) The terms **primary processor** and **secondary processor** have the meanings given by section 4 of the Animal Products Act 1999.

Section 8AA: inserted, on 1 November 1999, by section 8(1) of the Animal Products (Ancillary and Transitional Provisions) Act 1999 (1999 No 94).

Section 8AA(1)(ba): inserted, on 1 June 2005, by section 10(1) of the Animal Products (Ancillary and Transitional Provisions) Amendment Act 2005 (2005 No 27).

8AB Relationship between this Part and Wine Act 2003

The following persons are exempt from the requirements of the Food Hygiene Regulations 1974, and therefore from the application of this Part, in respect of any operations carried out under a wine standards management plan registered under subpart 1 of Part 2 of the Wine Act 2003:

(a) winemakers (as defined in section 4 of that Act):

(b) makers of wine products (as defined in section 4 of that Act):

(c) any other person who is required to operate under a wine standards management plan under section 12 of that Act.

Section 8AB: inserted, on 1 January 2004, by section 125 of the Wine Act 2003 (2003 No 114).

Applications for exemption

Heading: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8B Applications for exemption

(1) Subject to section 8C, any person may apply to the Director-General or the relevant territorial authority for an exemption from the provisions of the Food Hygiene Regulations 1974 in respect of any premises of the applicant, or any vehicle of the applicant, or both.

(2) Every application for an exemption shall—
- (a) be made in writing; and
- (b) be in the form provided or approved by the Director-General or, as the case requires, the territorial authority for that purpose; and
- (c) be accompanied by the prescribed fee (if any).

(3) For the purposes of this section, the **relevant territorial authority**, in relation to an application made under this section, is,—
- (a) where the application relates to any premises, the territorial authority that, under this Part, has the function of granting exemptions in respect of the district in which those premises are situated:
- (b) where the application relates to a vehicle, any territorial authority that, under this Part, has the function of granting exemptions in respect of a district in which that vehicle operates.

Section 8B: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8C Limitations on further applications

(1) Subject to subsection (2), where an application for an exemption is made under section 8B, and the exemption is refused, no further application that is the same or substantially the same as the first application may be made (whether to the same person or body or a different person or body) within the period of 6 months after the date of that refusal.

(2) A further application may be made within the period specified in subsection (1) if the Director-General or, as the case requires, the territorial authority to which the application is made is satisfied that there are special circumstances justifying the making of the further application within that period.

Section 8C: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

Effect of exemption

Heading: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8D Effect of exemption

(1) Where an exemption is in force in respect of any premises or vehicle, nothing in any of Parts 1 to 17 of the Food Hygiene Regulations 1974 shall apply in respect of those premises or, as the case may be, that vehicle.

(2) The fact that an exemption is in force in respect of any premises or vehicle does not affect the powers of a designated officer under regulation 82 of the Food Hygiene Regulations 1974 in respect of those premises or, as the case may be, that vehicle.

Section 8D: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

Section 8D(2): amended, on 1 July 2002, by Schedule 1 of the Food Amendment Act 2002 (2002 No 26).

8E Duties of territorial authorities to enforce Food Hygiene Regulations 1974 not affected

(1) Subject to section 8D(1), nothing in this Part affects the duty of a territorial authority to enforce the provisions of the Food Hygiene Regulations 1974 within its own district.

(2) For the purpose of fulfilling the duty referred to in subsection (1), every territorial authority shall take all reasonable steps—

(a) to inform itself as to whether or not the premises and vehicles in respect of which its duty applies—

(i) are registered in accordance with the Food Hygiene Regulations 1974; or

(ii) are exempt from compliance with those regulations by virtue of an exemption granted under this Part; and

(b) to keep that information up to date.

Section 8E: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

Powers of Director-General to grant exemptions

Heading: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8F Procedure where application made to Director-General

On receiving an application made under section 8B, the Director-General, if he or she is satisfied—

(a) that the applicant has adopted an appropriate food safety programme; and

(b) that the applicant will take all reasonable steps to comply with all relevant provisions of this Act, all relevant provisions of regulations made under this Act (other than the Food Hygiene Regulations 1974), and with all applicable food standards; and

(c) that the granting of the exemption is appropriate, having regard to all relevant circumstances,—

may exempt the applicant from the provisions of the Food Hygiene Regulations 1974 in respect of any premises of the applicant, or any vehicle of the applicant, or both.

Section 8F: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8G Definition of appropriate food safety programme

A food safety programme is not appropriate, for the purposes of section 8F or section 8O, unless it complies, at a minimum, with the following requirements:

(a) the programme must be based on the principles of Hazard Analysis Critical Control Point (HACCP), as set out in the current edition of the *Codex Alimentarius*:

(b) the programme must be in writing:

(c) the programme must—

(i) systematically identify the hazards involved in the preparation of food at the premises or, as the case may be, in the vehicle concerned:

(ii) identify how those hazards will be monitored:

(iii) identify the means by which those hazards will be controlled, and provide for the systematic supervision of those controls:

(d) the programme must identify the food preparation tasks or categories of tasks that will be carried out, and identify, in relation to each such task or category of task,—

(i) the skills required to perform it:

(ii) the persons or categories of persons who will perform it:

(iii) the training and instruction necessary before the task can be performed, and any ongoing training and instruction that may be required:

(e) the programme must identify the regular maintenance tasks that must be carried out in relation to the premises or vehicle concerned, and in relation to any equipment used in the premises or vehicle:

(f) the programme must provide for compliance with the programme to be audited, on a regular basis, by an approved auditor:

(g) where appropriate, the programme must provide for the recall of unsafe food:

(h) the programme must set out appropriate record-keeping requirements.

Section 8G: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8H Director-General not to refuse exemption unless applicant given opportunity to be heard

If the Director-General proposes to refuse to grant an exemption, the Director-General shall give the applicant—

(a) a notice containing such particulars as will clearly inform the applicant of the substance of the grounds on which the Director-General proposes to refuse to grant the exemption; and

(b) a copy of any information on which the Director-General relies in proposing to refuse to grant the exemption; and

(c) a reasonable opportunity to make written submissions in respect of the matter.

Section 8H: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8I Terms of exemption

(1) Every exemption granted under section 8F by the Director-General shall specify the terms of the exemption.

(2) Subject to subsection (5), the Director-General may from time to time vary the terms of an exemption granted under section 8F, by endorsement on the exemption or otherwise in writing.

(3) An exemption may be unconditional or subject to such conditions as the Director-General thinks fit and specifies in the exemption.

(4) Subject to subsection (5), the Director-General may at any time, by written notice to the holder of an exemption, revoke, amend, or add to any conditions imposed pursuant to subsection (3).

(5) Except where the terms or conditions of an exemption are varied, pursuant to subsection (2) or subsection (4), on the application of the holder of the exemption and in accordance with the terms of that application, the Director-General shall not vary the terms or conditions of any exemption under this section without first giving the holder of the exemption a reasonable opportunity to make written submissions to the Director-General in relation to the matter.

Section 8I: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8J Duration of exemption

(1) The Director-General may specify in any exemption granted under section 8F that the exemption is to have effect indefinitely or for a stated period.

(2) Every exemption granted under section 8F—

- (a) shall come into force on the date of its issue; and
- (b) shall continue in force until,—
  - (i) it is revoked pursuant to section 8K; or
  - (ii) in the case of an exemption granted for a stated period, the expiry of that period; or
  - (iii) it is surrendered pursuant to section 8L.

Section 8J: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8K Revocation of exemption

(1) Subject to subsection (3), the Director-General may at any time, by notice in writing to the holder of an exemption, revoke an exemption granted under section 8F.

(2) Without limiting the generality of subsection (1), the Director-General may revoke an exemption if the Director-General is satisfied—

(a) that the holder of the exemption has failed to comply with any condition of the exemption; or

(b) that the holder of the exemption has contravened, or failed to comply with, any provision of—

(i) this Act; or

(ii) any regulations made under this Act (other than any provision of the Food Hygiene Regulations 1974 from which the holder is exempt); or

(iii) any applicable food standard.

(3) The Director-General shall not revoke an exemption unless the Director-General has first given the holder of the exemption a reasonable opportunity to be heard.

Section 8K: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8L Surrender of exemption

(1) Subject to this section, the holder of an exemption granted under section 8F may at any time surrender that exemption by notice in writing to that effect sent to the Director-General.

(2) The surrender shall take effect on the expiry of 3 months after the date of the receipt of the notice by the Director-General, or on such earlier date as the Director-General may approve.

(3) On or before the surrender takes effect, the holder of the exemption shall send the exemption to the Director-General.

Section 8L: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8M Substituted exemption

Notwithstanding anything in this Part, the Director-General may, if he or she thinks fit, cancel an existing exemption granted under section 8F and issue a new exemption in substitution for it,—

(a) where the terms or conditions of the existing exemption are to be or have been varied under section 8I:

(b) where the existing exemption has become disfigured or dilapidated, or contains a mistake, or where the Director-General is satisfied that the existing exemption has been lost or destroyed.

Section 8M: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

Powers of territorial authorities to grant exemptions

Heading: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8N Procedure where application made to territorial authority

(1) On receiving an application made under section 8B, the territorial authority, if it is satisfied—

(a) that the applicant has adopted a food safety programme; and

(b) that guidelines are in force that set standard criteria which that food safety programme must satisfy; and

(c) that the food safety programme satisfies those standard criteria; and

(d) that the applicant will take all reasonable steps to comply with all relevant provisions of this Act, all relevant provisions of regulations made under this Act (other than the Food Hygiene Regulations 1974), and with all applicable food standards; and

(e) that the granting of the exemption is appropriate, having regard to all relevant circumstances,—

may exempt the applicant from the provisions of the Food Hygiene Regulations 1974 in respect of any premises of the applicant, or any vehicle of the applicant, or both.

(2) On receiving an application made under section 8B, the territorial authority, if it is satisfied—

(a) that the applicant has adopted a food safety programme; but

(b) that no guidelines are in force that set standard criteria which that food safety programme must satisfy; and

(c) that the application otherwise satisfies the requirements of paragraphs (d) and (e) of subsection (1),—

shall refer the application to the Director-General for determination pursuant to section 8O.

(3) Where, pursuant to section 8O(3) or section 8X(1)(b), the Director-General directs a territorial authority to grant an exemption, the territorial authority shall, in accordance with that direction, grant the exemption accordingly.

Section 8N: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8O Applications referred to Director-General

(1) Where, pursuant to section 8N(2), an application is referred to the Director-General, the Director-General shall decide whether or not the food safety programme adopted by the applicant is appropriate.

(2) Section 8G shall apply for the purposes of deciding, pursuant to this section, whether or not a food safety programme is appropriate.

(3) If the Director-General, after considering an application in accordance with this section, decides that the food safety programme adopted by the applicant is appropriate,—

(a) the Director-General shall direct the relevant territorial authority to grant an exemption to the applicant; and

(b) the Director-General shall specify in that direction,—

(i) the terms of the exemption; and

(ii) the conditions (if any) to which the exemption is to be subject; and

(iii) unless the exemption is to have effect indefinitely, the term of the exemption.

(4) Subject to subsection (5), if the Director-General, after considering an application in accordance with this section, is not satisfied that the food safety programme adopted by the applicant is appropriate, the Director-General shall direct the relevant territorial authority to refuse to grant an exemption to the applicant, and the territorial authority shall refuse to grant the exemption accordingly.

(5) If the Director-General proposes to give a direction pursuant to subsection (4), the Director-General shall give the applicant—

(a) a notice containing such particulars as will clearly inform the applicant of the substance of the grounds on which the Director-General proposes to give the direction; and

(b) a copy of any information on which the Director-General relies in proposing to give the direction; and

(c) a reasonable opportunity to make written submissions in respect of the matter.

Section 8O: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8P Territorial authority not to refuse exemption unless applicant given opportunity to be heard

(1) If a territorial authority proposes to refuse to grant an exemption, the territorial authority shall give the applicant—

(a) a notice containing such particulars as will clearly inform the applicant of the substance of the grounds on which the territorial authority proposes to refuse to grant the exemption; and

(b) a copy of any information on which the territorial authority relies in proposing to refuse to grant the exemption; and

(c) a reasonable opportunity to make written submissions in respect of the matter.

(2) Where a territorial authority refuses to grant an exemption, the territorial authority shall give written notice of its decision to the applicant, and shall inform the applicant of the applicant's right of appeal under section 8V.

(3) Nothing in this section applies where a territorial authority is directed, pursuant to section 8O(4), to refuse to grant an exemption.

Section 8P: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8Q Terms of exemption

(1) Every exemption granted under section 8N by a territorial authority shall specify the terms of the exemption.

(2) Subject to subsections (5) and (6), the territorial authority may from time to time vary the terms of an exemption granted

under section 8N, by endorsement on the exemption or otherwise in writing.

(3) An exemption may be unconditional or subject to such conditions as the territorial authority thinks fit and specifies in the exemption.

(4) Subject to subsections (5) and (6), the territorial authority may at any time, by written notice to the holder of an exemption, revoke, amend, or add to any conditions imposed pursuant to subsection (3).

(5) Except where the terms or conditions of an exemption are varied,—

(a) pursuant to subsection (2) or subsection (4), on the application of the holder of the exemption and in accordance with the terms of that application; or

(b) at the direction of the Director-General given under subsection (6)(b),—

the territorial authority shall not vary the terms or conditions of any exemption under this section without first giving the holder of the exemption a reasonable opportunity to make written submissions to the territorial authority in relation to the matter.

(6) Where a territorial authority grants an exemption on the direction of the Director-General given under section 8O(3),—

(a) the territorial authority shall not vary the terms or conditions of that exemption under this section except with the agreement of the Director-General:

(b) the territorial authority shall, if directed to do so by the Director-General, vary the terms or conditions of that exemption under this section in accordance with that direction.

(7) The Director-General shall not give a direction pursuant to subsection (6)(b) in relation to an exemption without first giving the holder of the exemption a reasonable opportunity to make written submissions to the Director-General in relation to the matter.

Section 8Q: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8R Duration of exemption

(1) A territorial authority may specify in any exemption granted by it under section 8N that the exemption is to have effect indefinitely or for a stated period.

(2) Every exemption granted under section 8N—

(a) shall come into force on the date of its issue; and

(b) shall continue in force until,—

(i) it is revoked pursuant to section 8S; or

(ii) in the case of an exemption granted for a stated period, the expiry of that period; or

(iii) it is surrendered pursuant to section 8T.

Section 8R: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8S Revocation of exemption

(1) Subject to subsection (3), a territorial authority may at any time, by notice in writing to the holder of an exemption, revoke an exemption granted by that territorial authority under section 8N.

(2) Without limiting the generality of subsection (1), a territorial authority may revoke an exemption if the territorial authority is satisfied—

(a) that the holder of the exemption has failed to comply with any condition of the exemption; or

(b) that the holder of the exemption has contravened, or failed to comply with, any provision of—

(i) this Act; or

(ii) any regulations made under this Act (other than any provision of the Food Hygiene Regulations 1974 from which the holder is exempt); or

(iii) any applicable food standard.

(3) A territorial authority shall not revoke an exemption unless the territorial authority has first given the holder of the exemption a reasonable opportunity to be heard.

Section 8S: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8T Surrender of exemption

(1) Subject to this section, the holder of an exemption granted by a territorial authority under section 8N may at any time surrender that exemption by notice in writing to that effect sent to that territorial authority.

(2) The surrender shall take effect on the expiry of 3 months after the date of the receipt of the notice by the territorial authority, or on such earlier date as the territorial authority may approve.

(3) On or before the surrender takes effect, the holder of the exemption shall send the exemption to the territorial authority.

Section 8T: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8U Substituted exemption

Notwithstanding anything in this Part, a territorial authority may, if it thinks fit, cancel an existing exemption granted by that territorial authority under section 8N and issue a new exemption in substitution for that exemption,—

(a) where the terms or conditions of the existing exemption are to be or have been varied under section 8Q:

(b) where the existing exemption has become disfigured or dilapidated, or contains a mistake, or where the territorial authority is satisfied that the existing exemption has been lost or destroyed.

Section 8U: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

Rights of appeal

Heading: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8V Rights of appeal

(1) Subject to subsection (2), any person whose application under section 8B to a territorial authority for an exemption is refused may appeal against that decision to the Director-General.

(2) No appeal shall lie under this section in any of the following cases:

(a) where the decision of the territorial authority to refuse to grant an exemption is made at the direction of the Director-General given under section 8O(4):

(b) where the decision to refuse to grant the exemption is made by the Director-General—

(i) by virtue of the transfer to the Director-General of a territorial authority's functions, duties, and powers under section 8ZA; or

(ii) by virtue of an appointment made under section 8ZG.

(3) Every appeal under this section shall be commenced by way of notice of appeal lodged with the Director-General within 20 working days after notice of the refusal is communicated to the appellant.

(4) Every notice of appeal shall—

(a) be in the prescribed form (if any); and

(b) be accompanied by the prescribed fee (if any); and

(c) specify the grounds of the appeal, which grounds shall be specified with such reasonable particularity as to give full advice to both the Director-General and the other party to the appeal of the issues involved.

(5) On lodging an appeal under this section, the appellant shall forthwith give a copy of the notice of appeal to the territorial authority against whose decision the appeal is lodged.

Section 8V: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8W Procedure on appeal

(1) Every appeal under section 8V shall be determined as soon as reasonably practicable after the appeal is lodged.

(2) On an appeal under section 8V,—

(a) the Director-General shall not be bound to follow any formal procedure; and

(b) it shall not be necessary for the Director-General to hold any hearing, and no person shall be entitled as of right to be heard by the Director-General; but

(c) the Director-General shall observe the rules of natural justice; and

(d) the Director-General shall consider all submissions made by or on behalf of the appellant or the territorial authority whose decision is appealed against.

(3) On an appeal under section 8V, the Director-General—

(a) may make, or cause to be made, such inquiry into the matter as the Director-General thinks fit; and

(b) may receive in evidence any statement, document, information, or matter that may in his or her opinion assist in dealing effectively with the appeal, whether or not the statement, document, information, or matter would otherwise be admissible in a court of law.

(4) Subject to this section and to any regulations made under this Act, the Director-General may determine the procedure relating to any appeal under section 8V.

Section 8W: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8X Determination of appeal

(1) On an appeal under section 8V against a decision of a territorial authority, the Director-General may—

(a) confirm the decision of the territorial authority; or

(b) reverse the decision appealed against, and direct the territorial authority to grant an exemption to the appellant on such terms and conditions as the Director-General considers appropriate.

(2) On determining an appeal under section 8V, the Director-General shall cause the parties to be notified, in writing, of the Director-General's decision, and of the reasons for the Director-General's decision.

Section 8X: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8Y Decision of Director-General to be final

The decision of the Director-General on any appeal under section 8V shall be final.

Section 8Y: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8Z Costs

On any appeal under section 8V, the Director-General may make an order for the payment by any party to the appeal of all or part of the costs incurred in respect of the appeal by any other party to the appeal, and in any such case the costs so awarded shall be recoverable as a debt due by the party against whom they have been awarded to the party in whose favour they have been awarded.

Section 8Z: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

Transfer of functions of territorial authorities

Heading: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8ZA Transfer of functions

(1) Subject to subsections (2) and (3), a territorial authority that has functions, powers, and duties under this Part may, in accordance with this section, transfer those functions, powers, and duties to another territorial authority or to the Director-General.

(2) A territorial authority may not transfer—

- (a) the duty conferred by section 8E(2); or
- (b) the power of transfer conferred by this section.

(3) A territorial authority shall not transfer its functions, powers, and duties under this section unless—

- (a) it has used the special consultative procedure set out in section 83 of the Local Government Act 2002; and
- (b) before using that special consultative procedure, it serves notice on the Director-General of its proposal to transfer the functions, powers, and duties; and
- (c) both authorities (in the case where the transfer is to be to another territorial authority) or the territorial authority and the Director-General (in the case where the transfer is to be to the Director-General) agree that the transfer is desirable on either or both of the following grounds:
  - (i) efficiency:
  - (ii) technical or special capability or expertise.

Section 8ZA: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

Section 8ZA(3)(a): substituted, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

8ZB Transfer agreement

A transfer of functions, powers, and duties under section 8ZA shall be made—

(a) by agreement between the territorial authorities concerned or, as the case requires, between the territorial authority concerned and the Director-General; and

(b) on such terms and conditions as are agreed.

Section 8ZB: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8ZC Effect of transfer

(1) Where a territorial authority transfers its functions, powers, and duties under section 8ZA, that territorial authority shall cease to be responsible for the exercise or performance of those functions, powers, and duties.

(2) Where functions, powers, and duties are transferred under section 8ZA to a territorial authority,—

(a) that territorial authority shall be responsible for the exercise or performance of those functions, powers, and duties; and

(b) its functions, powers, and duties shall be deemed to be extended in such manner as may be necessary to enable it to undertake, exercise, and perform the functions, powers, and duties so transferred to it.

(3) Where functions, powers, and duties are transferred under section 8ZA to the Director-General,—

(a) the Director-General shall be responsible for the exercise or performance of those functions, powers, and duties; and

(b) the functions, powers, and duties of the Director-General shall be deemed to be extended in such manner as may be necessary to enable the Director-General to undertake, exercise, and perform the functions, powers, and duties so transferred.

Section 8ZC: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8ZD Change, revocation, or relinquishment of transfer

(1) A territorial authority which has transferred its functions, powers, and duties under section 8ZA may,—

(a) with the agreement of the transferee, change the transfer at any time:

(b) revoke the transfer at any time by notice to the transferee.

(2) A transferee to which functions, powers, and duties have been transferred under section 8ZA may relinquish the transfer in accordance with the transfer agreement.

Section 8ZD: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

Performance standards for territorial authorities

Heading: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8ZE Minister may issue performance standards

(1) For the purposes of this Part, the Minister may from time to time, by notice in the *Gazette*,—

(a) issue performance standards in relation to the exercise or performance, by territorial authorities, of functions, powers, and duties under this Part:

(b) amend or revoke any such performance standards.

(2) Without limiting the generality of subsection (1), performance standards issued under this section may—

(a) prescribe standards of technical competence, experience, and qualifications relating to the persons employed or engaged by a territorial authority for the purposes of exercising or performing its functions, powers, and duties under this Part:

(b) prescribe measures by which the performance of territorial authorities is to be judged with respect to the exercise or performance of functions, powers, and duties under this Part.

(3) The Minister shall not issue any performance standards under this section, or amend or revoke any such performance standards, unless the Minister is satisfied that appropriate consultation has been carried out with respect to the performance standards or, as the case may be, the amendment or revocation, including (without limitation)—

(a) adequate and appropriate notice of the intention to issue the performance standards, amendment, or revocation; and

(b) a reasonable opportunity for territorial authorities, or representatives of territorial authorities, to make submissions; and

(c) adequate and appropriate consideration of any such submissions.

Section 8ZE: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8ZF Territorial authorities to meet performance standards

Every territorial authority shall take all reasonable steps to ensure that it complies with the requirements of any performance standards for the time being in force under section 8ZE.

Section 8ZF: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8ZG Non-performance by territorial authority

(1) If the Minister considers that any territorial authority is not exercising or performing any of its functions, powers, or duties under this Part to the extent that the Minister considers necessary to achieve the purposes of this Part, the Minister may appoint, on such terms and conditions as the Minister thinks fit,—

(a) another territorial authority; or

(b) the Director-General—

to exercise or perform all or any of those functions, powers, or duties in place of the territorial authority.

(2) Before making any appointment under subsection (1), the Minister shall give the territorial authority at least 20 days' notice in writing of the Minister's intention to do so.

(3) Any territorial authority appointed under subsection (1) to exercise or perform the functions, powers, or duties of a territorial authority under this Part may do so as if the territorial authority so appointed were the other territorial authority; and the provisions of this Act shall apply accordingly.

(4) Where the Director-General is appointed under subsection (1) to exercise or perform the functions, powers, or duties of a territorial authority, the Director-General may do so as if the functions, powers, or duties were conferred on the Director-General directly by this Part; and the provisions of this Act shall apply accordingly.

Section 8ZG: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8ZH Costs, charges, and expenses incurred by Minister

All costs, charges, and expenses incurred by the Minister for the purposes of section 8ZG, or by a territorial authority appointed under that section, or by the Director-General in the case where he or she is appointed under that section, in exercising or performing any functions, powers, or duties of a territorial authority, shall be recoverable from the territorial authority as a debt due to the Crown or may be deducted from any money payable to the territorial authority by the Crown.

Section 8ZH: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8ZI Duration of appointment

(1) In making an appointment under section 8ZG, the Minister shall specify the period for which the appointment is made, and it may from time to time be renewed.

(2) In determining whether any appointment under section 8ZG should be renewed or whether a new appointment should be made, the Minister shall consider whether the territorial authority is capable of exercising its functions, powers, and duties under this Part, and, if the Minister considers the territorial authority is so capable, the territorial authority shall be directed by the Minister to resume those functions, powers, and duties.

Section 8ZI: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

Monitoring compliance with exemptions

Heading: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8ZJ Duty to monitor compliance with exemption

(1) Where the Director-General grants an exemption under this Part, the Director-General shall have the function of monitoring compliance with that exemption.

(2) Where a territorial authority grants an exemption under this Part, that territorial authority shall have the function of monitoring compliance with that exemption.

Section 8ZJ: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

Guidelines relating to granting of exemptions by territorial authorities

Heading: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8ZK Director-General may issue guidelines

(1) For the purposes of this Part, the Director-General may from time to time issue guidelines to territorial authorities concerning—

- (a) the general administration of this Part:
- (b) the policies to be followed by territorial authorities in carrying out their functions under this Part.

(2) Without limiting the generality of subsection (1), guidelines issued under this section may—

- (a) specify standard criteria for food safety programmes in accordance with section 8ZN:
- (b) specify terms or conditions, or both, that must be included in an exemption granted pursuant to section 8N(1):
- (c) specify the period for which an exemption granted pursuant to section 8N(1) is to have effect.

(3) The Director-General may from time to time amend or revoke any guidelines issued pursuant to this section.

Section 8ZK: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8ZL Consultation on guidelines

The Director-General shall not issue any guidelines, or any amendment or revocation of any guidelines, unless the Director-General is satisfied that appropriate consultation has been carried out with respect to the guidelines, amendment, or revocation, including (without limitation)—

(a) adequate and appropriate notice of the intention to issue the guidelines, amendment, or revocation; and

(b) a reasonable opportunity for interested persons to make submissions; and

(c) adequate and appropriate consideration of any such submissions.

Section 8ZL: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8ZM Territorial authorities to observe guidelines

Every territorial authority shall observe every guideline, so far as the guideline is applicable to that territorial authority.

Section 8ZM: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8ZN Standard criteria for food safety programmes

(1) The Director-General may from time to time issue guidelines setting standard criteria that a food safety programme must satisfy before an application for an exemption based on that food safety programme may be granted by a territorial authority.

(2) Standard criteria may be set with respect to food safety programmes relating to—

(a) a particular part of the food industry:

(b) a particular person or group of persons within the food industry.

(3) Without limiting the generality of this section, guidelines may set standard criteria for a food safety programme in such man-

ner as the Director-General thinks fit, including (without limitation) in any 1 or more of the following ways:

(a) by specifying those criteria in the guidelines:

(b) by setting out the criteria in the form of model provisions:

(c) by incorporating material by reference in accordance with section 8ZO.

(4) For the purposes of this section, an application for an exemption is based on a particular food safety programme if the application relies on the adoption, by the applicant, of that food safety programme.

Section 8ZN: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8ZO Incorporation of material by reference

(1) The following material may be incorporated by reference into guidelines:

(a) standards, specifications, requirements, recommended practices, or codes of practice—

(i) published by or on behalf of any body or person in New Zealand or in any other country; or

(ii) of international or national organisations; or

(iii) of any country or jurisdiction:

(b) any other material or document that, in the opinion of the Director-General, is too large or impractical to be printed as part of the guidelines.

(2) Any such material may be so incorporated in guidelines either in whole or in part, and either unmodified or with such additions or variations as are specified in the guidelines.

(3) Subject to subsection (4), any material incorporated in guidelines by reference under subsection (1) (as it existed on the date of the inclusion but with such additions or variations (if any) as are specified in the guidelines) shall be deemed for all purposes to form part of the guidelines.

(4) Every reference in any guidelines to the current edition of any specified standard work of reference (such as the *Codex Alimentarius*) shall be construed at any particular time as the latest edition of that work available at that time, together with

any amendments, additions, and deletions made to or from it up to that time.

(5) The Director-General shall make available for inspection free of charge or for purchase at a reasonable price, at such place or places as he or she shall from time to time appoint, copies of all material incorporated in guidelines by reference under subsection (1).

Section 8ZO: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8ZP Verification, notification, availability, and commencement of guidelines

(1) All guidelines—

(a) shall be signed by the Director-General; and

(b) shall show on them the date of their issue.

(2) Where guidelines are issued,—

(a) the Director-General shall ensure that there is published in the *Gazette*, as soon as practicable after the guidelines are issued, a notice—

(i) indicating that the guidelines have been issued; and

(ii) showing the place or places at which copies of the guidelines are available for inspection free of charge, or for purchase, or both; and

(b) the Director-General shall ensure that, so long as the guidelines remain in force, copies of the guidelines are available—

(i) for inspection by members of the public free of charge; and

(ii) for purchase by members of the public at a reasonable price.

(3) All guidelines issued under this Act shall come into force on the 28th day after the date of their notification in the *Gazette* or on such later day as may be specified for that purpose in the guidelines.

(4) Subject to subsection (5), the provisions of this section apply, with all necessary modifications, in respect of any amendment or revocation of any guidelines.

(5) Nothing in subsection (3) applies in respect of any amendment to any guidelines to correct any obvious mistake (including, without limitation, grammatical and typographical errors or omissions).

Section 8ZP: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

Non-compliance with exemption an offence

Heading: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8ZQ Non-compliance with exemption an offence

(1) Every person commits an offence against this Act who, being the holder of an exemption, acts in contravention of, or fails or refuses to comply with, any condition of that exemption, in any case where that action, failure, or refusal may create, directly or indirectly, a risk to human health.

(2) Every individual who commits an offence against subsection (1) is liable on conviction,—

(a) in any case where the court is satisfied that the individual intended to commit the offence, to a fine not exceeding $5,000:

(b) in any other case, to a fine not exceeding $3,000,—

and, where the offence is a continuing one, to a further fine not exceeding $500 for every day or part of a day during which the offence continues.

(3) Every body corporate who commits an offence against subsection (1) is liable on conviction,—

(a) in any case where the court is satisfied that the body corporate intended to commit the offence, to a fine not exceeding $20,000:

(b) in any other case, to a fine not exceeding $5,000,—

and, where the offence is a continuing one, to a further fine not exceeding $1,000 for every day or part of a day during which the offence continues.

Section 8ZQ: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

Section 8ZQ(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 8ZQ(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Notification of auditor of food safety programmes

Heading: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8ZR Notification of auditor of food safety programmes

(1) Within 14 days of the granting of an exemption, the holder of the exemption shall,—

(a) where the Director-General granted the exemption, notify the Director-General; or

(b) where a territorial authority granted the exemption, notify that territorial authority,—

in writing, of the name of the approved auditor engaged by the exemption holder to audit the food safety programme adopted by the exemption holder.

(2) If the holder of an exemption changes his or her or its approved auditor, the exemption holder shall, within 14 days of that change,—

(a) where the Director-General granted the exemption, notify the Director-General; or

(b) where a territorial authority granted the exemption, notify that territorial authority,—

in writing, of that change, and of the name of the new approved auditor.

(3) Every person commits an offence against this Act who, being the holder of an exemption, fails to comply with the requirements of subsection (1) or subsection (2).

(4) Every individual who commits an offence against subsection (3) is liable on conviction,—

(a) in any case where the court is satisfied that the individual intended to commit the offence, to a fine not exceeding $2,000:

(b) in any other case, to a fine not exceeding $1,000.

(5) Every body corporate who commits an offence against subsection (3) is liable on conviction,—

(a) in any case where the court is satisfied that the body corporate intended to commit the offence, to a fine not exceeding $10,000:

(b) in any other case, to a fine not exceeding $2,000.

Section 8ZR: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

Section 8ZR(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 8ZR(5): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Register of exemptions

Heading: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8ZS Director-General to maintain register of exemptions

(1) The Director-General shall cause to be kept and maintained a register in which is recorded, in respect of every exemption granted under this Part, the following particulars:

(a) the name of the person to whom the exemption was granted:

(b) the date on which the exemption was granted:

(c) the terms of the exemption:

(d) the premises or vehicle to which the exemption relates:

(e) any conditions imposed in respect of the exemption:

(f) the name of the approved auditor for the time being engaged by the exemption holder to audit the food safety programme adopted by the exemption holder:

(g) the details of any variation of the terms or conditions of the exemption:

(h) the date on which the exemption was revoked, where applicable:

(i) such other particulars as may be required by this Act or any regulations made under this Act to be recorded in the register.

(2) The Director-General—

(a) shall keep the register open for public inspection, without fee, during ordinary office hours at the head office of the Ministry at Wellington; and

(b) shall supply to any person copies of all or part of the register on request and payment of a reasonable charge for the production of the copy.

(3) The register may be kept in such manner as the Director-General thinks fit, including, either wholly or partly, by means of a device or facility—

(a) that records or stores information electronically or by other means; and

(b) that permits the information so recorded to be readily inspected or reproduced in usable form; and

(c) that permits the information in the register to be accessed by electronic means, including (without limitation) by means of remote logon access.

(4) The Director-General shall make such arrangements as are reasonably necessary to facilitate effective and efficient access by territorial authorities to information in the register.

Section 8ZS: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

Section 8ZS(2)(a): amended, on 1 July 2002, by Schedule 1 of the Food Amendment Act 2002 (2002 No 26).

8ZT Duty on territorial authorities to forward information for inclusion on register

Where a territorial authority—

(a) grants an exemption under this Part; or

(b) varies the terms or conditions of an exemption under this Part; or

(c) revokes an exemption under this Part; or

(d) receives any notification under section 8ZR,—

the territorial authority shall, as soon as practicable, forward to the Director-General such information as is reasonably necessary to enable the Director-General to comply with the requirements of section 8ZS in relation to that exemption.

Section 8ZT: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8ZU Director-General to notify territorial authority

Where the Director-General—

(a) grants an exemption under this Part; or

(b) revokes an exemption under this Part,—

the Director-General shall, as soon as practicable, inform the relevant territorial authority of the grant or revocation of that exemption.

Section 8ZU: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

Approval of persons to audit food safety programmes

Heading: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8ZV Approval of persons to audit food safety programmes adopted by holders of exemptions

(1) The Director-General may from time to time, on application by any person, approve that person to carry out periodic audits of food safety programmes adopted by persons who hold exemptions.

(2) Every application for approval under this section shall—
- (a) be made in writing to the Director-General; and
- (b) be in the form provided or approved by the Director-General for that purpose; and
- (c) be accompanied by the prescribed fee (if any).

(3) The Director-General shall not grant an approval under this section unless the Director-General is satisfied that the applicant is a fit and proper person to carry out such audits, having regard to—
- (a) the relevant technical skills and experience possessed by the applicant; and
- (b) the applicant's character or reputation.

(4) If the Director-General proposes to refuse to grant an approval, the Director-General shall give the applicant—
- (a) a notice containing such particulars as will clearly inform the applicant of the substance of the grounds on which the Director-General proposes to refuse to grant the approval; and
- (b) a copy of any information on which the Director-General relies in proposing to refuse to grant the approval; and

(c) a reasonable opportunity to make written submissions in respect of the matter.

Section 8ZV: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8ZW Integrity of audit process

(1) Without limiting subsection (3) of section 8ZV, in determining whether or not to grant an approval under that section, the Director-General shall take into account the need to ensure the integrity of the audit process, and, in particular, the need to ensure that—

(a) an approved auditor maintains an appropriate degree of impartiality and independence in carrying out the auditor's duties; and

(b) the judgement of an approved auditor, in carrying out the auditor's duties, is not impaired by reason of—

(i) any relationship with, or interest in, the person whose food safety programme is required to be audited; or

(ii) any regulatory function conferred or imposed on the approved auditor or any person by whom the approved auditor is employed; or

(iii) any involvement, by the auditor, in the design or implementation of any food safety programme, other than involvement arising in the normal course of auditing a food safety programme.

(2) Without limiting section 8ZX, it shall be a condition of every approval granted under section 8ZV that the approved auditor must—

(a) maintain an appropriate degree of impartiality and independence in carrying out the auditor's duties; and

(b) take all reasonable steps to ensure that the judgement of the auditor, in carrying out the auditor's duties, is not impaired by reason of—

(i) any relationship with, or interest in, a person whose food safety programme is required to be audited; or

(ii) any regulatory function conferred or imposed on the approved auditor or any person by whom the approved auditor is employed; or

(iii) any involvement, by the auditor, in the design or implementation of any food safety programme, other than involvement arising in the normal course of auditing a food safety programme.

Section 8ZW: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8ZX Conditions of approval

(1) Subject to section 8ZW, an approval granted under section 8ZV may be subject to such conditions as the Director-General thinks fit and specifies in the approval.

(2) Subject to subsection (3), the Director-General may at any time, by written notice to the holder of an approval, revoke, amend, or add to any conditions imposed pursuant to subsection (1).

(3) Except where any variation to any approval is made, pursuant to subsection (2), on the application of the holder of the approval and in accordance with the terms of that application, the Director-General shall not vary any approval under this section without first giving the holder of the approval a reasonable opportunity to make written submissions to the Director-General in relation to the matter.

Section 8ZX: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8ZY Duration of approval

(1) The Director-General may specify in any approval granted under section 8ZV that the approval is to have effect indefinitely or for a stated period.

(2) Every such approval—

(a) shall come into force on the date of its issue; and

(b) shall continue in force until,—

(i) it is revoked pursuant to section 8ZZ; or

(ii) in the case of an approval granted for a stated period, the expiry of that period; or

(iii) it is surrendered pursuant to section 8ZZA.

Section 8ZY: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8ZZ Revocation of approval

(1) Subject to subsection (2), the Director-General may at any time, by notice in writing to the holder of an approval granted under section 8ZV, revoke that approval if the Director-General is satisfied—

(a) that the holder of the approval is not a fit and proper person to carry out audits of food safety programmes adopted by persons who hold exemptions; or

(b) that the holder of the approval has failed to comply with any condition of the approval; or

(c) that the holder of the approval has contravened, or failed to comply with, any provision of this Act, or of any regulations made under this Act, or of any applicable food standard.

(2) The Director-General shall not revoke an approval unless he or she has first given the holder of the approval a reasonable opportunity to be heard.

(3) Where an approval is revoked pursuant to this section, the former holder of that approval shall, as soon as practicable after that revocation, take all reasonable steps to notify the fact of that revocation to each person who was a client of that former holder (in that former holder's capacity as a person approved to audit food safety programmes) immediately before that revocation.

Section 8ZZ: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8ZZA Surrender of approval

(1) Subject to this section, the holder of an approval granted under section 8ZV may at any time surrender that approval by notice in writing to that effect sent to the Director-General.

(2) The surrender shall take effect on the expiry of 3 months after the date of the receipt of the notice by the Director-General, or on such earlier date as the Director-General may approve.

(3) On or before the surrender takes effect, the holder of the approval shall send the approval to the Director-General.

Section 8ZZA: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8ZZB Director-General to notify territorial authority of revocation or surrender of approval

Where an approval granted under section 8ZV is revoked or surrendered, the Director-General shall, as soon as practicable, notify that fact to every territorial authority.

Section 8ZZB: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8ZZC Substituted approval

Notwithstanding anything in this Part, the Director-General may, if he or she thinks fit, cancel an existing approval granted under section 8ZV and issue a new approval in substitution for it,—

(a) where the conditions of the approval are to be or have been varied under section 8ZX:

(b) where the existing approval has become disfigured or dilapidated, or contains a mistake, or where the Director-General is satisfied that the existing approval has been lost or destroyed.

Section 8ZZC: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8ZZD Approved auditor to notify termination of audit contract

Where,—

(a) under any contract or arrangement, any person is the approved auditor in relation to a food safety programme adopted by the holder of an exemption; and

(b) that person ceases to be the approved auditor in relation to that food safety programme (whether by reason of the termination of that contract or arrangement or for any other reason),—

that person shall, within 14 days of so ceasing to be the approved auditor in relation to that food safety programme, notify the enforcement authority, in writing, of that fact.

Section 8ZZD: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8ZZE Offence

(1) Every person commits an offence against this Act who fails to comply with the requirements of section 8ZZ(3) or section 8ZZD.

(2) Every individual who commits an offence against subsection (1) is liable on conviction,—

(a) in any case where the court is satisfied that the individual intended to commit the offence, to a fine not exceeding $2,000:

(b) in any other case, to a fine not exceeding $1,000.

(3) Every body corporate who commits an offence against subsection (1) is liable on conviction,—

(a) in any case where the court is satisfied that the body corporate intended to commit the offence, to a fine not exceeding $10,000:

(b) in any other case, to a fine not exceeding $2,000.

Section 8ZZE: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

Section 8ZZE(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 8ZZE(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

8ZZF Director-General to keep list of approved auditors

(1) The Director-General shall cause to be kept and maintained a list of every holder of an approval granted under section 8ZV.

(2) The Director-General—

(a) shall make the list maintained pursuant to subsection (1) available for public inspection, without fee, during ordinary office hours at the head office of the Ministry at Wellington; and

(b) shall supply to any person, on request and without fee, a copy of that list.

(3) The list may be kept in such manner as the Director-General thinks fit, including, either wholly or partly, by means of a device or facility—

(a) that records or stores information electronically or by other means; and

(b) that permits the information so recorded to be readily inspected or reproduced in usable form; and

(c) that permits the information in the list to be accessed by electronic means, including (without limitation) by means of remote logon access.

(4) The Director-General shall make such arrangements as are reasonably necessary to facilitate effective and efficient access by territorial authorities to the list.

Section 8ZZF: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

Section 8ZZF(2)(a): amended, on 1 July 2002, by Schedule 1 of the Food Amendment Act 2002 (2002 No 26).

Miscellaneous provision

Heading: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

8ZZG Other exemption powers not affected

Nothing in this Part limits section 42(1)(z) or any regulations made pursuant to that provision.

Section 8ZZG: inserted, on 1 July 1997, by section 3 of the Food Amendment Act (No 2) 1996 (1996 No 97).

Part 2
Sales and advertisements

9 General prohibitions on sales

(1) If, in respect of the composition of any kind of food, a standard is prescribed—

(a) by or under regulations made under this Act; or

(b) by any food standard,—

no person shall sell any article under such a name or description as to lead an intending purchaser to believe that the intending purchaser is purchasing that kind of food unless the article complies with the standard.

(2) If a person sells an article to a purchaser in response to a request for a food of a kind for which a standard is prescribed by or under regulations made under this Act or by any food standard, the first-mentioned person shall be deemed to sell a food of that kind and under such description as is specified in

subsection (1) unless that person clearly notifies the purchaser at the time of sale that the article is not of that kind.

(3) Notwithstanding that a food otherwise complies with the standard prescribed for that kind of food by or under regulations made under this Act or by any food standard, it shall be deemed not to comply with that standard if anything has been added to it—

(a) the addition of which to that kind of food is not expressly required or permitted by regulations made under this Act or by any food standard; or

(b) in a quantity or proportion greater than that so required or permitted; or

(c) that does not comply with the standard, if any, prescribed for that kind of food by or under regulations made under this Act or by any food standard.

(4) No person shall prepare or pack for sale, or sell,—

(a) any food that is unsound or unfit for human consumption or contaminated; or

(b) any food containing, or having attached to it or enclosed with it or in contact with it, any extraneous thing—

(i) that is injurious to health or harmful; or

(ii) that is offensive; or

(iii) the presence of which would be unexpected and unreasonable in food of that description prepared or packed for sale in accordance with good trade practice; or

(c) any food in any package, or any package intended to contain food, if that package is made wholly or partly of a material that may render the food injurious to health or that may taint the food; or

(d) any appliance that may render the food injurious to health or that may taint the food.

(5) Every individual who contravenes any of the provisions of this section commits an offence and is liable on conviction,—

(a) in any case where the court is satisfied that the individual intended to commit the offence, to a fine not exceeding $5,000:

(b) in any other case, to a fine not exceeding $3,000.

(6) Every body corporate who contravenes any of the provisions of this section commits an offence and is liable on conviction,—

(a) in any case where the court is satisfied that the body corporate intended to commit the offence, to a fine not exceeding $20,000:

(b) in any other case, to a fine not exceeding $5,000.

Section 9: substituted, on 1 July 1996, by section 4 of the Food Amendment Act 1996 (1996 No 41).

Section 9(5): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 9(6): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

10 Misleading labelling and packaging

(1) No person shall sell any food or appliance—

(a) that bears or has attached to it, or is contained in a package that bears or has attached to it, any false or misleading statement, word, brand, picture, label, or mark purporting to indicate the nature, suitability, quantity, quality, strength, purity, composition, weight, origin, age, effects, or proportion of the food or appliance, or of the food or appliance contained in the package, as the case may require, or of any ingredient or nutrient or other constituent of the food or any component of the appliance; or

(b) that has been packaged, processed, or treated in a manner that is false or misleading in relation to any of the matters mentioned in paragraph (a).

(2) Every individual who contravenes any of the provisions of this section commits an offence and is liable on conviction,—

(a) in any case where the court is satisfied that the individual intended to commit the offence, to a fine not exceeding $5,000:

(b) in any other case, to a fine not exceeding $3,000.

(3) Every body corporate who contravenes any of the provisions of this section commits an offence and is liable on conviction,—

(a) in any case where the court is satisfied that the body corporate intended to commit the offence, to a fine not exceeding $20,000:

(b) in any other case, to a fine not exceeding $5,000.

Compare: 1969 No 7 ss 7, 39(1)

Section 10(2): substituted, on 1 July 1996, by section 5 of the Food Amendment Act 1996 (1996 No 41).

Section 10(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 10(3): added, on 1 July 1996, by section 5 of the Food Amendment Act 1996 (1996 No 41).

Section 10(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

11 Restrictions on advertising

(1) No person shall, for the purpose of effecting or promoting the sale of a food, publish or cause to be published, either on that person's own account or as the servant or agent of the person seeking to effect or promote the sale, any advertisement relating or likely to cause any person to believe that it relates to the food, or to any ingredient or nutrient or other constituent of the food, that—

(a) directly or by implication qualifies or is contrary to any particulars required, by regulations made under this Act or by any food standard, to be marked on or attached to that kind of food or on or to packages containing that kind of food; or

(b) is prohibited, by any regulations made under this Act or by any food standard, from being marked on or attached to that kind of food or on or to packages containing that kind of food; or

(c) omits from the name or description of the food any word or words required, by any regulations made under this Act or by any food standard, to be included in the name or description marked on or attached to that kind of food or on or to packages containing that kind of food; or

(d) fails to make any statement required, by any regulations made under this Act or by any food standard, to be made in an advertisement relating to any food of that description, kind, or class; or

(e) makes any statement prohibited, by any regulations made under this Act or by any food standard, to be made in an advertisement relating to any food of that description, kind, or class; or

(f) is false, or is likely to deceive a purchaser, with regard to the nature, quality, strength, purity, composition, origin, age, or effects of the food or of any ingredient or nutrient or other constituent of the food.

(2) For the purposes of subsection (1), any words, the inclusion of which in an advertisement are necessary in order to avoid a contravention of that subsection, shall, where they appear in an advertisement published by television or otherwise in a transitory manner on a screen, be disregarded unless they are exposed in clearly legible lettering for a length of time sufficient to enable them to be read by the ordinary viewer.

(3) Every individual who contravenes any of the provisions of subsection (1) commits an offence and is liable on conviction,—

(a) in any case where the court is satisfied that the individual intended to commit the offence, to a fine not exceeding $5,000:

(b) in any other case, to a fine not exceeding $3,000.

(4) Every body corporate who contravenes any of the provisions of subsection (1) commits an offence and is liable on conviction,—

(a) in any case where the court is satisfied that the body corporate intended to commit the offence, to a fine not exceeding $20,000:

(b) in any other case, to a fine not exceeding $5,000.

Compare: 1969 No 7 s 8

Section 11(1): substituted, on 1 July 1996, by section 6(1) of the Food Amendment Act 1996 (1996 No 41).

Section 11(3): substituted, on 1 July 1996, by section 6(2) of the Food Amendment Act 1996 (1996 No 41).

Section 11(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 11(4): added, on 1 July 1996, by section 6(2) of the Food Amendment Act 1996 (1996 No 41).

Section 11(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

11AA Contravention of Act, etc, knowing that will create risk to human health

(1) Every person commits an offence against this Act who wilfully acts in contravention of, or fails or refuses to comply with any provision of, this Act or any regulations made under this Act or any food standard, knowing that the action, failure, or refusal may create, directly or indirectly, a risk to human health.

(2) Every person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding $100,000, and, where the offence is a continuing one, to a further fine not exceeding $1,000 for every day or part of a day during which the offence continues.

Section 11AA: inserted, on 1 July 1996, by section 7 of the Food Amendment Act 1996 (1996 No 41).

Section 11AA(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

11A Restriction on selling raw milk

(1) Except as provided in subsections (2) and (3), no person shall sell, resell, or buy any raw milk.

(2) A milk producer may sell raw milk to any person if—

(a) it is sold—

(i) at the producer's dairy premises; and

(ii) in a quantity not exceeding 5 litres at any one time; and

(b) the person intends the milk for consumption by the person or the person's family;—

and the person may buy it accordingly.

(3) A milk producer may sell raw milk to a dairy processor (as defined in section 4(1) of the Animal Products Act 1999) who—

(a) purchases the milk for processing for sale or export; and

(b) is a person who—

(i) carries out the processing under a risk management programme registered (or deemed to be registered) under the Animal Products Act 1999 or under a food safety programme (as defined in section 4(1) of that Act); or

(ii) carries out processing of a kind that is exempt under section 9 of that Act from the requirement for a risk management programme; or

(iii) is a person or business who, by section 79 of the Animal Products (Ancillary and Transitional Provisions) Act 1999, is at the time of the sale excused from the requirement to operate under a registered risk management programme or a food safety programme.

(4) This section is subject to section 9.

Section 11A: inserted, on 1 April 1988, by section 27(1) of the Milk Act 1988 (1988 No 13).

Section 11A(1): amended, on 1 June 2005, by section 10(2) of the Animal Products (Ancillary and Transitional Provisions) Amendment Act 2005 (2005 No 27).

Section 11A(3): substituted, on 1 June 2005, by section 10(3) of the Animal Products (Ancillary and Transitional Provisions) Amendment Act 2005 (2005 No 27).

Section 11A(4): added, on 1 June 2005, by section 10(3) of the Animal Products (Ancillary and Transitional Provisions) Amendment Act 2005 (2005 No 27).

Part 2A
Food standards

Part 2A: inserted, on 1 July 1996, by section 9 of the Food Amendment Act 1996 (1996 No 41).

Purposes of this Part

Heading: inserted, on 1 July 1996, by section 9 of the Food Amendment Act 1996 (1996 No 41).

11B Purposes of this Part

The purposes of this Part are—

(a) to provide for greater flexibility in the regulatory arrangements relating to food manufactured or prepared for sale or sold in New Zealand, or imported into New Zealand, having due regard to the following matters:

(i) the need to protect public health:

(ii) the desirability of avoiding unnecessary restrictions on trade:

(iii) the desirability of maintaining consistency between New Zealand's food standards and those applying internationally:

(iv) the need to give effect to New Zealand's obligations under any relevant international treaty, agreement, convention, or protocol; and

(b) in particular, to give effect to the Australia - New Zealand Joint Food Standards Agreement.

Section 11B: inserted, on 1 July 1996, by section 9 of the Food Amendment Act 1996 (1996 No 41).

Power to issue food standards

Heading: inserted, on 1 July 1996, by section 9 of the Food Amendment Act 1996 (1996 No 41).

11C Minister may issue food standards

(1) The Minister may from time to time issue standards in respect of food manufactured or prepared for sale or sold in New Zealand, or imported into New Zealand.

(2) Without limiting the generality of subsection (1), standards may be issued under that subsection for the purposes of, or in relation to, all or any of the following:

(a) food safety:

(b) the composition of food, including (without limitation)—

(i) the maximum amounts of contaminants or residues that may be present in food:

(ii) the maximum or minimum amounts of additives or other substances that must or may be present in food:

(iii) the microbiological status of food:

(c) the production, manufacture, and preparation of food:

(d) the genetic modification of food:

(e) the sampling and testing of food to determine its composition or safety:

(f) the packaging, storage, and handling of food:

(g) materials, containers, appliances, and utensils used, or designed for use, in relation to food:

(h) the carriage and delivery of food:

(i) the sale of food:
(j) information about food, including (without limitation) the labelling, promotion, and advertising of food:
(k) food safety programmes:
(l) the keeping of records by persons who import, produce, manufacture, prepare, pack, store, handle, carry, deliver, or sell food, and the inspection of such records:
(m) such other matters relating to food as may affect public health.

Section 11C: inserted, on 1 July 1996, by section 9 of the Food Amendment Act 1996 (1996 No 41).

11D Prescribed foods

(1) Without limiting the generality of section 11C, food standards may be issued under that section—
(a) declaring a food to be a prescribed food for the purposes of section 11P; and
(b) specifying the circumstances and conditions in which that food is to be or not to be a prescribed food.

(2) The Minister shall not declare a food to be a prescribed food unless the Minister is satisfied that, because of—
(a) the food's nature; or
(b) particular circumstances in which the food is dealt with,—
it is necessary or desirable that the provisions of section 11P apply in respect of the food in order to minimise the risk of illness or injury posed by the food.

Section 11D: inserted, on 1 July 1996, by section 9 of the Food Amendment Act 1996 (1996 No 41).

11E Preconditions for issuing food standard

(1) In issuing any food standard, the Minister shall take into account the following:
(a) the need to protect public health:
(b) the desirability of avoiding unnecessary restrictions on trade:
(c) the desirability of maintaining consistency between New Zealand's food standards and those applying internationally:

(d) New Zealand's obligations under any relevant international treaty, agreement, convention, or protocol, and, in particular, under the Australia - New Zealand Joint Food Standards Agreement:

(e) such other matters as the Minister considers appropriate.

(2) The Minister shall not issue any food standard unless the Minister is satisfied that appropriate consultation has been carried out with respect to the food standard, including (without limitation)—

(a) adequate and appropriate notice of the intention to issue the food standard; and

(b) a reasonable opportunity for interested persons to make submissions; and

(c) adequate and appropriate consideration of any such submissions.

Compare: 1994 No 104 s 39(2)

Section 11E: inserted, on 1 July 1996, by section 9 of the Food Amendment Act 1996 (1996 No 41).

Incorporation of material by reference

Heading: inserted, on 1 July 1996, by section 9 of the Food Amendment Act 1996 (1996 No 41).

11F Food standards may incorporate material by reference

(1) The following material may be incorporated by reference into a food standard:

(a) standards, requirements, or recommended practices of international or national organisations:

(b) standards, requirements, or recommended practices of any country or jurisdiction:

(c) any other material or document that, in the opinion of the Minister, is too large or impractical to be printed as part of the food standard.

(2) Any such material may be so incorporated in a food standard either in whole or in part, and either unmodified or with such additions or variations as are specified in the food standard.

(3) Subject to subsection (4), any material incorporated in a food standard by reference under subsection (1) (as it existed on the

date of the inclusion but with such additions or variations (if any) as are specified in the food standard) shall be deemed for all purposes to form part of the food standard.

(4) Every reference in any food standard to the current edition of any specified standard work of reference (such as the *Food Chemicals Codex* or the *Pharmaceutical Codex*) shall be construed at any particular time as the latest edition of that work available at that time, together with any amendments, additions, and deletions made to or from it up to that time.

(5) The Director-General shall make available for inspection free of charge or for purchase at a reasonable price, at such place or places as he or she shall from time to time appoint, copies of all material incorporated in a food standard by reference under subsection (1).

Compare: 1994 No 104 s 452

Section 11F: inserted, on 1 July 1996, by section 9 of the Food Amendment Act 1996 (1996 No 41).

General provisions relating to food standards

Heading: inserted, on 1 July 1996, by section 9 of the Food Amendment Act 1996 (1996 No 41).

11G Verification, notification, availability, and commencement of food standards

(1) Every food standard issued under this Act—

(a) shall be signed by the Minister; and

(b) shall show on it the date of its issue.

(2) Where a food standard is issued under this Act,—

(a) the Minister shall ensure that there is published in the *Gazette*, as soon as practicable after the food standard is issued, a notice—

(i) indicating that the food standard has been issued; and

(ii) showing the place or places at which copies of the food standard are available for inspection free of charge, or for purchase, or both; and

(b) the Director-General shall ensure that so long as the food standard remains in force, copies of the food standard are available—

(i) for inspection by members of the public free of charge; and

(ii) for purchase by members of the public at a reasonable price.

(3) Every food standard issued under this Act shall come into force on the 28th day after the date of its notification in the *Gazette* or on such later day as may be specified for that purpose in the standard.

Compare: 1993 No 28 s 49

Section 11G: inserted, on 1 July 1996, by section 9 of the Food Amendment Act 1996 (1996 No 41).

11H Further general provisions relating to food standards

(1) Any food standard may apply generally or in relation to any 1 or more of the following:

(a) any specified food, person, activity, or matter:

(b) any specified class or classes of food, person, activity, or matter:

(c) the same class of food, person, activity, or matter in different circumstances.

(2) Without limiting the generality of subsection (1)(b), a class of food may be defined by reference to the country, region, or locality in which the food is produced, or from which that food is imported or otherwise obtained.

(3) No food standard shall be invalid because it—

(a) confers any discretion upon, or allows any matter to be determined or approved by, the Minister or any other person; or

(b) allows the Minister, the Director-General, or any other person to impose requirements as to the performance of any activities.

(4) Subject to section 11G(3), the commencement of any food standard may be wholly suspended until it is applied by the Minister by notice in the *Gazette*.

Compare: 1994 No 104 s 451(1), (3), (4)

Section 11H: inserted, on 1 July 1996, by section 9 of the Food Amendment Act 1996 (1996 No 41).

11I Food standards subject to disallowance

A food standard is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Section 11I: replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

11J Minister not to delegate power to issue food standards

Notwithstanding anything in section 28 of the State Sector Act 1988, the Minister shall not delegate to any other person the Minister's power to issue food standards.

Compare: 1994 No 104 s 451(8)

Section 11J: inserted, on 1 July 1996, by section 9 of the Food Amendment Act 1996 (1996 No 41).

11K Proof of food standards

(1) Without affecting any other method of proof, the production in any proceedings of a copy of any food standard purporting to have been issued by the Minister shall, in the absence of evidence to the contrary, be sufficient evidence that it has been issued under the authority of section 11C, on the date shown on it as the date of issue.

(2) Without affecting any other method of proof, the production in any proceedings of a copy of an emergency food standard purporting to have been issued by the Director-General shall, in the absence of evidence to the contrary, be sufficient evidence that it has been issued under the authority of section 11M, on the date shown on it as the date of issue.

(3) In any proceedings, and without affecting any other method of proof,—

(a) any material incorporated in a food standard by reference under section 11F(1) may be proved by the production of a copy of that material certified to be correct by the Director-General; and

(b) judicial notice shall be taken of the signature of the Director-General.

Compare: 1992 No 122 s 42

Section 11K: inserted, on 1 July 1996, by section 9 of the Food Amendment Act 1996 (1996 No 41).

11L Amendment and revocation of food standards

(1) The Minister may at any time amend or revoke any food standard.

(2) Subject to subsection (3), the provisions of sections 11E to 11K shall apply in respect of any amendment or revocation of any food standard.

(3) Nothing in section 11E(2) applies in respect of any amendment to any food standard to correct any obvious mistake (including, without limitation, grammatical and typographical errors or omissions).

Section 11L: inserted, on 1 July 1996, by section 9 of the Food Amendment Act 1996 (1996 No 41).

Emergency food standards

Heading: inserted, on 1 July 1996, by section 9 of the Food Amendment Act 1996 (1996 No 41).

11M Emergency food standards

(1) The Director-General may from time to time exercise the powers conferred on the Minister by section 11C or section 11L to issue food standards or amend food standards, or both, if the Director-General considers that—

(a) the issue or amendment of a food standard is necessary to alleviate or minimise any risk of the death of, or serious harm to, any person; and

(b) it is not practicable in the circumstances of the particular case for the Minister to issue or amend a food standard to effectively alleviate or minimise that risk.

(2) Every food standard or amendment of a food standard issued under this section shall—

(a) be identified as an emergency food standard; and

(b) be signed by the Director-General; and

(c) show the date on which it is issued.

(3) Notwithstanding anything in section 11E or section 11G,—

(a) before issuing any emergency food standard under this section, the Director-General shall consult with such

persons, representative groups within the food industry or elsewhere, government departments, Crown entities, and local authorities as the Director-General in each case considers appropriate, but no other consultation shall be required with respect to the issuing of an emergency food standard:

(b) subject to paragraph (a), it shall not be necessary for the Director-General to give notice to any person of the Director-General's intention to issue any emergency food standard:

(c) every emergency food standard shall be notified in the *Gazette*:

(d) subject to paragraph (e), an emergency food standard shall come into force immediately upon its being notified in the *Gazette*:

(e) the Director-General may give notice of an emergency food standard to such person or persons as he or she considers appropriate or necessary in the circumstances, and in any such case—

(i) service of such notification may be effected by facsimile transmission, telephone, or in such other manner as the Director-General considers appropriate or necessary in the circumstances; and

(ii) the emergency food standard shall come into force immediately upon service of such notification on the person or persons, but only in respect of that person or those persons:

(f) unless sooner revoked, every emergency food standard shall be in force for such period (not exceeding 6 months) as is specified for that purpose in the standard:

(g) so far as any emergency food standard is inconsistent with or repugnant to any other food standard, the emergency food standard shall prevail.

(4) Except as provided by subsection (3), all the provisions of this Act shall apply, with all necessary modifications, in relation to the issuing of emergency food standards under this section, and with respect to emergency food standards so issued, as

they apply in relation to food standards that are not emergency food standards.

(5) The Minister may revoke any emergency food standard, and the revocation shall be notified as if it were an emergency food standard.

Section 11M: inserted, on 1 July 1996, by section 9 of the Food Amendment Act 1996 (1996 No 41).

11N Director-General not to delegate power to issue emergency food standards

(1) Notwithstanding anything in section 41 of the State Sector Act 1988, the Director-General shall not delegate to any other person the power conferred on the Director-General by section 11M.

(2) Nothing in this section limits section 40 of the State Sector Act 1988.

Section 11N: inserted, on 1 July 1996, by section 9 of the Food Amendment Act 1996 (1996 No 41).

Offences and penalties

Heading: inserted, on 1 July 1996, by section 9 of the Food Amendment Act 1996 (1996 No 41).

11O Contravention of food standards

No person shall—

(a) produce any food unless that person and that food complies with all applicable food standards relating to the production of that food; or

(b) manufacture, prepare for sale, or sell any food in New Zealand, or import any food into New Zealand, unless that person and that food complies with all applicable food standards relating to—

(i) food safety; and

(ii) the composition of food; and

(iii) the manufacture of food or, as the case may be, the preparation of food for sale; or

(c) sell or import any food that does not comply with all applicable food standards relating to the labelling of food; or

(d) advertise or promote any food unless that person complies with all applicable food standards relating to the advertising or promotion of food; or

(e) sell, or import into New Zealand, any material, container, appliance, or utensil used, or designed for use, in relation to food, unless the material, container, appliance, or utensil complies with all applicable food standards; or

(f) otherwise act in contravention of, or fail to comply with, any food standards relating to food manufactured or prepared for sale or sold in New Zealand, or imported into New Zealand.

Section 11O: inserted, on 1 July 1996, by section 9 of the Food Amendment Act 1996 (1996 No 41).

11P Prescribed foods

(1) Where a food standard declares a food to be a prescribed food when it is imported into New Zealand, no person shall import that food into New Zealand unless that person has first satisfied an officer, by such means as the officer may reasonably require (including, without limitation and by way of example only, by the production of such evidence as the officer may reasonably require), that the food complies in all respects with—

(a) all relevant provisions of this Act; and

(b) all relevant provisions of any regulations made pursuant to this Act; and

(c) all applicable food standards.

(2) Where a food standard declares a food to be a prescribed food in any other circumstances and conditions specified in the food standard, no person shall deal with that food in those circumstances and conditions unless that person has first satisfied an officer, by such means as the officer may reasonably require (including, without limitation and by way of example only, by the production of such evidence as the officer may reasonably require), that—

(a) that person, in dealing with prescribed food of that kind in those circumstances and conditions; and

(b) where applicable, prescribed food of that kind so dealt with by that person—

will comply in all respects with—

(c) all relevant provisions of this Act; and

(d) all relevant provisions of any regulations made pursuant to this Act; and

(e) all applicable food standards.

(3) Without limiting subsections (1) and (2), where,—

(a) in order to satisfy the requirements of either of those subsections, a person would normally be required to satisfy an officer with respect to compliance with the Food Hygiene Regulations 1974; and

(b) by virtue of an exemption granted to that person under Part 1A, that person is exempt from compliance with those regulations,—

that person shall, in addition to satisfying that officer with respect to the other requirements of that subsection, also satisfy that officer, by the production of such evidence as the officer may reasonably require, that the person will comply in all respects with all relevant conditions of that exemption.

Section 11P: inserted, on 1 July 1996, by section 9 of the Food Amendment Act 1996 (1996 No 41).

Section 11P(3): added, on 1 July 1997, by section 4 of the Food Amendment Act (No 2) 1996 (1996 No 97).

11Q Offences and penalties

(1) Every individual who contravenes any of the provisions of section 11O or section 11P commits an offence and is liable on conviction,—

(a) in any case where the court is satisfied that the individual intended to commit the offence, to a fine not exceeding $5,000:

(b) in any other case, to a fine not exceeding $3,000,—

and, where the offence is a continuing one, to a further fine not exceeding $500 for every day or part of a day during which the offence continues.

(2) Every body corporate who contravenes any of the provisions of section 11O or section 11P commits an offence and is liable on conviction,—

(a) in any case where the court is satisfied that the body corporate intended to commit the offence, to a fine not exceeding $20,000:

(b) in any other case, to a fine not exceeding $5,000,—

and, where the offence is a continuing one, to a further fine not exceeding $1,000, for every day or part of a day during which the offence continues.

Section 11Q: inserted, on 1 July 1996, by section 9 of the Food Amendment Act 1996 (1996 No 41).

Section 11Q(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 11Q(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Transitional provisions

Heading: inserted, on 1 July 1996, by section 9 of the Food Amendment Act 1996 (1996 No 41).

11R Definitions

In this section and sections 11S to 11ZE, unless the context otherwise requires,—

alternative food standards means food standards that are identified, pursuant to section 11T, as food standards compliance with which is an alternative to compliance with 1 or more specified provisions of the Food Regulations 1984

election means an election made pursuant to section 11U; and **to elect** has a corresponding meaning

mandatory food standard means a food standard in respect of which a declaration under section 11Z is for the time being in force

superseded food regulation means a provision of the Food Regulations 1984 in respect of which food standards are identified, pursuant to section 11T, as alternative food standards

transition period means the period beginning with the commencement of this section and ending with the close of such date as is specified for the purpose by the Governor-General by Order in Council.

Section 11R: inserted, on 1 July 1996, by section 9 of the Food Amendment Act 1996 (1996 No 41).

11S Application of food standards and food regulations during transition period

Except as provided in section 11W or section 11Y or section 11ZA, during the transition period,—

(a) no food standard shall apply in respect of any person or any food, and—

(i) no person shall be liable to be prosecuted for, or convicted of, any offence relating to any food standard; and

(ii) no power or duty conferred or imposed by any of sections 12, 13, 14, 15A, 17, or 20 in relation to the enforcement of, or any breach or alleged breach of, any food standard shall be exercised or performed in respect of any person or any food; and

(b) every provision of the Food Regulations 1984 shall apply in the normal way as if there were no food standards in force under this Act.

Section 11S: inserted, on 1 July 1996, by section 9 of the Food Amendment Act 1996 (1996 No 41).

11T Minister to identify alternative food standards

(1) Where—

(a) any food standards are issued under this Act; and

(b) it is intended that compliance with those food standards, during the transition period, is to be an alternative to compliance with 1 or more particular provisions of the Food Regulations 1984,—

those food standards shall contain a provision (in this section referred to as a **declaring provision**) stating that compliance with those food standards is to be an alternative to compliance with such provisions of the Food Regulations 1984 as are specified in the declaring provision.

(2) It shall not be necessary, for the purposes of this section, for a declaring provision to identify, in respect of each and every provision of any food standards, which provision of the Food Regulations 1984 is a superseded food regulation, as long as the declaring provision contains sufficient detail to enable a reasonable person to ascertain which provisions of the Food

Regulations 1984 need not be complied with if those food standards are complied with.

Section 11T: inserted, on 1 July 1996, by section 9 of the Food Amendment Act 1996 (1996 No 41).

11U Persons may elect to be governed by food standards

(1) This section applies to the following persons:
- (a) any person who is an importer of food or who intends to import any food:
- (b) any person who manufactures or intends to manufacture any food:
- (c) any person who prepares or intends to prepare food for sale:
- (d) any person who sells or intends to sell any food:
- (e) any other person to whom any provision of the Food Regulations 1984 applies.

(2) Any person to whom this section applies may, at any time during the transition period, elect that alternative food standards are to apply, during the transition period, in respect of a particular food dealt with by that person.

(3) Any person who wishes to make an election shall record an entry in a register kept by that person for the purpose.

(4) Every such entry made pursuant to subsection (3)—
- (a) shall be in the prescribed form (if any); and
- (b) shall specify the following particulars:
  - (i) the particular food in respect of which the election is made:
  - (ii) the date on and from which the election is to take effect.

Section 11U: inserted, on 1 July 1996, by section 9 of the Food Amendment Act 1996 (1996 No 41).

11V Revocation of election

(1) Any person who makes an election may at any time revoke that election by recording an entry to that effect in the register in which the election is recorded.

(2) Every such entry made pursuant to subsection (1)—
- (a) shall be in the prescribed form (if any); and
- (b) shall specify the following particulars:

(i) the particular election that is revoked:
(ii) the date on and from which the revocation of that election is to take effect.

Section 11V: inserted, on 1 July 1996, by section 9 of the Food Amendment Act 1996 (1996 No 41).

11W Application of alternative food standards adopted during transition period

(1) Notwithstanding section 11S, where a person elects that alternative food standards are to apply, during the transition period, in respect of a particular food dealt with by that person, then, while that election has effect,—

(a) those food standards shall apply, in accordance with the terms of the election, in respect of—
(i) any dealings by that person with food in respect of which that election applies; and
(ii) any such food dealt with by that person; and

(b) no provision of the Food Regulations 1984 that, in relation to those alternative food standards, is a superseded food regulation shall apply in respect of that person's dealings with such food or in respect of any such food dealt with by that person; and

(c) this Act shall apply accordingly.

(2) Nothing in subsection (1) limits or affects the liability of that person for any offence committed before that election takes effect.

Section 11W: inserted, on 1 July 1996, by section 9 of the Food Amendment Act 1996 (1996 No 41).

11X Effect of adoption of alternative food standards on persons subsequently selling food

The fact that, by virtue of an election made by any person, any food standards apply, in accordance with section 11W, during the transition period, in respect of any food dealt with by that person does not require any other person (in this subsection referred to as the **seller**) who sells that food to comply with those food standards, if—

(a) the first-mentioned person disposed of that food in a package; and

(b) the seller obtained that food (whether from the first-mentioned person or from any other person) in that same package; and

(c) the seller sells that food in that same package; and

(d) the food has at no time between its disposal by the first-mentioned person and its sale by the seller been repackaged.

Section 11X: inserted, on 1 July 1996, by section 9 of the Food Amendment Act 1996 (1996 No 41).

11Y Adoption of alternative food standards may be necessary if person to deal with food lawfully

Where—

(a) any person deals with any food in any manner (other than in the manner permitted by section 11X); and

(b) that person can lawfully deal with that food under this Act in that manner only by complying with the provisions of alternative food standards (whether or not that person must also comply with any provision of the Food Regulations 1984 or any mandatory food standards),—

then that person shall not deal with that food in that manner unless that person has elected that those alternative food standards are to apply in respect of that food.

Section 11Y: inserted, on 1 July 1996, by section 9 of the Food Amendment Act 1996 (1996 No 41).

11Z Minister may declare mandatory food standard

(1) The Minister may from time to time during the transition period, by notice published in the *Gazette*, declare, in respect of any food standards specified in the notice, that compliance with those food standards, during the transition period, is mandatory.

(2) A provision contained in any food standards and declaring that compliance with 1 or more provisions of those food standards, during the transition period, is mandatory, shall be deemed to be a declaration made under subsection (1).

(3) The Minister may at any time, in like manner, amend or revoke any declaration made under this section.

Section 11Z: inserted, on 1 July 1996, by section 9 of the Food Amendment Act 1996 (1996 No 41).

11ZA Application of mandatory food standard during transition period

Notwithstanding section 11S, where a mandatory food standard applies in respect of any food, then, during the transition period,—

(a) that food standard shall apply, in accordance with the terms of that food standard, in respect of—
  (i) that food; and
  (ii) any dealings by any person with that food; and

(b) this Act shall apply accordingly.

Section 11ZA: inserted, on 1 July 1996, by section 9 of the Food Amendment Act 1996 (1996 No 41).

11ZB Inconsistencies between food standards and Food Regulations 1984, and between mandatory and alternative food standards

(1) In the event of any inconsistency between any provision of the Food Regulations 1984 and the provisions of any food standards, where that inconsistency arises during the transition period, the provisions of the food standards shall, to the extent of the inconsistency, prevail.

(2) In the event of any inconsistency between any provisions of any mandatory food standards and the provisions of any alternative food standards, where that inconsistency arises during the transition period, the provisions of the mandatory food standards shall, to the extent of the inconsistency, prevail.

Section 11ZB: inserted, on 1 July 1996, by section 9 of the Food Amendment Act 1996 (1996 No 41).

11ZC Duty to disclose which food regime applies

Where, during the transition period,—

(a) any person deals with any food; and

(b) in so dealing with that food, that person is required to comply with any requirements of the Food Regulations 1984, or any alternative food standards, or both,—

that person shall, on request by any other person, promptly tell the other person whether the first-mentioned person has elected that alternative food standards are to apply in respect of that food.

Section 11ZC: inserted, on 1 July 1996, by section 9 of the Food Amendment Act 1996 (1996 No 41).

11ZD Register of elections

(1) During the transition period, and for a period of not less than 1 year after the expiry of the transition period, every person who makes an election shall cause to be kept and maintained a register in which is recorded—

(a) the details of each such election made by that person; and

(b) the details of any revocation of any such election.

(2) Every such register may be kept in such manner as the person keeping it thinks fit, including, either wholly or partly, by means of a device or facility—

(a) that records or stores information electronically or by other means; and

(b) that permits the information so recorded to be readily inspected or reproduced in usable form.

(3) Every person who is required by this section to keep a register shall, at all reasonable times, allow any officer to enter that person's premises (not being a dwellinghouse) for the purpose of inspecting that register, and shall, on request,—

(a) provide the officer with access to the register so kept by that person; and

(b) permit the officer to examine the register; and

(c) permit the officer to produce or make a printout or copy of the register or any part of the register.

(4) Section 12(3) applies, with all necessary modifications, in respect of the exercise by an officer of any powers under subsection (3).

Section 11ZD: inserted, on 1 July 1996, by section 9 of the Food Amendment Act 1996 (1996 No 41).

11ZE Offences

(1) Every person commits an offence against this Act who fails to comply with the requirements of section 11ZC or section 11ZD.

(2) Every individual who commits an offence against subsection (1) is liable on conviction,—

(a) in any case where the court is satisfied that the individual intended to commit the offence, to a fine not exceeding $5,000:

(b) in any other case, to a fine not exceeding $3,000,—

and, where the offence is a continuing one, to a further fine not exceeding $500 for every day or part of a day during which the offence continues.

(3) Every body corporate who commits an offence against subsection (1) is liable on conviction,—

(a) in any case where the court is satisfied that the body corporate intended to commit the offence, to a fine not exceeding $20,000:

(b) in any other case, to a fine not exceeding $5,000,—

and, where the offence is a continuing one, to a further fine not exceeding $1,000 for every day or part of a day during which the offence continues.

Section 11ZE: inserted, on 1 July 1996, by section 9 of the Food Amendment Act 1996 (1996 No 41).

Section 11ZE(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 11ZE(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Part 3
Enforcement

12 Powers of officers

(1) In this section the expression **article to which this section applies** means—

(a) any food; and

(b) any appliance; and

(c) any advertising material or labelling material; and

(d) any package containing or intended to contain any food or appliance.

(2) An officer, and any other person assisting him and acting under his direct supervision, may at any reasonable time—

(a) enter and inspect any premises (not being a dwellinghouse) or vehicle (including any fixtures, fittings, or appliances in the premises or vehicle) where the officer reasonably believes that any article to which this section applies is, for the purposes of sale, prepared, processed, manufactured, packed, stored, carried, or delivered, or is sold:

(b) enter any premises (not being a dwellinghouse) or vehicle where the officer reasonably believes that any books, documents, or other records are kept relating to—

(i) any such preparation, processing, manufacture, packing, storage, carriage, delivery, or sale; or

(ii) the purchase or receipt of any food or appliance for such preparation, processing, manufacture, packing, storage, carriage, delivery, or sale:

(c) open and examine any appliance, receptacle, or package that the officer reasonably believes contains any article to which this section applies:

(d) examine any article to which this section applies:

(e) subject to sections 20 and 21, purchase or take samples of—

(i) any food that the officer reasonably believes to be intended for sale or to have been sold; or

(ii) any appliance that the officer reasonably believes to be intended for sale or to have been sold for use in the preparation, processing, manufacture, packing, storage, carriage, delivery, or sale of food:

(f) purchase or take—

(i) any package in which the officer reasonably believes food is intended to be packed for sale; or

(ii) any advertising material or labelling material that the officer reasonably believes is intended for use in connection with the sale of any food or appliance, or to have been used for such purpose:

(g) examine any books, documents, or other records that the officer reasonably believes contain information relevant to the enforcement of this Act or any regulations or food standards made under this Act, and make copies of or take extracts from any such records:

(h) mark, fasten, seal, or otherwise secure on any premises—

(i) any plant, machinery, or equipment that is used or intended to be used on those premises for the preparation or packing of any food and that the officer reasonably believes may render any food injurious to health or may taint any food; or

(ii) any other article to which this section applies,—

and direct the owner of the plant, machinery, equipment, or other article to refrain from using it and to detain it for such time as may be necessary to obtain results of analysis or (where analysis is not appropriate) to take any necessary remedial action, but in no case longer than 14 days:

(i) seize and detain any article to which this section applies, not being an article of a kind referred to in paragraph (h)(i), by means of or in relation to which the officer reasonably believes an offence against this Act or against any regulations made under this Act has been committed:

(j) seize and detain any advertising material or labelling material that contravenes or does not comply with the requirements of this Act or any regulations or food standards made under this Act relating to advertisements or labels:

(k) take photographs of any premises or vehicle, or any article to which this section applies, or any other thing, where or by means of or in relation to which the officer reasonably believes an offence against this Act or against any regulations made under this Act has been committed.

(2A) Subject to sections 14 and 16, the provisions of Part 4 of the Search and Surveillance Act 2012 (except subparts 2 and 3, sections 118, 119, 125(4), 131(5)(f), and 133, and subparts

6 and 8) apply in respect of any seizure and detention under subsection (2)(i) or (j).

(3) On demand by any person in any premises or vehicle, or claiming any interest in any article, in or in respect of which any power is exercised under this section, the officer exercising the power shall identify himself and produce evidence that he is an officer.

(4) *[Repealed]*

Compare: 1969 No 7 s 21(1), (2), (4); 1979 No 27 s 47(1)–(6)

Section 12(2)(g): amended, on 1 July 1996, by section 10 of the Food Amendment Act 1996 (1996 No 41).

Section 12(2)(j): amended, on 1 July 1996, by section 10 of the Food Amendment Act 1996 (1996 No 41).

Section 12(2A): inserted, on 1 October 2012, by section 253(2) of the Search and Surveillance Act 2012 (2012 No 24).

Section 12(4): repealed, on 1 April 1987, by section 25(1) of the Official Information Amendment Act 1987 (1987 No 8).

13 Powers of local authority inspectors

(1) A local authority inspector, and any other person assisting him and acting under his direct supervision, may at any reasonable time, within any district in which the inspector is employed,—

(a) enter and inspect any premises (not being a dwellinghouse) or vehicle (including any fixtures, fittings, or appliances in the premises or vehicle) where the inspector reasonably believes that any article to which section 12 applies is, for the purposes of sale, prepared, processed, manufactured, packed, stored, carried, or delivered, or is sold:

(b) open and examine any receptacle or package that the inspector reasonably believes contains any food or appliance:

(c) examine any article to which section 12 applies:

(d) seize and detain any food or appliance by means of or in relation to which the inspector reasonably believes an offence against any of paragraphs (a) to (d) of section 9(4) or against section 11Q or against any regulations made under this Act has been committed:

(e) take photographs of any premises or vehicle, or any article to which section 12 applies, or any other thing,

where or by means of or in relation to which the inspector reasonably believes any such offence has been committed.

(1A) Subject to sections 14 and 16, the provisions of Part 4 of the Search and Surveillance Act 2012 (except subparts 2 and 3, sections 118, 119, 125(4), 131(5)(f), and 133, and subparts 6 and 8) apply in respect of any seizure and detention under subsection (1)(d).

(2) Section 12(3), with all necessary modifications, shall apply in respect of the exercise by a local authority inspector of any powers under this section.

(3) Every local authority—

(a) must give to the designated officer designated for the district of the local authority all reports on the exercise in its district of the powers under this section of local authority inspectors that the designated officer asks for; and

(b) must give the Director all reports on the exercise in its district of the powers under this section of local authority inspectors that any designated officer asks for.

Compare: 1969 No 7 s 21(3), (10)

Section 13(1)(d): amended, on 1 July 1996, by section 11 of the Food Amendment Act 1996 (1996 No 41).

Section 13(1A): inserted, on 1 October 2012, by section 253(3) of the Search and Surveillance Act 2012 (2012 No 24).

Section 13(2): amended, on 1 April 1987, by section 25(1) of the Official Information Amendment Act 1987 (1987 No 8).

Section 13(3): substituted, on 1 July 2002, by Schedule 1 of the Food Amendment Act 2002 (2002 No 26).

14 Further provisions relating to seizure and detention of articles

(1) If any officer or local authority inspector seizes any article under section 12 or section 13 in any premises or vehicle that is not in the occupation or use of the owner of the article, he shall forthwith give notice in writing of the seizure to the owner, or to the consignor or consignee, or to the agent of the owner, of the article, if his name and address are on or attached to the article or are otherwise known to the officer or inspector, and the address is that of a place in New Zealand.

(2) Subject to subsection (3), where any article is—

(a) ordered to be detained under paragraph (h) of subsection (2) of section 12; or

(b) seized under paragraph (i) or paragraph (j) of that subsection; or

(c) seized under section 13(1)(d),—

it may, at the option of the officer or local authority inspector concerned, be detained in the premises or vehicle where it was ordered to be detained or seized, or removed to another place and detained there, at the expense of the owner at the time of the order or seizure.

(3) An officer or local authority inspector shall release any article seized or ordered by him to be detained under section 12 or section 13 when he is satisfied—

(a) that all the provisions of this Act and of any regulations and food standards made under this Act, to the extent that they are material, have been complied with in respect of the article; and

(b) that the article is fit for the purpose for which it is intended to be sold or used.

(4) If, within the time limited by section 16(1), the seized article has not been released and no application for disallowance of that seizure has been made under that section or any such application has been dismissed, the article shall,—

(a) in the case of a seizure by an officer, become the property of the Crown; or

(aa) *[Repealed]*

(b) in the case of a seizure by a local authority inspector, become the property of the corporation of the local authority in whose district he was employed at the time of the seizure;—

and, in either case, the owner of the article at the time of the seizure shall be liable for any costs or expenses incurred in the disposition of that article.

(5) Without prejudice to the owner's liability under subsections (2) and (4), where the article was, at the time of the seizure, in the possession of a person who was not the owner and the identity of the owner is not known to the officer or local authority inspector, the person in whose possession

the article was at that time shall be liable for any costs and expenses incurred in the detention, removal, or disposition of that article.

(6) If any article seized under section 12 or section 13 is not destroyed or otherwise disposed of under this section, it shall be returned to the person from whom it was seized when the officer or local authority inspector concerned is satisfied of the matters referred to in subsection (3).

Compare: 1969 No 7 s 21(5)–(8)

Section 14(3)(a): amended, on 1 July 1996, by section 12 of the Food Amendment Act 1996 (1996 No 41).

Section 14(4)(a): amended, on 1 October 2012, by section 253(4) of the Search and Surveillance Act 2012 (2012 No 24).

Section 14(4)(a): amended, on 1 July 2002, by Schedule 1 of the Food Amendment Act 2002 (2002 No 26).

Section 14(4)(aa): repealed, on 1 July 1993, by section 32 of the Health Reforms (Transitional Provisions) Act 1993 (1993 No 23).

15 Seizure and destruction of decayed or putrified food

Notwithstanding sections 12 to 14, an officer or a local authority inspector may at any time seize and destroy any food that is decayed or putrified.

Compare: 1969 No 7 s 21(9)

15A Power to issue search warrant even though offence not imprisonable

(1) A search warrant may be issued under section 6 of the Search and Surveillance Act 2012 in respect of an offence which has been or is suspected to have been committed against section 9 or section 10 or section 11 or section 11Q or section 11ZE or which is believed to be intended to be so committed, even though the offence is not punishable by imprisonment.

(2) An officer who is authorised in writing by the Director-General to apply for search warrants in relation to the offences referred to in subsection (1) may apply for such a warrant under section 6 of the Search and Surveillance Act 2012 as if that officer were a constable.

Section 15A: inserted, on 1 July 1996, by section 13 of the Food Amendment Act 1996 (1996 No 41).

Section 15A(1): amended, on 1 October 2012, by section 253(5) of the Search and Surveillance Act 2012 (2012 No 24).

Section 15A(2): inserted, on 1 October 2012, by section 253(6) of the Search and Surveillance Act 2012 (2012 No 24).

16 District Court may order return of property or compensation

(1) Any person claiming any interest in any article seized or ordered to be detained under section 12 or section 13, may, within 3 days thereafter, apply to a District Court for an order—

(a) that the seizure or the order for detention be disallowed and that the article be returned or otherwise made available to him:

(b) that the Crown or the local authority, as the case may be, shall pay to him such sum by way of compensation for any depreciation in the value of the article resulting from its seizure, detention, or removal, and any transport and storage costs, as the court thinks fit.

(2) On any such application, the court may dismiss it, or, subject to subsections (3) and (4), order—

(a) that the seizure be disallowed in whole or in part; or

(b) that the detention of the article be terminated in whole or in part; or

(c) that compensation be paid by the Crown or the local authority for any depreciation in the value of the article resulting from its seizure, detention, or removal, and any transport and storage costs;—

and any such order may be made upon and subject to such terms and conditions as the court thinks fit.

(3) No order that the seizure of the article be disallowed or that the detention of the article be terminated in whole or in part shall be made if the court is of the opinion that the purpose to which that article or that part is intended to be put will probably involve the commission of an offence against this Act, or any regulations made under this Act, or that the continued detention of that article or that part is expedient for the purposes of its production in any pending proceedings under this Act.

(4) No order for the payment of compensation shall be made except in respect of an article or part that, in the opinion of the court, ought not to have been seized or continued to be detained, as the case may be, and except to the extent that the court disallows the seizure or terminates the detention.

(5) Where the court makes an order for the payment of any sum by way of compensation to any person under this section, the sum so awarded shall be recoverable by that person as a debt due from the Crown or the local authority, as the case may be.

(6) Every application to the court under this section shall be made and dealt with by way of originating application filed in the office of the court nearest to the place where the article in dispute was seized or ordered to be detained.

(7) The applicant shall serve notice of his application on the respondent on or before the date on which he files it in the court.

(8) Except as modified by subsections (6) and (7), the rules of procedure for the time being in force under the District Courts Act 1947 shall apply with respect to every application to the court under this section.

(9) Every order made by the court under this section shall be final and binding on all parties.

(10) Nothing in this section shall limit or affect the Customs Act 1966 or any other enactment.

Compare: 1969 No 7 s 22; 1979 No 27 s 49

Section 16(1)(b): amended, on 1 July 1993, by section 32 of the Health Reforms (Transitional Provisions) Act 1993 (1993 No 23).

Section 16(2)(c): amended, on 1 July 1993, by section 32 of the Health Reforms (Transitional Provisions) Act 1993 (1993 No 23).

Section 16(5): amended, on 1 July 1993, by section 32 of the Health Reforms (Transitional Provisions) Act 1993 (1993 No 23).

17 Power of Medical Officer of Health to require information

(1) Without limiting section 12, where the Medical Officer of Health or the Director reasonably suspects that any person is in possession—

(a) of any food for the purpose of sale; or

(b) of any substance, appliance, or article for the purpose of the manufacture, preparation, or sale of any food; or

(c) of any advertising material or labelling material for use as an advertisement or label,—

in breach of this Act or of any regulations or food standards made under this Act, he may require that person to produce for his inspection, or to produce to any officer specially authorised by him for the purpose, any books, documents, or other records dealing with the importation, purchase, reception, manufacture, processing, preparation, packing, storage, carriage, delivery, or sale of any such food, substance, appliance, or article.

(2) The Medical Officer of Health or the Director may make or cause to be made copies of or extracts from any such books, documents, or other records, and the copies or extracts, certified as such by him or by any specially authorised officer, shall be deemed to be true and correct copies or extracts, unless the contrary is proved.

(3) Every person commits an offence against this Act who refuses or fails to comply with any requirement made under this section.

(4) *[Repealed]*

(5) For the purposes of this section, any goods that have been seized or detained, whether under this Act or any other enactment, shall be deemed to be still in the possession of the person who had them in his possession when they were seized or ordered to be detained.

Compare: 1969 No 7 s 27; 1979 No 27 s 50

Section 17(1): amended, on 1 July 2002, by Schedule 1 of the Food Amendment Act 2002 (2002 No 26).

Section 17(1): amended, on 1 July 1996, by section 14 of the Food Amendment Act 1996 (1996 No 41).

Section 17(2): amended, on 1 July 2002, by Schedule 1 of the Food Amendment Act 2002 (2002 No 26).

Section 17(4): repealed, on 1 April 1987, by section 25(1) of the Official Information Amendment Act 1987 (1987 No 8).

18 Power to require name and address of seller

(1) Any officer acting in the exercise of any of his powers under this Act may require any person who is in possession of any food for sale, or for delivery upon sale, to state correctly his

name and address and, so far as he is aware of them, the name and address of the person from whom he obtained the food.

(2) Every person commits an offence against this Act who fails, without reasonable excuse, to comply with any requirement of an officer under subsection (1).

(3) In this section the term **officer** includes a local authority inspector.

Compare: 1969 No 7 s 28; 1979 No 27 s 51

19 Source of information or reports need not be disclosed

(1) No prosecutor or witness in any prosecution under this Act shall be compelled to disclose the fact that he received any information, or the nature of such information, or the name of any person who gave such information; and no officer appearing as a prosecutor or witness shall be compelled to produce any confidential reports or documents made or received by him in his official capacity, or to make any statement in relation to any such report or document.

(2) In this section the term **officer** includes a local authority inspector.

Compare: 1969 No 7 s 37; 1979 No 27 s 52

20 Procuring of samples for analysis

(1) For the purposes of analysis, an officer may demand and select and take or obtain samples of any food, or of any substance reasonably believed by him to be a food, or any appliance, in accordance with this section.

(2) When an officer intends to procure a sample of a food, or an appliance, for the purposes of analysis, he shall—

(a) pay or tender the current market value of the sample or appliance to the owner or the person from whom it is obtained:

(b) before or forthwith after obtaining the sample or appliance, inform the owner or the person from whom it is obtained of his intention to submit it to an analyst:

(c) thereafter, in the case of a sample, deal with the sample in the manner set out in section 21.

(3) For the purposes of subsection (2), an officer may require the person in possession of a food, or his employee or agent, to show and permit the inspection of any package containing the food and to take therefrom the sample demanded.

(4) Where any food is kept for retail sale in an unopened package, no person shall be required by any officer to sell less than the whole of the contents of the package.

(5) Nothing in this section or in section 21 shall apply to the procuring of a sample of a food from a vending machine if the officer obtains the sample by properly making payment for it and no person present admits to being in charge of the machine.

(6) Notwithstanding anything in this section or in section 21,—

(a) an officer shall not be obliged to submit to an analyst any sample or appliance that he has obtained:

(b) an officer may inspect, select, and take or purchase any sample, or appliance, for the purposes of analysis without complying with those sections, but in that event no regard shall be had to the results of any such analysis in any proceedings before any court in respect of an offence against this Act or against any regulations made under this Act.

(7) Every person commits an offence against this Act who refuses or fails to comply with any demand or requirement made by an officer under this section.

(8) Without limiting the foregoing provisions of this section, an officer may submit any food or appliance or any part of it, in respect of which a complaint is made by any member of the public, to an analyst for analysis or a report in accordance with this Act.

Compare: 1969 No 7 s 23; 1979 No 27 s 53

21 How samples to be dealt with

(1) Subject to the succeeding provisions of this section, where an officer has procured a sample of a food under section 20 (except subsection (8)), he shall—

(a) divide the sample into 3 parts; and

(b) mark and seal or fasten up each part in such manner as its nature will permit; and

(c) leave 1 part with the owner of the food from which the sample was taken or the person from whom the sample was procured.

(2) When any food is contained in a package in such quantity that its division into 3 parts would, in the opinion of the officer, furnish parts insufficient for accurate analysis, additional packages that purport to contain a similar food under the same brand or label may be taken or procured, and the contents of 2 or more packages may be mixed together and the mixture divided and submitted for analysis as provided in this section.

(3) If the officer who has procured the sample considers that it should be analysed, he shall submit 1 part of the sample to an analyst for this purpose and shall retain the third part.

(4) Where—

(a) a sample of food is procured only for bacteriological analysis; or

(b) a sample of milk is procured only for examination by the freezing point test for added water; or

(c) a sample of milk is procured for bacteriological analysis and examination by the freezing point test for added water,—

the officer may submit the whole sample to the analyst instead of dividing it into parts, unless the owner of the food from which the sample was taken or the person from whom the sample was procured requires him to leave a part with such owner or person, in which case it shall be sufficient compliance with that requirement if the officer selects, marks, and seals 2 packages that purport to contain similar food under the same brand or label, as the case may require, and leaves 1 of them.

(5) Subject to subsection (6), if the officer reasonably believes that the food of which he seeks to procure a sample is of such a nature or so packed that there is a risk of its quality being affected in the course and by reason of the procedure prescribed in subsection (1), or there is a danger of the portions not being representative of the bulk of the sample, the officer may submit the whole sample to the analyst instead of dividing it into 3 parts.

(6) In any case to which subsection (5) applies, if the owner of the food or the person from whom the sample was procured so requires, the officer shall select, mark, and seal another package that purports to contain a similar food under the same brand or label, as the case may require, and leave it with that owner or person.

Compare: 1969 No 7 s 24; 1979 No 27 s 54

22 Analysis of sample and certificate or report of analyst

(1) The certificate of the analyst shall be in the prescribed form.

(2) Where any method of analysis for the analysis of any food is prescribed, an analyst shall use that method and shall declare in his certificate of analysis that he has done so.

(3) Any certificate of the result of an analysis or any report given by an analyst in pursuance of this section shall be signed by the analyst, but the analysis may be made by any person acting under the direction of the analyst.

(4) When any sample is procured by an officer under this Act and submitted for analysis, the person from whom the sample was procured, and the manufacturer or importer of the food, may, on payment of the prescribed fee, obtain a copy of the analyst's certificate or, if there is no such certificate, a copy of the report made by the analyst in respect of the sample.

(5) *[Repealed]*

(6) Every person commits an offence against this Act who publishes or causes to be published any advertisement relating to any food or appliance which states that the food or appliance has been analysed by an analyst under this Act, or quotes or purports to quote the findings of any analyst under this Act in relation to the food or appliance, whether or not those findings are given in any certificate or report prepared for the purposes of this Act.

Compare: 1969 No 7 s 25; 1979 No 27 s 55

Section 22(5): repealed, on 1 April 1987, by section 25(1) of the Official Information Amendment Act 1987 (1987 No 8).

23 Evidence of analysis

(1) Subject to subsections (2) and (3), in any proceedings for an offence against this Act, a certificate purporting to be signed

by an analyst in the prescribed form shall, in the absence of evidence to the contrary, be sufficient evidence of the authority of the person who signed the certificate and of the facts stated in the certificate.

(2) A certificate referred to in subsection (1) shall be admissible in evidence only if—

(a) at least 14 clear days before the hearing at which the certificate is tendered, a copy of that certificate (in addition to the copy required by section 27A(1) to be served with the summons) is served, by or on behalf of the prosecutor, on the defendant, and the defendant is, at the same time, informed in writing that the prosecutor does not propose to call the analyst as a witness at the hearing; and

(b) the defendant does not, by notice in writing given to the prosecutor at least 7 clear days before the hearing, require the analyst to be called by the prosecutor as a witness at the hearing.

(3) No certificate referred to in subsection (1) shall be admissible in evidence if the court, of its own motion, directs that the result of the analysis shall be disregarded unless that result is proved by the oral evidence of the analyst.

(4) No certificate of an analyst and no other evidence of an analysis under this Act shall be ruled inadmissible or disregarded by reason only of the fact that any of the provisions of this Act or of any regulations or food standards made under this Act relating to the taking or analysing of samples have not been strictly complied with, if there has been reasonable compliance with those provisions.

Compare: 1969 No 7 s 36; 1979 No 27 s 56

Section 23(2)(a): amended, on 1 July 1996, by section 18(2) of the Food Amendment Act 1996 (1996 No 41).

Section 23(4): amended, on 1 July 1996, by section 15 of the Food Amendment Act 1996 (1996 No 41).

24 Special provisions relating to imported consignments

(1) Where, in any port, any officer takes any sample under section 20 from any imported consignment of any substance reasonably believed by him to be food, or takes any appliance

under section 12(2)(e)(ii) or section 20, from any imported consignment the following provisions shall apply:

(a) the officer shall forthwith notify the importer that he has taken the sample or appliance:

(b) subject to paragraphs (c) and (d), an officer shall direct the Customs to detain the remainder of the consignment in the port under the control of the Customs, at the expense of the importer, until the analysis or examination has been completed:

(c) any such consignment may, with the approval of an officer, be removed at the expense of the importer from the port to a specified place if the importer undertakes in writing, in a form approved by the officer, that he will detain the consignment for such time as may be necessary to obtain results of analysis or to complete an examination:

(d) where any such consignment is in a bulk cargo container, the officer may, in accordance with paragraph (c), approve the removal of that container to a specified place at which a sample can be taken or an examination undertaken:

(e) where any consignment is to be removed to a specified place under paragraph (c) or paragraph (d), an officer shall mark it:

(f) if, as a result of the analysis or examination, an officer reasonably believes that the consignment does not comply with any of the provisions of this Act or any regulations or food standards made under this Act, he may—

(i) seize and detain the goods; or

(ii) order the goods returned by the importer to their place of origin, or some other place outside New Zealand, at the expense of the importer; or

(iii) permit the goods to be released subject to such conditions as he may specify, including a condition that a new label be substituted for any label on each or any package comprising part of the consignment:

(g) nothing in paragraph (c) or paragraph (d) or paragraph (f)(iii) shall limit or affect the Customs and Excise Act 1996.

(2) Where an officer seizes any goods under this section, he shall serve notice of his action on the importer of the goods; and, if the goods are still under the control of the Customs, he shall also serve a copy of the notice on the Customs who shall ensure that the goods are not delivered from the control of the Customs without the written consent of the officer.

(3) Where any goods are seized under this section, section 16 shall apply with all necessary modifications.

(4) It shall be the duty of all officers of the Customs to assist in carrying out the provisions of this section, and to prevent the introduction into New Zealand of anything contrary to this Act; and for that purpose they may, in respect of anything so introduced or attempted to be introduced, exercise all the powers conferred by the Customs and Excise Act 1996 in the case of uncustomed or prohibited goods.

Compare: 1970 No 151 s 9; 1979 No 27 s 57

Section 24(1)(b): amended, on 1 October 1996, by section 289(1) of the Customs and Excise Act 1996 (1996 No 27).

Section 24(1)(f): amended, on 1 July 1996, by section 16 of the Food Amendment Act 1996 (1996 No 41).

Section 24(1)(g): amended, on 1 October 1996, by section 289(1) of the Customs and Excise Act 1996 (1996 No 27).

Section 24(2): amended, on 1 October 1996, by section 289(1) of the Customs and Excise Act 1996 (1996 No 27).

Section 24(4): amended, on 1 October 1996, by section 289(1) of the Customs and Excise Act 1996 (1996 No 27).

25 Presumption that contents conform with label

In any prosecution for an offence against this Act or against any regulations made under this Act, it shall be presumed, until the contrary is proved, that the contents of a package conform with any purported description of the contents shown on any label.

Compare: 1979 No 27 s 58

26 Obstruction of officers

(1) Every person commits an offence against this Act who wilfully obstructs, hinders, resists, or deceives any officer in the execution of any powers conferred on that officer by or under this Act.

(2) Without limiting subsection (1), every person shall be deemed to have obstructed an officer if—

(a) except with the authority of an officer or under an order of a court, he removes, alters, or interferes in any way with any article seized or detained under this Act; or

(b) except with the authority of an officer or of an analyst or under an order of a court, he erases, alters, opens, breaks, or removes any mark, seal, or fastening placed by an officer under this Act on any sample or part of a sample procured under this Act, other than a part of a sample or a bottle or package left with the owner of the food from which the sample was taken or the person from whom the sample was procured; or

(c) he refuses to sell to an officer, or to allow an officer to take, in the quantity that the officer reasonably requires as a sample, any food that appears to the officer to be intended for sale or to have been sold, or any advertising material or labelling material that appears to the officer to be intended for use in connection with the sale of any article to which section 12 applies or to have been so used; or

(d) he refuses or fails to give to an officer any assistance that that officer may reasonably require him to give, or to give to an officer any information, or to produce or permit an officer to examine and make copies of and extracts from any books, documents, or other records, that that officer is expressly authorised by this Act to require to be given or produced or to examine or make, or may reasonably require to be given or produced or to examine or make, or when required to give any such information or to produce any such books, documents, or other records, knowingly makes any false statement in respect thereof.

(3) In this section the term **officer** includes a local authority inspector.

Compare: 1969 No 7 s 29; 1979 No 27 s 59

27 Time for filing charging document

(1) Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, the limitation period in respect of an offence against this Act or any regulations made under it ends on the date that is 12 months after the date on which the offence was committed.

(2) Subsection (1) does not apply to an offence against section 11AA.

Section 27: replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

27A Copy of analyst's certificate or report to be served with summons

(1) Where proceedings are brought for an offence against this Act or against any regulations made under this Act, there shall be served with the summons in any such proceedings a copy of the analyst's certificate or report (if any) relating to the prosecution.

(2) In any such proceedings, the court shall, on the request of either party to the proceedings, and may if it thinks fit without such request, order that the part of the sample retained by the officer under section 21 be submitted, for analysis and report, to—

(a) an analyst named by the court; or

(b) 2 analysts together, of whom 1 shall be nominated by the defendant and the other shall be either the analyst whose certificate or report is before the court or some other analyst appointed under this Act.

Section 27A: inserted, on 1 July 1996, by section 18(1) of the Food Amendment Act 1996 (1996 No 41).

28 General penalty

Every person who commits any offence against this Act for which no penalty is provided elsewhere than in this section is liable on conviction to imprisonment for a term not exceeding

3 months or a fine not exceeding $2,000, and, if the offence is a continuing one, to a further fine not exceeding $100 for every day or part of a day during which the offence has continued.

Compare: 1969 No 7 s 39; 1979 No 27 s 62

Section 28: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 28: amended, on 1 July 1996, by section 19(a) of the Food Amendment Act 1996 (1996 No 41).

Section 28: amended, on 1 July 1996, by section 19(b) of the Food Amendment Act 1996 (1996 No 41).

29 Liability of principal for acts of agents, etc

(1) Where an offence is committed against this Act or against any regulations made under this Act by any person acting as the agent or employee of another person, that other person shall, without prejudice to the liability of the first-mentioned person, be liable under this Act in the same manner and to the same extent as if he had personally committed the offence.

(2) Notwithstanding anything in subsection (1), where any proceedings are brought by virtue of that subsection—

(a) for an offence against section 9 or section 10 or section 11AA or section 11Q, knowledge shall not, for the purposes of section 9(5) or section 9(6) or section 10(2) or section 10(3) or section 11AA(1) or section 11Q(1) or section 11Q(2), be imputed to the defendant by reason only of the knowledge of the agent or employee; or

(b) for any other offence against this Act, it shall be a good defence to the charge if the defendant proves that the offence was committed without his knowledge and that he took all reasonable steps to prevent the commission of the offence.

(3) Where any body corporate is convicted of an offence against this Act or against any regulations made under this Act, every director and every person concerned in the management of the body corporate shall be guilty of a like offence if it is proved that the act that constituted the offence took place with his authority, permission, or consent, or that he knew the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it.

Compare: 1969 No 7 s 30; 1979 No 27 s 63

Section 29(2)(a): substituted, on 1 July 1996, by section 20 of the Food Amendment Act 1996 (1996 No 41).

30 Strict liability

(1) In any prosecution for selling a food contrary to any provision of this Act or of any regulations or food standards made under this Act it shall not be necessary for the prosecution to prove that the defendant intended to commit an offence.

(2) Subject to subsection (3), it shall be a good defence in any such prosecution if the defendant proves—

(a) that he did not intend to commit an offence against this Act or any regulations made under this Act; and

(b) that—

(i) in any case where it is alleged that anything required by this Act or any regulations or food standards made under this Act to be done to or with or in relation to the food was not done, he took all reasonable steps to ensure that it was done; or

(ii) in any case where it is alleged that anything prohibited by this Act or any regulations or food standards made under this Act was done to or with or in relation to the food, that he took all reasonable steps to ensure that it was not done.

(3) Except as provided in subsection (4), subsection (2) shall not apply unless, within 7 days after the service of the summons, or within such further time as the court may allow, the defendant has delivered to the prosecutor a written notice—

(a) stating that he intends to rely on subsection (2); and

(b) specifying the reasonable steps that he will claim to have taken.

(4) In any such prosecution, evidence that the defendant took a step not specified in the written notice required by subsection (3) shall not, except with the leave of the court, be admissible for the purpose of supporting a defence under subsection (2).

(5) Nothing in this section applies in respect of an offence against section 11AA.

Compare: 1969 No 7 s 31

Section 30(1): amended, on 1 July 1996, by section 21(1) of the Food Amendment Act 1996 (1996 No 41).

Section 30(2)(b)(i): amended, on 1 July 1996, by section 21(2) of the Food Amendment Act 1996 (1996 No 41).

Section 30(2)(b)(ii): amended, on 1 July 1996, by section 21(2) of the Food Amendment Act 1996 (1996 No 41).

Section 30(5): added, on 1 July 1996, by section 21(3) of the Food Amendment Act 1996 (1996 No 41).

31 Further defences

(1) Subject to subsections (2) and (4), it shall be a good defence in a prosecution for selling any food contrary to any provision of this Act or any regulations or food standards made under this Act if the defendant proves—

(a) that he purchased the article sold by him in reliance on a written warranty or other written statement as to the nature of the article purchased, signed by or on behalf of the person from whom the defendant purchased the article; and

(b) that if the article had truly conformed to the warranty or statement, the sale of the article by the defendant would not have constituted the offence charged against him; and

(c) that he had no reason to believe or suspect that the article sold by him did not conform to the warranty or statement; and

(d) that at the time of the commission of the alleged offence, the article was in the same state as it was when he purchased it.

(2) No warranty or statement shall be any defence under this section unless—

(a) it was given or made by or on behalf of a person resident in New Zealand or a company having a registered office in New Zealand or a firm having a place of business in New Zealand; and

(b) the signature to the warranty or statement is written by hand; and

(c) the defendant proves that at the time he received the warranty or statement he took reasonable steps to ascertain, and did in fact believe, that the signature was

that of the person from whom he purchased the article, or, as the case may be, of some person purporting to sign on behalf of the person from whom the defendant purchased the article.

(3) Subject to subsection (4), it shall be a good defence in a prosecution for selling any food contrary to any provision of this Act or of any regulations or food standards made under this Act if the defendant proves—

(a) that he purchased the article sold by him in a package and sold it in the same package and in the same condition as the article was in at the time when he purchased it; and

(b) that he could not with reasonable diligence have ascertained that the sale of the article would constitute the offence charged against him.

(4) Neither subsection (1) nor subsection (3) shall apply unless, within 7 days after the service of the summons, or within such further time as the court may allow, the defendant has delivered to the prosecutor a copy of the warranty or statement, if any, and a written notice to the effect that he intends to rely on it or on subsection (3), as the case may require, and specifying the name and address of the person from whom he received the warranty or statement or package, and has also, within the same time, sent by post a like notice of his intention to that person.

(5) Where the defendant is an agent or employee of the person who purchased the article under such a warranty or statement or in such a package, he shall be entitled to the benefit of this section in the same manner and to the same extent as his principal or employer would have been if he had been the defendant.

Compare: 1969 No 7 s 32

Section 31(1): amended, on 1 July 1996, by section 22(1) of the Food Amendment Act 1996 (1996 No 41).

Section 31(3): amended, on 1 July 1996, by section 22(2) of the Food Amendment Act 1996 (1996 No 41).

32 Liability of persons named on labels

(1) If any food is sold in the package in which it was contained when purchased by the person who sells the food and which

has not since that purchase been opened by that person or any agent or employee of that person, every person who appears from any statement or label on or attached to the package to be—

(a) the person who has manufactured, imported, or prepared the food; or

(b) the person who is the owner of the rights of manufacture of the food or has enclosed it in the package; or

(c) the agent of any such person,—

shall, unless he proves the contrary, be deemed to have so manufactured, imported, prepared, or enclosed the food or, as the case may require, to be the agent of such a person, and shall be liable in the same manner and to the same extent as if he had actually sold the food at the time and place at which the sale was made, and, if that sale involved the commission of an offence against this Act, he shall be deemed to be a party to that offence.

(2) Subject to subsection (3), it shall be a good defence in a prosecution under subsection (1) if the defendant proves—

(a) in the case of a prosecution relating to the condition of a food, that when the package left his possession, the food was in such a condition that its sale then would not have involved the commission of the offence with which he is charged; or

(b) in the case of a prosecution relating to the condition of a food, that when or before the food left his possession, he gave notice to the person to whom he consigned or delivered the food that it was not intended for human consumption; or

(c) in the case of a prosecution relating to packing or labelling, that the offence with which he is charged arises from an alteration made to the package or labelling since the package left his possession.

(3) Subsection (2) shall not apply unless, within 7 days after the service of the summons, or within such further time as the court may allow, the defendant has delivered to the prosecutor a written notice—

(a) stating that he intends to rely on subsection (2); and

(b) identifying the person to whom the defendant consigned or delivered the food or explaining why he is unable to identify that person.

Compare: 1969 No 7 s 33

33 Payment of expenses of analysis on conviction

(1) Where any person is convicted of an offence against this Act or any regulations made under this Act, the court may order that all fees and other expenses incidental to any analysis of the food in respect of which the conviction is entered (including any analysis under section 27A(2)) shall be paid by the defendant.

(2) All such fees and expenses shall be deemed to be part of the costs attending the conviction, and shall be recoverable accordingly.

Compare: 1969 No 7 s 41; 1979 No 27 s 65

Section 33(1): amended, on 1 July 1996, by section 18(3) of the Food Amendment Act 1996 (1996 No 41).

34 Forfeiture on conviction

(1) Where any person is convicted of an offence against this Act or any regulations made under this Act, the court may order that all articles (if any) in respect of which the offence was committed and in the possession of that person, and any similar articles found on the premises of the defendant or in his possession at the time of the commission of the offence, shall be forfeited to the Crown.

(2) Every article so forfeited shall be disposed of as the Crown directs.

Compare: 1969 No 7 s 40; 1979 No 27 s 66

Section 34(1): amended, on 1 July 1993, by section 32 of the Health Reforms (Transitional Provisions) Act 1993 (1993 No 23).

Section 34(2): substituted, on 1 July 1993, by section 32 of the Health Reforms (Transitional Provisions) Act 1993 (1993 No 23).

35 Courts may order withdrawal of goods from circulation

(1) If any person who manufactures, packs, or imports foods of any description, or appliances of any kind, is convicted of an offence against any of the provisions of Part 2 or Part 2A in re-

spect of food of that description, or appliances of that kind, the court may in its discretion order that person to withdraw from sale all food of that description, or appliances of that kind, until the matter in relation to which the offence was committed has been remedied.

(2) If the court makes an order under subsection (1), the Director-General shall cause particulars of the order and of the offence in relation to which the order was made to be published in the *Gazette*; and thereupon every distributor, wholesaler, or retailer who has possession of any food of the same description, or appliances of the same kind, that are packed and labelled in the same way as the food or appliances in relation to which the offence was committed shall withdraw them from sale, and may—

(a) return them to the person who supplied them; or

(b) remedy the matter in relation to which the offence was committed.

(3) Every distributor, wholesaler, or retailer who takes action in accordance with paragraph (a) or paragraph (b) of subsection (2) may recover all the costs and expenses incurred in so acting (including, if action is taken under the said paragraph (a), the purchase price of the food, or appliances) from the person who supplied them as a debt due by that person to the distributor, wholesaler, or retailer.

(4) Without limiting subsection (1), if any person referred to in that subsection is convicted of an offence against any of the provisions of Part 2 or Part 2A in respect of any package, or of any advertising material or labelling material, the court may in its discretion order that person to withdraw from use all packages or material of the same description until the matter in relation to which the offence was committed has been remedied; and in any such case subsections (2) and (3) shall apply with any necessary modifications.

(5) Where any person referred to in subsection (1) is convicted of an offence against any of the provisions of Part 2 or Part 2A, the Director-General may cause particulars of the offence and a description of the food or appliances in relation to which the offence was committed to be published in the *Gazette*.

Compare: 1969 No 7 s 35

Section 35(1): amended, on 1 July 1996, by section 23 of the Food Amendment Act 1996 (1996 No 41).

Section 35(4): amended, on 1 July 1996, by section 23 of the Food Amendment Act 1996 (1996 No 41).

Section 35(5): amended, on 1 July 1996, by section 23 of the Food Amendment Act 1996 (1996 No 41).

Part 4
Miscellaneous provisions

36 Duty of officer to procure sample for analysis on request

(1) Where any person, other than the manufacturer of the food or any agent or employee of the manufacturer, requests any officer in writing to procure a sample of any food that is for sale and submit it for analysis for any purpose specified by that person, the officer, on payment by that person of the prescribed fee together with the cost of the sample, shall procure or arrange for another officer to procure a sample of the food and submit it for analysis for the specified purpose, unless he reasonably believes that the request is frivolous or vexatious.

(2) Sections 20 to 22 shall, so far as they are applicable and with the necessary modifications, apply with respect to the procuring and analysis of the sample.

Compare: 1969 No 7 s 26

37 Statements by Director-General

(1) The Director-General may from time to time, for the purpose of protecting the public, publish statements relating to any food or appliance, or to any matter contained or implied in advertisements, either generally or in any particular advertisement or class or classes of advertisements, relating to any food or appliance.

(2) Every statement published under this section shall be protected by qualified privilege.

Compare: 1969 No 7 s 42; 1979 No 27 s 77

38 Examination of Customs entries

For the purposes of this Act, any officer shall have the right at all times, subject to the convenience of the Customs, to inspect any Customs entry relating to any goods imported or proposed

to be imported into New Zealand, or to inspect any certificate or invoice relating to those goods, if and so long as any such document is in the possession or control of the Customs.

Compare: 1969 No 7 s 43; 1979 No 27 s 79

Section 38: amended, on 1 October 1996, by section 289(1) of the Customs and Excise Act 1996 (1996 No 27).

39 Protection of persons acting under authority of Act

No person who does any act in pursuance or intended pursuance of any of the functions conferred on him 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 he has acted in bad faith or without reasonable care.

Compare: 1969 No 7 s 44; 1979 No 27 s 80

40 Recall of food

(1) The Minister may, for the purpose of protecting the public, issue to any importer, manufacturer, or seller of food, an order directing the recall of any food or appliance, or requiring the destruction or denaturing of any food that is unsound or unfit for human consumption or is damaged or deteriorated or perished, or that is contaminated with any poisonous, deleterious, or injurious substance.

(2) The importer, manufacturer, or seller shall, on receipt of the recall order, advise the Minister of the details of the manner in which he proposes to comply with the order, and shall give written notice to the Minister when the recall has been completed.

(3) Every person commits an offence against this Act who fails to comply in any respect with any of the provisions of this section or any order issued under this section.

41 Records

(1) Every person who, in the course of any business, imports, prepares, processes, manufactures, packs, stores, carries, delivers, or sells any food or appliance shall keep, in some place of security at his place of business, such records as may be required by any regulations or food standards made under this

Act, and shall retain them for such period as may be specified in those regulations or food standards, as the case requires.

(2) Every person who, in the course of any business, imports, prepares, processes, manufactures, packs, stores, carries, delivers, or sells any food or appliance, shall at all reasonable times permit any officer to inspect and make copies of any such record, and shall at all reasonable times on demand afford to any officer all further information in his possession with respect to any dealings by that person relating to any food or appliance.

(3) Every person commits an offence against this Act who contravenes or fails to comply in any respect with any of the provisions of this section.

Section 41(1): amended, on 1 July 1996, by section 24 of the Food Amendment Act 1996 (1996 No 41).

42 Regulations

(1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

(a) prescribing standards of composition, including standards of strength, weight, microbiological quality and content, quality, purity, or quantity for any food or for anything contained in or added to or intended to be contained in or added to any food:

(b) permitting the addition of a specified thing, or a specified thing in a specified quantity or proportion, to any food for which a standard is prescribed:

(c) prohibiting the sale of any food for which a standard is not prescribed and to which a specified thing has been added or has been added in a quantity or proportion in excess of a specified quantity or proportion:

(d) prohibiting, regulating, restricting, or imposing conditions in respect of, the importation, preparation, processing, manufacture, packing, storage, carriage, delivery, or sale of any food or appliance:

(e) prescribing the manner and mode of testing of any food or appliance during manufacture, preparation, or storage:

(f) prescribing or regulating the keeping of records by persons who import, prepare, process, manufacture, pack, store, carry, deliver, or sell any food or appliance:

(g) providing for and regulating the inspection of records of persons who import, prepare, process, manufacture, pack, store, carry, deliver, or sell any food or appliance:

(h) securing the cleanliness and freedom from infection, deterioration, or contamination of any food in the course of its preparation, processing, manufacture, packing, storage, carriage, delivery, or exposure for sale; securing the cleanliness of places, packages, receptacles, appliances, and vehicles used for the sale of any food or in such preparation, processing, manufacture, packing, storage, carriage, or delivery; preventing the use of any such place, receptacle, appliance, or vehicle contrary to any such regulation; and conferring powers and imposing duties on local authorities in relation to the administration and enforcement of any regulations made under this paragraph:

(i) prohibiting, restricting, or regulating the sale or supply for human consumption of any food that is infected or contaminated, or is reasonably expected by a designated officer to be infected or contaminated:

(j) prescribing the mode of labelling, branding, printing, or marking of appliances used or intended for use in or in connection with the preparation or storage of any food; and prohibiting the sale of any such appliance that is not labelled, branded, printed, or marked in accordance with any such regulations:

(k) requiring any labelling material or any class of labelling material to be submitted before use to the Director for his approval, and prohibiting the use of any such material without such approval:

(l) prescribing the mode of labelling of packages containing any substance or preparation used or intended for use or held or kept for use in the manufacture or preparation of, or as an ingredient or nutrient or other constituent of, any food:

(m) prescribing the mode of labelling of any food sold in a package, and requiring any matter to be printed, embossed, impressed, branded, stamped, or otherwise marked on any food, or on any package containing any food, in such manner as may be prescribed:

(n) prescribing the matter to be contained or not to be contained in any label for any of the purposes mentioned in paragraphs (j) to (m), and the nature and appearance of any package containing a particular kind of food:

(o) prescribing the matters to be contained or not to be contained in any advertisement, or otherwise regulating the contents of any such advertisements, relating to any food or appliance, or any class of food or appliances:

(p) requiring, where the label on any package that contains food bears any statement to the effect that the package contains any number of portions or servings of food, that the label shall also bear a statement giving particulars of the quantity of each purported portion or serving, by weight or volume, when ready for consumption:

(q) requiring, in the case of any specified class or classes of food or appliances imported into New Zealand, all articles belonging to any such class, or the packages containing such articles, to be branded, stamped, or marked so as to indicate the fact of their importation and the country of origin:

(r) prohibiting or restricting the sale of any food that is not marked or labelled in accordance with any regulations made under this section, and the sale of specified articles of food otherwise than in a package or otherwise than by weight or volume or number:

(s) requiring, with respect to any specified article of food, that, when it is sold otherwise than in packages, or when it is sold in a vending machine, there shall be conspicuously displayed in the place of sale, so as to be easily read by the purchaser, the same particulars (if any), but subject to such necessary modifications as may be expressed or indicated in the regulations, as are required by any regulations made under this section to be contained in the labels when the article is sold in packages:

(t) requiring that any specified food or foods of any specified class or classes shall be artificially coloured by the addition of such colouring substance or substances as may be prescribed, and in such proportion or proportions as may be prescribed, and prohibiting the sale of any such food not so coloured:

(u) prohibiting, restricting, or regulating the sale or supply of appliances intended for use in carrying, delivering, manufacturing, packing, preparing, processing, selling, or storing, food that are—

(i) made of any material containing any substance capable of imparting any poisonous or injurious property to any food that might be cooked, prepared, served, or stored in those appliances, or prepared with those appliances; or

(ii) reasonably suspected by any designated officer of being made of any such material:

(v) requiring and providing for the destruction or denaturation of any food that is damaged, deteriorated, impoverished, contaminated, or perished, and specifying the circumstances in which any such food shall be destroyed or denatured:

(w) prescribing the minimum size of, and the packing required for, any article (not being food) that is to be included in a package of food:

(x) prescribing the temperature at which food, or food of any specified class or description, that is stored or conveyed for sale shall be kept:

(y) prescribing the method of analysis of any food and prescribing the form of the certificate of an analyst and any other forms that may be required for the purposes of this Act or of any regulations or food standards made under this section:

(z) exempting or providing for exemptions from any specified provision of any regulations made under this section:

(za) prohibiting the use of any package of a kind specified or described in the regulations for any purpose other than the storage or sale of food:

(zb) *[Repealed]*

(zc) prescribing offences in respect of the contravention of or non-compliance with any regulations made under this Act, and the amount of the fines that may be imposed in respect of any such offences, which fines shall be,—

(i) in the case of an individual,—

(A) in any case where the court is satisfied that the individual intended to commit the offence, an amount not exceeding $5,000:

(B) in any other case, an amount not exceeding $3,000,—

and, where the offence is a continuing one, a further amount not exceeding $500 for every day or part of a day during which the offence continues:

(ii) in the case of a body corporate,—

(A) in any case where the court is satisfied that the body corporate intended to commit the offence, an amount not exceeding $20,000:

(B) in any other case, an amount not exceeding $5,000,—

and, where the offence is a continuing one, a further amount not exceeding $1,000, for every day or part of a day during which the offence continues:

(zd) providing for such other matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.

(2) The Minister may, by notice in the *Gazette*, vary for such period (not exceeding 12 months) as may be specified in the notice, any requirement imposed by any such regulations on any specified thing that may be contained in any food, or may, in like manner, permit the addition of a specified thing, or of a specified thing in any quantity or proportion to a food, or may vary any labelling requirement.

(2A) The Minister, before recommending the making of any regulation under subsection (1) or before giving notice in the *Gazette* in accordance with subsection (2), must consult the Environ-

mental Protection Authority established by section 7 of the Environmental Protection Authority Act 2011 about the contents of any such regulations or notice relating to the appearance in food of any substance with toxic properties.

(3) Any regulations under this section may be made applicable either to foods generally or to specified foods only.

(4) Notwithstanding anything contained in any regulations made under this section, it shall be lawful for any person, at any time within 12 months after the date of the commencement of the regulations, to sell any food of which the sale is otherwise lawful, if he proves that at the said date the food was part of the existing stock-in-trade in New Zealand of any person carrying on business there, and that since the said date no act has been done whereby the food fails to conform to the regulations.

(5) For the purposes of subsection (4), any goods purchased before the said date for importation into New Zealand shall be deemed to be part of the purchaser's stock-in-trade in New Zealand.

(6) Every reference in any regulations made under this section to the current edition of any specified publication shall be construed at any particular time as the latest edition of that publication available at that time, together with any amendments, additions, and deletions made to or from it up to that time.

Compare: 1969 No 7 s 46; 1979 No 27 s 82

Section 42(1)(d): amended, on 18 June 2002, by section 16(1)(a) of the Food Amendment Act 2002 (2002 No 26).

Section 42(1)(e): amended, on 18 June 2002, by section 16(1)(b) of the Food Amendment Act 2002 (2002 No 26).

Section 42(1)(f): amended, on 18 June 2002, by section 16(1)(a) of the Food Amendment Act 2002 (2002 No 26).

Section 42(1)(g): amended, on 18 June 2002, by section 16(1)(a) of the Food Amendment Act 2002 (2002 No 26).

Section 42(1)(i): substituted, on 1 July 2002, by Schedule 1 of the Food Amendment Act 2002 (2002 No 26).

Section 42(1)(j): amended, on 18 June 2002, by section 16(1)(c) of the Food Amendment Act 2002 (2002 No 26).

Section 42(1)(q): amended, on 18 June 2002, by section 16(1)(d) of the Food Amendment Act 2002 (2002 No 26).

Section 42(1)(u): substituted, on 18 June 2002, by section 16(2) of the Food Amendment Act 2002 (2002 No 26).

Section 42(1)(y): amended, on 1 July 1996, by section 25(1) of the Food Amendment Act 1996 (1996 No 41).

Section 42(1)(zb): repealed, on 1 July 1996, by section 25(2) of the Food Amendment Act 1996 (1996 No 41).

Section 42(1)(zc): substituted, on 1 July 1996, by section 25(2) of the Food Amendment Act 1996 (1996 No 41).

Section 42(2A): inserted, on 2 July 2001, by section 149 of the Hazardous Substances and New Organisms Act 1996 (1996 No 30).

Section 42(2A): amended, on 1 July 2011, by section 53(1) of the Environmental Protection Authority Act 2011 (2011 No 14).

Section 42(6): added, on 8 March 1985, by section 2 of the Food Amendment Act 1985 (1985 No 18).

42A Regulations for fees and charges

(1) The Governor-General may, by Order in Council made on the advice of the Minister (given after consultation with all organisations or bodies appearing to the Minister to be representative of persons likely to be substantially affected by the regulations), make regulations prescribing all or any of the following:

- (a) fees to meet, or help meet, any of the costs and expenses described in subsection (1A):
- (b) charges to meet, or help meet, any of the costs and expenses described in subsection (1A):
- (c) means by which there may be calculated or ascertained—
  - (i) fees to meet, or help meet, any of the costs and expenses described in subsection (1A); or
  - (ii) charges to meet, or help meet, any of the costs and expenses described in subsection (1A).

(1A) The costs and expenses referred to in subsection (1) are—

- (a) the costs and expenses incurred by the Director-General, the Director, analysts, the Crown, or any other person, in exercising powers, or performing functions or duties, or providing services, under this Act; and
- (b) the costs and expenses incurred by the Director in exercising powers, or performing functions or duties, or providing services, under any enactment other than this Act (whether the Director has incurred any cost or expense directly, or by arranging for another person to act

on the Director's behalf, or help the Director, in exercising, performing, or providing, a power, function, duty, or service).

(1B) Subsection (1) does not limit the power to make regulations conferred by section 42.

(2) Any regulations made under subsection (1) may—

(a) prescribe the matters in respect of which fees or charges, or both, are payable, which may include (without limitation)—

(i) additional fees or charges, or both, for services or work provided or carried out outside normal working hours, at weekends, or on statutory holidays:

(ii) charges for reimbursement of travelling time and other expenses:

(b) prescribe the amounts of the fees or charges, or the methods by which they are to be assessed:

(c) specify the persons by whom, and to whom, any fees or charges, or both, are payable:

(d) provide for the refund, waiver, or rebate, or enable the refund, waiver, or rebate, of any fee or charge, or both:

(e) fix, or enable the fixing, of a date by which any fee or charge is to be paid:

(f) provide a discount for early payment of any fee or charge or a penalty for late payment, or both:

(g) prescribe any returns, and the conditions relating to such returns, to be made by persons by whom any fees or charges are payable.

(3) Any regulations made under subsection (1) may—

(a) prescribe different rates of fees or charges, or both; or

(b) prescribe different methods by which fees or charges, or both, are to be assessed—

in respect of different classes of persons, foods, or other matters.

Section 42A: inserted, on 1 July 1996, by section 26 of the Food Amendment Act 1996 (1996 No 41).

Section 42A(1): substituted, on 1 July 2002, by section 6 of the Food Amendment Act 2002 (2002 No 26).

Section 42A(1A): inserted, on 1 July 2002, by section 6 of the Food Amendment Act 2002 (2002 No 26).

Section 42A(1B): inserted, on 1 July 2002, by section 6 of the Food Amendment Act 2002 (2002 No 26).

Reprints notes

1 General

This is a reprint of the Food Act 1981 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 Legal status

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, will have the status of an official version once issued by the Chief Parliamentary Counsel under section 17(1) of that Act.

3 Editorial and format changes

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also http://www.pco.parliament.govt.nz/editorial-conventions/.

4 Amendments incorporated in this reprint

Legislation Act 2012 (2012 No 119): section 77(3)

Search and Surveillance Act 2012 (2012 No 24): section 253

Criminal Procedure Act 2011 (2011 No 81): section 413

Environmental Protection Act 2011 (2011 No 14): section 53(1)

Animal Products (Ancillary and Transitional Provisions) Amendment Act 2005 (2005 No 27): section 10

Wine Act 2003 (2003 No 114): section 125

Local Government Act 2002 (2002 No 84): section 262

Food Amendment Act 2002 (2002 No 26)

Animal Products (Ancillary and Transitional Provisions) Act 1999 (1999 No 94): section 8(1)

Food Amendment Act (No 2) 1996 (1996 No 97)

Hazardous Substances and New Organisms Act 1996 (1996 No 30): section 149

Customs and Excise Act 1996 (1996 No 27): section 289(1)

Food Amendment Act 1996 (1996 No 41)

Health Reforms (Transitional Provisions) Act 1993 (1993 No 23): section 32

State Sector Act 1988 (1988 No 20): section 88(2)

Milk Act 1988 (1988 No 13): section 27(1)
Official Information Amendment Act 1987 (1987 No 8): section 25(1)
Health Amendment Act 1987 (1987 No 10): section 6
Food Amendment Act 1985 (1985 No 18)
Food Act Commencement Order 1984 (SR 1984/178)

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