

## CHAPTER 449

### FOOD SAFETY ACT

*To make provision for any matter related to food safety and to establish a Food Safety Commission, to introduce new provisions for enforcement in relation to food, and to repeal the Food, Drugs and Drinking Water Act.*

13th September, 2002

*ACT XIV of 2002, as amended by Legal Notice 426 of 2007 and Act XXIX of 2007.*

#### PART I

##### Preliminary

1. The short title of this Act is Food Safety Act.

Short title.

2. (1) In this Act, unless the context otherwise requires -

Interpretation.

"additive" means any substance not normally consumed as a food in itself and not normally used as a characteristic ingredient of food whether or not it has nutritive value, the intentional addition of which to food for a technological purpose in the manufacture, processing, preparation, treatment, packaging, transport or storage of such food results, or may be reasonably expected to result, in it or its by-products becoming directly or indirectly a component of such foods;

"advertisement" includes any notice, circular, label, wrapping, invoice or other document or presentation, and any broadcast or public announcement by visual or acoustic presentation or both, and "to advertise" shall be construed accordingly;

"authorised technique" shall not include any technique which involves no more than, or no more than the assistance of, naturally occurring processes of reproduction, including selective breeding techniques or *in vitro* fertilisation;

"authorised officer" means any person suitably qualified to the satisfaction of the health authority;

"authorised place" means any port, airport or other place authorised by or under the regulations which is used, or is capable of being used, for the importation or exportation of food or food sources, and, in relation to food in a particular consignment, includes any place so authorised for the importation of that consignment;

"commercial operation" in relation to any food or contact material means any of the following:

- (a) selling, possessing for sale, and offering, exposing or advertising for sale;
- (b) consigning, delivering or serving by way of sale;
- (c) preparing for sale or presenting, labelling or wrapping for the purpose of sale;

- (d) storing or transporting for the purpose of sale;
- (e) importing or exporting;

and, in relation to any food source, means deriving food from that food source for the purpose of sale or for purposes connected with sale;

"Commission" means the Food Safety Commission established under article 5;

"consumer" means any natural or legal person who, not in the course of a business, trade or profession, buys or otherwise receives food or food sources within the meaning of the provisions of this Act;

"contact material" means any article or substance which is intended to come into contact with food;

"container" includes any basket, pail, tray, package or receptacle of any kind, whether open or closed;

"court" means such court having jurisdiction according to law over any person charged with having committed offences against any of the provisions of this Act;

"description", in relation to food, includes any description of its origin or of the manner in which it is packed;

"food" means any substance or products, whether processed, partially processed or unprocessed, intended to be, or reasonably expected to be ingested by humans;

"food" includes -

- (i) drink, including potable water in liquid or solid state;
- (ii) chewing gum and products of a similar composition and use;
- (iii) any substance, intentionally incorporated into the food during its manufacture, preparation or treatment; and
- (iv) any other substance as the Minister may by regulation prescribe.

Water used for human consumption must comply with any criteria which the Minister may by regulation prescribe;

"food" shall not include -

- (i) live animals or birds, or live fish which are not used or intended for human consumption while alive;
- (ii) fodder or feeding stuff for animals, birds or fish;
- (iii) cosmetics;
- (iv) narcotic or psychotropic substances within the meaning of the United Nations Single Convention on Narcotic Drugs, 1961, and the United Nations Convention on Psychotropic Substances, 1971;

- (v) tobacco;
- (vi) residues and contaminants; and
- (vii) any other substance which the Minister may by regulation prescribe;

"food business" means any undertaking, whether for profit or not and whether public or private, carrying out any of the activities related to any stage of production, processing and distribution and the importation and exportation of food;

"food control" shall include the totality of all regulatory, licensing, enforcement and prevention and other activities conducted for purposes of health, food safety and hygiene, compositional, nutritional or other value, or otherwise, in relation to the preparation, production, processing, sale and provision of food or food sources in, or seeking admittance to Malta, including the operation of all food business by whomsoever conducted;

"food premises" means any premises used for the purposes of a food business, and includes stalls, whether in open or closed markets, vehicles, whether movable or not, and sea-going vessels, including fishing vessels;

"food source" means any growing crop, live animals, bird or fish from which food is intended to be derived, whether by harvesting, milking, collecting eggs or otherwise;

"health authority" means the public officer responsible for public health in terms of the Department of Health (Constitution) Ordinance or any law substituting the same; Cap. 94.

"irradiated" means treated with ionised irradiation sources, including X-rays, electronic beams or gamma rays;

"label" includes any tag, ring or collar, brand name, trade mark, pictorial or other descriptive matter in any case, which is written, printed, stencilled, marked, embossed or impressed on, or attached to, a container of food, or in any other way clearly visible through its packaging;

"labelling" includes any words, particulars, trade mark, brand name, pictorial matter or symbol relating to the food and appearing on the packaging of the food or on any document, notice, label, ring or collar accompanying the food;

"licence" means any authorising document issued by any body or authority appointed by the Government for that purpose;

"licensee" means any person to whom the licence is issued or any person acting in his stead;

"Minister" means the Minister responsible for public health;

"novel food" means any food which has not previously been used for human consumption in Malta, or has been so used only to a very limited extent, or food produced, prepared or processed in such manner by using methods which produce significant changes in the compositional or nutritional value of the food, or the use to which it is put;

"nutritional" means of nutritive value; deriving from nutrients in

the composition of food; such nutrients include proteins, dietary fats, carbohydrates, minerals, vitamins, dietary fibres and other nutrients with energy content;

"preparation" includes manufacture and any form of treatment or alteration, including handling, and "preparation for sale" includes packaging and "to prepare for sale" shall be construed accordingly;

"responsible person" means the person responsible for the food business, food premises or food product and, in his absence, includes such employee or other person, being the senior employee or person present, engaged in operating the food business or food premises at the time; such senior employee or person shall be presumed to be acting on the authority of the person responsible unless the person responsible produces proof to the contrary;

"sale" shall be construed as a reference to sale for human consumption;

"source of supply" shall include any spring, well, tank, cistern, conduit, aqueduct, reservoir and other waterworks.

(2) For the purpose of this Act -

- (a) the supply of food, otherwise than by sale, in the course of a business; and
- (b) any other thing which is done with respect to food which may, from time to time, be specified by regulations made under this Act,

shall be deemed to be a sale of the food, and references to "purchases" and "purchasing" shall be construed accordingly.

Applicability of  
this Act.

**3.** (1) This Act shall apply to all food products, whether produced in Malta, imported into Malta or exported therefrom, and whether intended for sale on the local market or intended for export.

(2) This Act shall also apply -

- (a) in relation to any food which is offered as a prize or reward or given away in connection with any entertainment to which the public is admitted, whether on payment of money or not, as if the food were, or had been, exposed for sale by each person concerned in the organization of the entertainment;
- (b) in relation to any food which, for the purpose of advertisement or in furtherance of any trade or business, is offered as a prize or reward or given away, as if the food were, or had been, exposed for sale by the person offering or giving away the food; and
- (c) in relation to any food which is exposed or deposited in any premises for the purpose of being so offered or given away as mentioned in paragraphs (a) and (b), as if the food were, or had been, exposed for sale by the responsible person in respect of the premises,

and in this article "entertainment" includes any social gathering, amusement, exhibition, performance, game, sport or trial of skill.

4. (1) For the purposes of this Act, any food commonly used for human consumption shall, if sold or offered, exposed or kept for sale, be presumed, until the contrary is proved, to have been sold, or, as the case may be, to have been or to be intended for sale for human consumption. Presumptions.

(2) Unless the contrary is proved, it shall be presumed that -

- (a) any food commonly used in the manufacture of food for human consumption; and
- (b) any article or substance commonly used in the manufacture of food for human consumption,

which is found on premises used for the preparation, storage, or sale of that food is intended for sale, or for manufacturing food for sale, for human consumption.

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

## PART II

### Food Safety Commission

5. (1) There is hereby established a Food Safety Commission which shall consist of: Food Safety Commission.

- (a) a chairperson;
- (b) the senior public officer operationally responsible for public health, designated by the Minister responsible for public health;
- (c) the senior public officer operationally responsible for veterinary services, designated by the Minister responsible for veterinary services;
- (d) the senior officer operationally responsible for food stuffs within the Malta Standards Authority, designated by the Chairman of that Authority;
- (e) the senior public officer operationally responsible for consumer affairs, designated by the Minister responsible for consumer affairs;
- (f) the senior public officer operationally responsible for health promotion, designated by the Minister responsible for health promotion;
- (g) the senior public officer operationally responsible for environment protection, designated by the Minister responsible for environment protection; and
- (h) the senior public officer operationally responsible for plant health, designated by the Minister responsible for plant health.

(2) In addition, the Minister may also appoint three other members from among persons not having any direct or indirect

interest in any food business.

(3) The Chairperson and the members of the Commission, appointed by the Minister under subarticle (2), shall be so appointed for a term of three years.

(4) The Chairperson and the other members of the Commission referred to in subarticle (3) may resign their office at any time by giving notice in writing to the Minister.

(5) The Minister may at any time remove the Chairperson and, or, any of the members appointed under subarticle (2) on grounds of disability to perform their functions, bankruptcy or neglect of duty.

(6) The quorum necessary for meetings of the Commission shall be the Chairperson and not less than half the other members:

Provided that the Commission may act notwithstanding any vacancy among its members.

(7) The decisions of the Commission shall be taken by a majority of votes of members present at the meeting. The Chairperson of the Commission shall have an original vote and, in the case of equality of votes, also a second or casting vote.

(8) The Minister shall designate a public officer in a department within his Ministry to act as the secretary to the Commission.

(9) Subject to the provisions of article 9, and to the other provisions of this Act, the Commission may regulate its own procedures and meetings in such manner as it deems proper.

Judicial and legal  
representation.

**6.** The judicial and legal representation of the Commission shall vest in the Chairperson:

Provided that the Commission may appoint any one or more of the other members to appear in the name and on behalf of the Commission in any judicial proceedings, and in any act, contract, instrument or other transaction whatsoever.

Functions of the  
Commission.

**7.** (1) It shall be the duty of the Commission to monitor, co-ordinate and keep under review all practices, operations and activities relating to food, and for such purpose it shall:

- (a) effectively apply the precautionary principle when a significant risk to consumers is identified or reasonably suspected;
- (b) monitor the enforcement of any relevant legislation, standards and practices in relation to food business, food premises, and persons operating in the food business;
- (c) administer an efficient and effective system for rapid alert, product recall and product withdrawal in order to protect the consumer from any risk that may have been identified or suspected for products already available to the consumer;
- (d) do all such things as may be necessary to ensure that international obligations entered into by the

Government on all matters relating to food are complied with;

- (e) formulate and implement policies and strategies with short-term and long-term objectives, in relation to all matters relating to food, including the development of a national surveillance and enforcement plan for food safety and to ensure the effective, transparent and comprehensive implementation of such plan;
  - (f) give advice to the Minister on any matter relating to food safety either at the request of the Minister or, when it deems it appropriate, without such a request;
  - (g) carry out studies, research or investigations on any matter relating to food and for such purpose shall require the submission of any information and shall analyse and interpret any data or information submitted to it;
  - (h) ensure that proper records and registers are kept to ensure that the persons responsible for any food product may be identified;
  - (i) issue such guidelines as may be necessary in relation to food safety;
  - (j) consider and keep under review the efficacy of food safety practices being adopted from time to time and make a report thereon at least annually to the Minister;
  - (k) carry out such other functions as the Minister may prescribe by regulations; and
  - (l) carry out such other duties as may be conducive to the better performance of its functions under this Act.
- (2) The functions of the Commission shall be vested in:
- (a) in relation to food hygiene and matters concerning public health, the public officer referred to in article 5(1)(b);
  - (b) in relation to veterinary matters and to food of animal origin, the public officer referred to in article 5(1)(c);
  - (c) in relation to risk assessment in food, the officer referred to in article 5(1)(d);
  - (d) in relation to matters concerning consumer protection, the public officer referred to in article 5(1)(e);
  - (e) in relation to nutrition and matters concerning health promotion, the public officer referred to in article 5(1)(f);
  - (f) in relation to genetically modified organisms, novel foods and to environmental matters, the public officer referred to in article 5(1)(g); and
  - (g) in relation to phytosanitary measures and to matters relating to food of plant origin, the public officer referred to in article 5(1)(h).
- (3) For the purposes of this Part, "food" includes:

- (a) any substance used, available to be used, or intended to be used for food or drink by humans;
- (b) any substance used, available to be used, or intended to be used for food or drink by animals or for food or irrigation of plants that are wholly or partially intended for human consumption; and
- (c) any substance which enters into or is used in the production, composition or preparation of the substances referred to in paragraphs (a) and (b).

The Commission to exercise functions through the Authority.  
*Added by:*  
 XXIX. 2007.16.  
 Cap. 419.

**7A.** (1) The Commission shall exercise its functions under article 7(1)(b), (c), (d), (e), (g), (h), (j) and (l) through the Malta Standards Authority as established by article 3 of the Malta Standards Authority Act.

(2) The Malta Standards Authority shall also issue such guidelines as may be necessary in relation to the functions mentioned in subarticle (1).

(3) The Commission may demand from the Malta Standards Authority any information obtained or report drawn up by the Authority in the exercise of its functions under this article and the Authority shall comply with any such demand.

(4) The functions of the Malta Standards Authority under this article shall be without prejudice to any other functions assigned to it by any other law.

Power to publish warnings and information.

**8.** (1) The Commission may make or issue public statements identifying and giving warnings or information about any of the following:

- (a) food or food sources that are injurious to health or unfit for human consumption;
- (b) the supply of food or food sources, by whomsoever supplied, which are or which may potentially cause injury to health or which are unfit for human consumption, and the persons engaged in the supply of such food or food sources;
- (c) practices, conducted in relation to any food business, which are detrimental to the interests of consumers, and, or the persons who engage in such practices;
- (d) any other matter that adversely affects or may adversely affect the health of consumers in connection with the acquisition or use of food or food sources.

(2) When making a statement as is referred to in subarticle (1), the Commission shall adhere to the principles of consistency, fairness and objectivity, and shall not make such a statement unless it is in the public interest to do so.

(3) The Government, the Commission and any public officer acting on the instructions or authority of the Commission, shall not be or become liable for any acts done in good faith under subarticle (1); such exemption from liability shall extend to all persons publishing, printing, recording, broadcasting, communicating or



reproducing such information in any form whatsoever.

9. (1) For the purposes of article 27(2)(d) of the Product Safety Act, the head of the Market Surveillance Directorate of the Malta Standards Authority established under the Malta Standards Authority Act or such other head of any Directorate as the Minister may by Order designate in his stead shall periodically advise, supervise and audit the functions of the Commission.

Conduct of  
business of  
Commission.  
*Amended by:*  
XXIX. 2007.17.  
Cap. 427.  
Cap. 419.

(2) Where under any other law, a person or authority is empowered to take any measure or action which relates to food safety, such person or authority shall, on taking such measure or action, immediately inform the Commission thereon.

(3) The Minister may make, amend or revoke regulations for the proper conduct of the business of the Commission.

### PART III

#### Regulations

10. (1) The Minister may make regulations -

Power of Minister  
to make  
regulations.

- (a) regarding the importation, exportation, preparation, composition, advertising, sale, disposal and, or destruction of food and prescribing standards of minimum permissible quality, composition or other property of such food and without prejudice to the generality of the aforesaid, such regulations may in particular -
  - (i) require, prohibit or regulate the addition of any specified additive or substance, a combination of additives or substances, or any substance or additive of any specified class, to any food intended for human consumption or to any class of such food, or the use of such substance as an ingredient in the preparation of such food;
  - (ii) require, prohibit or regulate the use of any materials or any process or treatment in the preparation of any food intended for sale for human consumption, or of any class of such food including in the storage of food or in food sources;
  - (iii) prohibit or regulate the sale, possession for sale, or offering, exposing or advertising for sale, of any specific substance, or of any substance of any specific class, with a view to its use in the preparation of any food intended for human consumption, and the possession of any such substance for use in the preparation of food intended for sale for human consumption;
  - (iv) impose requirements or prohibitions as to, and otherwise regulate, the labelling, stamping, marking, presenting or advertising of any food intended for sale for human consumption, and the descriptions which may be applied to any

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- such food; and may in any regulations under this paragraph require that such labels be in Maltese and, or, in English;
- (v) prohibit or regulate the sale, possession for sale, offer, exposure or advertisement for sale, importation, consignment, or delivery, or exportation, of any food intended for human consumption which does not comply with any regulations made under this article, or in relation to which an offence has been committed against any of the said regulations;
  - (vi) prohibit or impose requirements as to, or otherwise regulate the sources of supply of water used in the preparation, processing, alteration or sale of food for human use or consumption, whether or not for drinking purposes;
  - (vii) prescribe standards of hygiene in connection with food, utensils, equipment and any other article used for the manufacture, preparation, preservation, packaging, storing, handling, transportation, distribution, disposal, destruction, and testing of food;
  - (viii) empower the health authority to require any person who carries on a business which includes the production, importation, exportation, use or distribution of any substance used in the process, preparation or production of any food intended for human consumption, to furnish to the health authority such particulars as may be specified in any such regulations regarding the composition and use of any such substance;
- (b) for securing the observance of hygienic and sanitary conditions and practices in connection with the carrying out of commercial operations with respect to food or food source and without prejudice to the generality of the aforesaid, such regulations may in particular -
- (i) impose requirements as to the construction, layout, drainage, equipment, maintenance, cleanliness, ventilation, lighting, water supply and use of premises in, at or from which food intended for human consumption is produced or sold, or is offered, exposed, stored or prepared for sale, including any parts of such premises in which apparatus or utensils are cleansed, or in which refuse is disposed of or stored;
  - (ii) impose requirements as to the provision, maintenance and cleanliness of sanitary and washing facilities in connection with such premises, the disposal of refuse and the maintenance and cleanliness of apparatus, equipment, furnishings and utensils used in such

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- premises;
- (iii) prohibit or regulate the sale or importation of apparatus or utensils designed for use in the preparation of food intended for human consumption and containing any specific material or material of any specific class;
  - (iv) control or otherwise regulate the use of containers, and the packaging or wrapping of any food intended for sale for human consumption or of any ingredients thereof;
  - (v) impose requirements as to the clothing which is to be worn by persons in any such premises;
  - (vi) prescribe the precautions to be taken for protecting food against infection or contamination;
  - (vii) regulate generally the treatment and disposal of any food unfit for human consumption;
- (c) require the observance of hygienic conditions with respect to contact materials which are intended to come into contact with food for human consumption;
  - (d) impose requirements or prohibitions as to, or otherwise regulating, the labelling, marking or advertising of materials referred to in paragraph (c), and the descriptions which may be applied to them;
  - (e) otherwise to prohibit or regulate the carrying out of commercial operations with respect to materials referred to in paragraph (c);
  - (f) prohibit or regulate the carrying out of commercial operations with respect to novel foods and novel food ingredients, or food sources from which such foods are intended to be derived, of any class as may be specified in the regulations;
  - (g) prohibit or regulate the carrying out of such operations with respect to genetically modified or irradiated foods, or foods derived from such food sources, of any class as may be specified; or
  - (h) exclude, in each case, from the prohibition of importation or exportation of any food or food source which is of a description specified by or under the regulations and, in the case of a prohibition on importation, is imported or exported for use at such place as may be authorised;
  - (i) generally regulate food, food sources or contact materials, including the prohibition or regulation of the carrying out of commercial operations with respect to food, food sources or contact materials, as may appear to him to be expedient or necessary in order to conform with any international agreement which applies to Malta
  - (j) subject to the provisions of subarticle (5), provide for

the requirement of the registration or the holding of a licence in connection with any food premises, food businesses or person engaged in any food business or who is responsible for any food premises;

- (k) provide for the appointment of official laboratories for the purposes of this Act;
- (l) regulate the matters to be taken into account in determining whether, and at what times, samples should be procured;
- (m) regulate the manner of procuring samples, including the steps to be taken to ensure that the samples procured are fair and adequate samples;
- (n) regulate the method of dealing with samples, including, where appropriate, their division into parts;
- (o) regulate the persons to whom the samples or parts of the samples are to be delivered and the persons by whom they are to be retained;
- (p) regulate the methods which are to be used in the analysis or examination of samples, or in the classification and evaluation of the results of such analyses or examinations; and
- (q) make provision for giving effect to any international obligation or agreement to which Malta may be a party.

(2) Any particulars or other information obtained by the health authority pursuant to any regulations made under subarticle (1)(a)(viii) shall not be disclosed except as may be necessary for the purposes of any regulations made under subarticle (1)(a)(i), (ii), (iii) or (v) or for the purposes of any proceedings for any offence.

(3) The conditions and requirement imposed on premises, by regulations made under subarticle (1)(b), may be extended to apply to seacraft, stalls and other places, as may be prescribed in such regulations.

(4) For the purposes of this subarticle (1)(f), (g) and (h), a food source shall be considered to be genetically modified if any of the genes or other genetic material in the food source -

- (a) has been modified by means of an artificial technique;  
or
- (b) is inherited or otherwise derived, through any number or replications, from genetic material which was so modified; or
- (c) has been modified by any other means as the Minister may prescribe.

(5) Regulations made under subarticle (1)(j) may provide for the suspension or cancellation of any registration, either wholly or in respect of a part of the business for which the registration is applied for or is held, or for the refusal, suspension or cancellation of any licence or licence application provided for under this Act -

- (a) where the requirements of regulations made under this article are not complied with in relation to that business, or
  - (b) where the premises, vehicle, stall or other place, or any part thereof, are otherwise unsuitable, having regard to considerations of hygiene and in particular to the situation, construction or condition of such premises, vehicle, stall or other place, or to any activities carried on therein, for the purpose or purposes specified in the relative application, or for which they are actually used, as the case may be.
- (6) Any person who contravenes any of the provisions of any regulation made under subarticle (1) shall be guilty of an offence.
- (7) Where under any other law a power is conferred on a Minister to make regulations in relation to food, such power is exercisable subject to consultation with the Minister.

#### PART IV

##### General Provisions

###### *Registration of Food Premises, etc.*

- 11.** (1) No person shall engage in any food business unless such person, the food business and the food premises to be used for that purpose are registered with and, where required by or under this Act, licensed by the health authority.
- (2) No food premises which are registered for use or, where required by or under this Act, licensed for the purposes of, any food business, shall be otherwise used than for the purpose for which they are registered or licensed, and in accordance with any terms or conditions to such licence, and in accordance with any regulation applicable thereto.
- (3) Any person who acts in contravention of subarticles (1) or (2) shall be guilty of an offence against this article.

Registration of premises, etc.

###### *Food Safety*

- 12.** (1) Any person who, in carrying out any food business, knowingly renders any food intended to be sold for human consumption injurious to health by any means whatsoever shall be guilty of an offence against this article.
- (2) For the purposes of this article, whether any food is injurious to health shall be determined by assessing not only the probable effect of that food on the health of a person consuming it, but also the probable cumulative effect of food of substantially the same composition on the health of a person consuming it in ordinary quantities.
- 13.** (1) Any person engaged in any food business shall monitor the safety of all food within his control, and when he knows, or has reasonable cause to suspect that any food, food source or contact material may cause injury to health he shall immediately, or as soon as practicable, inform the health authority

Rendering food injurious to health.

Monitoring the safety of food.

and take any other action as the Minister may by regulation prescribe.

(2) Any person who fails to comply with the provisions of subarticle (1) shall be guilty of an offence against this article.

Food which fails to comply with safety requirements.

**14.** (1) Any person who -

- (a) sells, offers, exposes or advertises for sale or has in his possession for sale or for preparation for sale for human consumption;
- (b) deposits with, or consigns to, any other person for the purpose of sale or preparation for sale for human consumption;
- (c) supplies by way of compensation or otherwise or conveys from one place to another for human consumption;
- (d) offers as a prize or reward, or gives away to be so offered,

any food which fails to comply with food safety requirements, shall be guilty of an offence against this article.

(2) For the purposes of this article, food shall be considered as having failed to comply with food safety requirements in the cases where -

- (a) it has been rendered injurious to health by any means whatsoever; or
- (b) it is unfit for human consumption; or
- (c) it is so contaminated, whether by extraneous matter or otherwise, that it would not be reasonable to expect it to be used for human consumption in that state; or
- (d) it has been prepared, stored, kept, processed, deposited, transported, offered or exposed for sale, or otherwise dealt with under insanitary or unhygienic conditions; or
- (e) it contains additives or such quantities or combinations of additives which have been prohibited by regulations made under this Act,

and references to such requirements or to food complying with such requirements shall be construed accordingly.

(3) Where any food fails to comply with food safety requirements is part of a batch, lot or consignment of food of the same class, type or description, it shall be presumed, until the contrary is proved, that all of the food in that batch, lot or consignment fails to comply with those requirements.

Personal hygiene of food handlers.

**15.** (1) Persons who, in the exercise of their functions, come into contact, whether directly or indirectly, with the materials and products referred to in article 25(b) to (f) shall be subjected to the hygiene inspection referred to in article 24(c).

(2) The inspection referred to in subarticle (1) shall be carried out for the purposes of checking that the health standards

concerning personal cleanliness and clothing are respected. This inspection shall be without prejudice to any medical examinations that may, from time to time, be required under this or any other law.

*Consumer Protection*

**16.** (1) No person shall prepare or sell, package, store, offer, expose, keep or advertise for sale for human consumption any article of food equal or similar in appearance to any article of common use for which it might be mistaken so as to cause or to potentially cause risk of injury to health.

Prohibition of sale of similar products.

(2) Any person who acts in contravention of the provisions of subarticle (1) shall be guilty of an offence against this article.

**17.** (1) No person shall sell, to the prejudice of the purchaser, any food intended for human consumption which is not of the nature, substance or quality of the food demanded by the purchaser.

Selling food to the prejudice of the purchaser.

(2) Any person who acts in contravention of the provisions of subarticle (1) shall be guilty of an offence against this article.

(3) In any proceedings for an offence against this article, it shall not be a defence for the accused to state that the purchaser was not prejudiced because he had purchased the item for analysis or for examination.

**18.** (1) Any person who gives with any food sold by him, or displays with any food offered or exposed by him for sale or who has in his possession for the purpose of sale, a label, whether or not attached to or printed on the wrapper or container, and any person who advertises or is party to an advertisement which in either case -

Labelling, etc. of food.

(a) falsely describes the food; or

(b) is likely to mislead as to the nature, substance or quality of the food,

shall be guilty of an offence against this article:

Provided that, in any proceedings under this subarticle, it shall be a defence to prove that the accused acted with reasonable diligence, and did not know or could not ascertain that the advertisement contravened this article.

(2) Any person who sells, or offers or exposes for sale, or has in his possession for the purpose of sale, any food the presentation of which is likely to mislead as to the nature, substance or quality of the food, shall be guilty of an offence against this article.

(3) In any proceedings for an offence against any of the provisions of this article, the fact that the label or advertisement in respect of which the offence is alleged to have been committed contained an accurate statement of the composition of the food shall not preclude the court from finding that the offence was committed.

(4) In this article the reference to "sale" shall be construed as a reference to sale for human consumption.

**19.** (1) No person shall sell, or offer or expose or advertise for sale, or have in his possession for the purpose of sale, any food in an unopened container, unless such label as may be prescribed is

Packaged food to be labelled.

attached or affixed to, or included in, the container.

(2) Any person who acts in contravention of the provisions of subarticle (1) shall be guilty of an offence against this article.

*Information and documentation*

Supply of  
information.

**20.** The health authority may direct any person carrying on a food business to furnish it, within a time period specified in the direction, such verifiable information, as may be specified in the direction, including information on such matters as may be specified from time to time by regulations, in relation to any food or food source in relation to which the person carries on business and any person failing to comply with such a requirement shall be guilty of an offence against this article.

Documents, etc., to  
be in writing.

**21.** (1) Any document which is required or authorised by or under this Act to be given or served on any person, may, in any case for which no other provision is made in this Act, be given or served either -

- (a) by delivering it to that person; or
- (b) in the case of an officer of the health authority by leaving it or sending by post addressed to him, at his office; or
- (c) in the case of a company or other commercial partnership or other corporate body, by delivering it to an employee of such company, commercial partnership or corporate body at the registered or principal office of such company, commercial partnership or corporate body, or by sending it by post addressed to him at that office; or
- (d) in the case of any other person, by leaving it or sending it by post addressed to him at his usual or last known residence.

(2) Where the document is to be given or served on the owner or the occupier of any premises and it is not possible, after reasonable enquiry, to ascertain the name and address of the person to or on whom it should be given or served, or if the premises are unoccupied, the document shall be deemed to have been properly served if it is affixed on a conspicuous place on the premises and notice of such affixture is published in at least one daily newspaper.

*Enforcement*

Prohibition to  
employ persons  
with certain  
infections.

**22.** (1) No person shall be employed or work in, or in connection with, the preparation or the handling of any food intended for sale for human consumption if the employer is aware that such person is, or, as the case may be, if such person is himself aware that he is, suffering from, or is the carrier of, typhoid fever, paratyphoid fever or any other salmonella infection or dysentery, staphylococcal infection, and any other infection likely to cause food poisoning, or any other disease which the Minister may, by order, declare to be a disease to which this article applies.

(2) An order made under subarticle (1) may be revoked, varied or substituted by a subsequent order and may apply to any food, or



any class of food, or any particular food, intended for sale for human consumption.

**23.** No person shall import into Malta any food, intended for sale or for preparation for sale, for human consumption which -

Prohibition of the importation of certain foods.

- (a) has been rendered injurious to health by any means whatsoever;
- (b) if sold in Malta, would constitute a violation of the provisions of this Act or of any regulations made thereunder;
- (c) is unsound or unwholesome or otherwise unfit for human consumption;
- (d) in the preparation of which, any such food as is described in paragraph (c) has been used.

**24.** Subject to the provisions of articles 25 and 26, food control shall comprise one or more of the following operations:

Food control.

- (a) inspection of food premises;
- (b) sampling and analysis of food and, or food sources;
- (c) inspection of staff hygiene and qualifications;
- (d) examination of written and documentary material; and
- (e) examination of any verification systems set up by the food business and of the results obtained through such verification systems.

**25.** The following may be subject to inspection by an authorised officer in the enforcement and execution of this Act:

Subject of inspections.

- (a) the state and use which is made, at the different stages, of the site, premises, offices, business premises and their surroundings, machinery and equipment;
- (b) raw materials, ingredients, technological aids and other products used for the preparation and production of foodstuffs;
- (c) semi-finished goods;
- (d) finished goods;
- (e) materials and articles intended to come into contact with foodstuffs;
- (f) cleaning and maintenance products and processes, and pesticides;
- (g) processes used for the manufacture or processing of foodstuffs;
- (h) labelling and presentation of foodstuffs; and
- (i) preserving methods; and
- (j) such other matters as may be prescribed by regulations.

**26.** (1) Inspections shall be carried out -

Inspections.

- (a) regularly and, or, whenever there exists a suspicion of non-compliance with any of the provisions of this Act

or of any regulations made thereunder; and

- (b) by using means proportionate to the end to be achieved,

and shall cover all stages of production, manufacture, importation, processing, storage, transport, distribution, trade, disposal and destruction of food.

(2) The authorised officer shall in each case, decide the stage or stages which he considers the most appropriate for its examination from those listed in subarticle (1).

(3) The authorised officer may be assisted by any other person whom he considers necessary.

Prohibition to  
publish official  
statements without  
written permission.

**27.** Except with the written permission of the Commission or the health authority, as the case may be, no person may publish or cause to be published in any form, a statement intended to, or which may, promote the supply or use of food, food goods, or services relating to food by implying that the Commission or the health authority, as the case may be, approves or otherwise such use.

Authorised  
officers.

**28.** (1) Every person appointed to carry out the function of authorised officer in accordance with this Act, shall declare and confirm that he is not, directly or indirectly engaged in any food business.

(2) An authorised officer may inspect any food intended for human consumption, or which he may reasonably believe to be so intended, which -

- (a) has been sold or is offered or exposed for sale; or
- (b) is, or has been in the possession of, or has been deposited with or consigned to, any person for the purpose of sale or of preparation for sale; or
- (c) is in the course of delivery before or after sale for human consumption, including where this is present in any vehicle,

and the provisions of article 31 shall apply where, on such inspection, it appears to the authorised officer that any food fails to comply with food safety requirements.

(3) An authorised officer may -

- (a) examine any article to which this Act or any regulations made thereunder apply and take, on payment of the current market value, if so required, samples for analysis or for bacteriological or other examination; and
- (b) seize and remove any such article in relation to which reasonable ground for suspicion exists that any provisions of this Act or of any regulations made thereunder are being or have been contravened.

(4) In subarticle (3), the expression "any article" includes -

- (a) any food, or any substance capable of being used in the

composition or preparation of any food;

- (b) any thing used or capable of being used for the manufacture, preparation, preservation, packing or storage thereof, including contact material; and
- (c) any labelling or advertising material:

Provided that the taking of any article under subarticle (3)(a) shall, for the purpose of this Act or of any regulations made thereunder, be deemed to be a sale of that article.

**29.** (1) Any authorised officer shall, on producing, if so required, some duly authenticated document showing his authority, have a right at any reasonable time to - Power of entry, search and seizure.

- (a) enter any food premises for the purpose of ascertaining whether there is or has been or there is likely to be any contravention against any of the provisions of this Act, or of regulations made thereunder;
- (b) enter any business premises for the purpose of ascertaining whether there is on the premises any evidence of any contravention against any of the provisions of this Act;
- (c) carry out any inspections under this Act;
- (d) inspect any records, in whatever form they are held, relating to a food business and, where any such records are kept by means of computer -
  - (i) may have access to, and inspect and check the operation of any computer, any associated apparatus or material which is or has been in use in connection with the records; and
  - (ii) may require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford him such assistance as he may reasonably require;
- (e) seize and detain any records which he has reason to believe may be required as evidence in proceedings under any of the provisions of this Act or of regulations made thereunder; and
- (f) where the records are kept by means of a computer, require the records to be produced in a form in which they may be taken away.

(2) Any person who, having entered any premises by virtue of this article, discloses to any other person any information obtained by him in the premises with regard to any trade secret shall, unless the disclosure was made in the performance of his duty, be guilty of an offence.

(3) Admission, for the purpose of subarticle (1), to any premises used only as a private dwelling house may only be had if authorised by a warrant signed by a magistrate or by the Attorney General.

(4) Every warrant so granted shall continue in force for a

period not exceeding one month.

Inspection of  
vehicles, etc.

**30.** An authorised officer who has reason to believe that any vehicle or container contains any food which is intended for sale for human consumption, or which is in the course of delivery after sale for human consumption, may examine the contents of the vehicle or container, and, for that purpose, he may, if necessary, detain the vehicle or container.

Duties of  
authorised officers.

**31.** (1) If it appears to any authorised officer, upon an inspection or otherwise, that any food is unfit for human consumption, or is likely to cause injury, food poisoning or any disease communicable to human beings, the authorised officer may either -

- (a) give notice to the licensee, manager or any other person in charge of the food premises at the time, that until the notice is withdrawn, the food or any specified portion of it -
  - (i) is not to be used for human consumption; and
  - (ii) is not to be removed or is not to be removed except to some place specified in the notice; and, or
  - (iii) is not to be sold or destroyed or otherwise dealt with, whether or not removed for those purposes; or
- (b) may seize the food, or any sample thereof to be produced as evidence before any court; or
- (c) where not required to be produced as evidence as aforesaid, with the consent and at the expense of the responsible person, may destroy the food.

(2) Any person who knowingly contravenes the requirements of a notice given under subarticle (1) shall be guilty of an offence.

(3) Where the authorised officer exercises the powers granted under subarticle (1), he shall, within a reasonable time, determine whether or not such food satisfies food safety requirements, and -

- (a) if such food is deemed to be fit for human consumption, he shall forthwith withdraw the notice, and allow the release of the food from the place where it is stored under the terms of the notice; or
- (b) if such food is deemed to be unfit for human consumption, he shall seize the food, or a sample thereof, in order to produce the same as evidence before any court.

(4) Where an authorised officer exercises the powers conferred to him by subarticle (1) or (3), he shall inform the person in charge of the food of his intention to have it dealt with by the court, and he shall give the reasons therefor, and any person who, under subarticle (1) or (3), may be liable to be prosecuted in respect of the food shall be entitled to be heard and to call witnesses.

(5) If it appears to the court, on the basis of such evidence as may be considered appropriate in the circumstances, that any food

falling to be dealt with by it under this article, fails to comply with food safety requirements, it shall condemn the food and order the food to be destroyed or to be so disposed of so as to prevent it from being used for human consumption.

(6) The court shall also, upon an application by the health authority, order the person found guilty of an offence to pay the health authority the costs incurred by it for the prosecution in connection with the offence, including any inspection which led to such prosecution and any examination pursuant to such inspection.

**32.** (1) A person who -

Hindrance or obstruction.

- (a) intentionally obstructs or causes the obstruction of any person acting in the performance of his duties under this Act; or
- (b) without reasonable cause, fails to give any person acting in the performance of his duties under this Act, such assistance or information which he is required to give by or under this Act,

shall be guilty of an offence against this article.

(2) Any person who, in the purported compliance with any provision of this Act -

- (a) furnishes information which he knows to be false or misleading in a material particular; or
- (b) recklessly furnishes information which is false or misleading in a material particular;

shall be guilty of an offence against this article.

(3) Nothing in subarticle (2) shall be construed as requiring any person to answer any question or give any information if, by so doing, he may incriminate himself.

#### *Notices and Orders*

**33.** (1) If an authorised officer has reasonable grounds to believe that the person responsible for a food business or food premises is failing to comply with any regulations to which this article applies, he may, by a written notice, hereinafter in this Act referred to as an "improvement notice", served on that person -

Improvement notice.

- (a) state the officer's grounds for believing that the person is failing to comply with the regulations;
- (b) specify the matters which constitute the person's failure to comply;
- (c) specify the measures which, in the officer's opinion, the person must take in order to secure compliance; and
- (d) require the person to take those measures, or measures which are at least similar to them, within such period as may be specified in the improvement notice.

(2) Any person who fails to comply with an improvement notice shall be guilty of an offence against this article.

(3) The provisions of this article shall apply to any regulations

which may be made under this Act for the purpose of -

- (a) requiring, prohibiting or regulating the use of any process or treatment in the preparation of food; or
- (b) securing the observance of hygiene conditions and practices in connection with the carrying out of commercial operations with respect to food or food sources; or
- (c) providing for the protection of the consumer, the quality of food or the provision of public information about food, food products or the use to which such food or food products may be put.

Court may impose appropriate prohibition.

**34.** (1) If the person responsible for a food business is convicted for an offence against any regulations to which this article applies, and if the court by which the person responsible is convicted, is satisfied that there exists a health risk condition with respect to that business, the court may by an order, impose the appropriate prohibition referred to in subarticle (3).

(2) In assessing whether a health risk condition exists with respect to any food business, the court shall examine if any of the following involve risk of injury to health, namely -

- (a) the use, for the purposes of the business, of any process or treatment;
- (b) the construction of any premises used for the purposes of the business, or the use, for those purposes, of any equipment;
- (c) the state or condition of any premises or equipment used for the purposes of the business; and
- (d) the conduct or practice of any persons engaged there.

(3) The appropriate prohibitions which may be imposed are:

- (a) in a case falling within subarticle (2)(a), a prohibition on the use of the process or treatment for the purpose of the business;
- (b) in a case falling within subarticle (2)(b), a prohibition on the use of the premises or equipment for the purposes of the business or any other food business of the same class or description;
- (c) in a case falling within subarticle (2)(c), a prohibition on the use of the premises or equipment for the purposes of any food business;
- (d) in a case falling within subarticle (2)(d), a prohibition on the conduct or practice in question.

(4) If the person responsible for a food business is convicted of an offence against any regulations as is referred to in article 33(3)(b), and the court by which the responsible person is convicted deems it proper so to do in the circumstances of the case, the court may, by an order, impose a prohibition on the responsible person from participating in the management of any food business, or any food business of a class, type or description, as may be

stated in the order, for whatever period as may be specified in the order, such period not being less than six months.

(5) Upon the making an order under subarticle (1) or (4), hereinafter in this Act referred to as a "prohibition order", the health authority shall, as soon as is practicable, -

- (a) serve a copy of the prohibition order on the responsible person of the business; and
- (b) in the case of an order under subarticle (1), affix a copy of the prohibition order in a conspicuous place on such premises used for the purposes of the business, as it may consider appropriate,

and any person who knowingly contravenes any such order shall be guilty of an offence against this article.

(6) A prohibition order shall cease to have effect -

- (a) in the case of an order given under subarticle (1), on the issue, by the health authority, of a certificate to the effect that it is satisfied that the responsible person has taken sufficient measures to secure that the health risk condition no longer exists with respect to the business; and
- (b) in the case of an order given under subarticle (4), on the giving by the court of a direction to that effect.

(7) The health authority shall issue a certificate under subarticle (6)(a) within three working days of its being satisfied that the measures therein mentioned have been taken; and on an application by the responsible person for such a certificate, the health authority shall -

- (a) determine, as soon as is reasonably practicable and in any event not later than fourteen days after such application, whether or not it is so satisfied; and
- (b) if it determines that it is not so satisfied, give notice to the responsible person of the reasons for that determination.

(8) The court shall give a direction under subarticle (6)(b) if, on an application by the responsible person, the court deems it proper so to do having regard to all the circumstances of the case, including in particular the conduct of the responsible person since the making of the order, but no such application shall be entertained if it is made -

- (a) before the lapse of six months from the making of the prohibition order; or
- (b) within three months after the making by the responsible person of a previous application for such a direction.

(9) Any person who fails to comply with a prohibition order shall be guilty of an offence against this article.

(10) The provisions of subarticle (4) shall apply in relation to the manager of a food business as they apply in relation to the

responsible person of such business; and any reference in subarticle (5) or (8) to the responsible person of the business, or to the responsible person, shall be construed accordingly; for the purposes of this subarticle, "manager", in relation to a food business, shall mean any person who is entrusted by the responsible person with the day-to-day running of the business, or any part thereof.

Publication of a copy of a prohibition order.

**35.** (1) The health authority may publish or cause to be published a copy of the order given under article 34(4) in the local media in both the Maltese and English languages.

(2) When making a decision under subarticle (1) the health authority shall adhere to the principles of fairness and objectivity.

(3) The Government, the health authority and any public officer acting on the instructions or authority of the health authority shall not be or become liable for any acts done in good faith under subarticle (1); the exemption from liability shall extend to all persons publishing, printing, recording, broadcasting, communicating or reproducing such information in any form.

Emergency prohibition orders.

**36.** (1) Where the health authority is satisfied that a health risk condition exists with respect to any food business, it may, by order served on the responsible person of the business, hereinafter in this Act referred to as an "emergency prohibition order", impose the appropriate prohibition in accordance with this article.

(2) Any person who fails to comply with an emergency prohibition order shall be guilty of an offence against this article.

(3) The provisions of article 34(2) and (3) shall, *mutatis mutandis*, apply with regard to emergency prohibition orders under this article as if reference to the court in such subarticles were a reference to the health authority, and as if the reference in article 34(2) to risk of injury were a reference to imminent risk of injury.

(4) The provisions of article 34(10) shall, *mutatis mutandis*, apply with respect to an emergency prohibition order.

(5) As soon as is practicable, after the making of an emergency prohibition order, the health authority shall -

- (a) serve a copy of the order on the responsible person of the business; and
- (b) affix a copy of the order in a conspicuous place on the premises used for the purposes of that business as it may consider appropriate,

and any person who knowingly contravenes such an order or in any way defaces, erases, obscures, damages or removes the said copy of the order, shall be guilty of an offence against this article.

(6) An emergency prohibition order shall cease to have effect on the issue by the health authority of a certificate to the effect that it is satisfied that the responsible person has taken sufficient measures to secure that the health risk no longer exists with respect to the business.

(7) The health authority shall issue a certificate under



subarticle (6) within three days of its being satisfied that the measures therein mentioned have been taken; and on an application by the responsible person for such a certificate, the health authority shall -

- (a) determine, as soon as is reasonably practicable and in any event not later than ten days after such application, whether or not it is so satisfied; and
  - (b) if it determines that it is not so satisfied, give notice to the responsible person of the reasons for that determination.
- (8) (a) Any person who feels himself aggrieved by any emergency prohibition order made on him may, within fifteen days from the making of the order, by application served on the health authority, appeal against it to the First Hall of the Civil Court and, if the court, after appointing the application for hearing and after examining such evidence as may be produced by the parties, is -
- (i) satisfied that the imminent risk to health exists in accordance with the provisions of article 34(2), the court shall dismiss the appeal and confirm the order,
  - (ii) not satisfied that the imminent risk to health exists in accordance with the provisions of article 34(2), it may order the health authority to pay to the person making the application a reasonable amount as compensation for any loss suffered by reason of his complying with the order.
- (b) The health authority shall file a reply to such application within such time, not being less than twenty-four hours, as the court may determine.

**37.** (1) If any steps or other action in pursuance of article 34(2) as made applicable by article 36(3), to be taken as a result of an emergency prohibition order, have not been taken within the time specified therein, the health authority may enter the premises to which the emergency prohibition order relates and take such steps, including the closure of the premises or other action as may be required in the circumstances.

Failure to abide by emergency prohibition order.

(2) Saving the provisions of Chapter IV of the Constitution or of the European Convention Act, notwithstanding the provisions of any other law, no precautionary warrant or other order shall be issued or made by any court restraining the health authority from the exercise of any of the powers conferred upon it by article 36 and by subarticle (1) of this article.

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(3) All expenses reasonably incurred by the health authority to carry out an emergency prohibition order under article 36 in pursuance of subarticle (1) of this article shall be recoverable as a civil debt by the health authority from the responsible person of the business to which the emergency prohibition order relates.

Emergency control order.

**38.** (1) If it appears to the health authority that the carrying out of commercial operations with respect to food, food sources or contact materials of any class or description involves, or may involve an imminent risk of injury to health, it may, by an order referred to as an "emergency control order", and subject to any condition it may deem fit to impose, prohibit the carrying out of such operations with respect to food, food sources or contact materials of that class or description.

(2) Any person who knowingly contravenes an emergency control order shall be guilty of an offence against this article.

(3) The health authority may in writing consent either unconditionally or subject to any condition or conditions that it may consider appropriate, to the doing, in such case as may be specified in the consent, of anything which has otherwise been prohibited by an emergency control order.

(4) It shall be a defence for a person charged with an offence against subarticle (2) to show that consent had been given for the doing of the act charged under subarticle (3), and that any condition subject to which the consent was given was complied with.

(5) The health authority may -

(a) give directions as appear to it necessary or expedient for the purpose of preventing the carrying out of commercial operations with respect to any food, food source or contact materials which it believes, on reasonable grounds, to be food, food sources or contact materials to which an emergency control order applies; and

(b) do anything which appears to it to be necessary or expedient for that purpose.

(6) Any person who knowingly fails to comply with a direction under this article shall be guilty of an offence.

(7) The court shall also, upon an application by the health authority, order the person found guilty of an offence to pay the health authority the costs incurred by it for the prosecution in connection with the offence, including any inspection which led to such prosecution and any examination pursuant to such inspection.

Undertakings.

**39.** (1) When it appears to the health authority that any person engaged in any food business has engaged in any conduct that constitutes an offence against articles 11 to 14 and articles 16 to 19, the health authority may, at its discretion, instead of causing proceedings to be instituted against that person, caution that person in writing, and seek an undertaking in writing from that person that he shall refrain from the conduct specified in the undertaking for such period as may be agreed to by the parties concerned, and, without prejudice to subarticle (3), upon the making of such undertaking no further proceedings may be instituted with respect to such offence.

(2) The health authority shall maintain a register of undertakings made under subarticle (1), which register shall be kept at an office specified by the health authority, and shall be

available for viewing by any person at such times as may be established by the health authority.

(3) Any person who acts in contravention of an undertaking made in accordance with subarticle (1) shall be guilty of an offence against this article.

#### *Defences*

**40.** Where the facts which, subject to the provisions of article 41, would constitute the commission, by any person, of an offence against any of the preceding provisions of this Part or of any regulations issued in virtue of article 10, are due to an act or default of some other person, that other person shall be guilty of the offence; and a person may be charged with and convicted of the offence by virtue of this article whether or not proceedings are taken against the first mentioned person.

Commission of an offence by default of another person.

**41.** (1) Subject to the provisions of subarticle (5), in any proceedings for an offence against any of the preceding provisions of this Part or of any regulations issued in virtue of article 10, it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by a person under his control.

Due diligence.

(2) Without prejudice to the generality of subarticle (1), a person charged with an offence against article 14, or 17, or 18 who -

- (a) has not prepared the food in respect of which the offence is alleged to have been committed; or
- (b) has not imported it into Malta,

shall be taken to have established the defence provided by that subarticle if he satisfies the requirements of subarticle (3).

(3) A person shall be deemed to satisfy the requirements of this subarticle if he proves -

- (a) that the commission of the offence was due to an act or default of another person who was not under his control, or to reliance on information supplied by another person;
- (b) that he carried out all necessary checks on the food in question as were reasonable, in all the circumstances, and that it was reasonable in the circumstances for him to rely on checks carried out by the person who supplied the food to him;
- (c) that the sale or intended sale of which the alleged offence consisted was not a sale or intended sale under his name or mark; and
- (d) that he did not know, and had no reason to suspect at the time of the commission of the alleged offence that his act or omission would amount to an offence against the relevant provision.

(4) The person charged shall not, without the leave of the

court, be entitled to rely on the defence referred to in subarticle (3) if the defence involves the allegation that the commission of the offence was due to an act or default of another person, or to reliance on information supplied by another person, unless, after the reading of the charge in court and not later than twenty-four hours thereafter, he files a notice in court to be served on the prosecutor containing such information identifying or assisting in the identification of that other person as was then in his possession.

(5) (a) In proceedings for an offence against any of the preceding provisions of this Part, relating to the advertisement for sale of any food, it shall be a defence for the person charged to prove -

- (i) that he is a person whose business it is to publish or arrange for the publication of advertisements; and
- (ii) that he received the advertisement in the ordinary course of business and that, notwithstanding that he complied with any guidelines made under paragraph (b), he did not know and had no reason to suspect that its publication would amount to an offence against that provision.

(b) The Minister may by regulations make provision for the issue and supply of guidelines for persons engaged in the business referred to in paragraph (a), and in particular for the avoidance of the publication of advertisements not in conformity with this Act.

## PART V

### Legal proceedings

Initiation of  
criminal  
proceedings.

**42.** (1) Where there is reasonable cause to believe that any person has contravened any of the provisions of this Act or of any regulations made thereunder, the Police shall, on the report of the health authority, institute criminal proceedings against the offender before the competent court.

(2) In any criminal proceedings instituted by the Police for an offence under this Act, the health authority or any officer, lawyer or legal procurator deputed by the health authority may, notwithstanding any law to the contrary, lay the charge before the Court of Magistrates, produce evidence, plead and otherwise conduct the prosecution instead of the Police.

(3) The sworn statement of any officer, lawyer or legal procurator to the effect that he is deputed as provided in subarticle (2) shall be conclusive evidence of the fact, should proof thereof be required by the accused.

Offences and  
penalties.  
Amended by:  
L.N. 426 of 2007.

**43.** (1) A person found guilty of an offence against article 31 shall be liable, on conviction, to a fine (*multa*) of not less than four hundred and sixty-five euro and eighty-seven cents (465.87) and not exceeding two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37) or to imprisonment for a

term not exceeding six months or to both such fine and imprisonment.

(2) A person found guilty of a second or subsequent conviction shall be liable, on conviction, to a fine (*multa*) of not less than one thousand liri and not exceeding two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37) and not exceeding four thousand and six hundred and fifty-eight euro and seventy-five cents (4,658.75) or to imprisonment for a term of not less than one year and not exceeding two years or to both such fine and imprisonment.

(3) A person found guilty of any other offence against this Act shall be liable -

- (a) on conviction for a first offence to a fine (*multa*) of not less than four hundred and sixty-five euro and eighty-seven cents (465.87) and not exceeding four thousand and six hundred and fifty-eight euro and seventy-five cents (4,658.75) or to imprisonment for a term not exceeding two years or to both such fine and imprisonment;
- (b) on conviction for a subsequent offence, to a fine (*multa*) of not less than one thousand and one hundred and sixty-four euro and sixty-nine cents (1,164.69) and not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87) or to imprisonment for a term not exceeding four years or to both such fine and imprisonment.

44. Upon conviction for any offence, other than an offence against the provisions of article 31, the court may order the suspension or cancellation of any licence or licences issued in respect of the person charged or the premises forming the subject of the proceedings.

Suspension or  
cancellation of  
licences.

45. Where a person is found guilty of an offence against this Act, the court shall, where necessary, besides awarding punishment, order the offender to abate any nuisance arising from the offence or, if the circumstances so require, to comply with the law, in either case within such time as shall be fixed by the court for the purpose and, in the case of non-compliance with any such order, the offender shall be liable to a further fine (*multa*) not exceeding one hundred and sixteen euro and forty-seven cents (116.47) for every day of non-compliance after the expiration of the said time fixed as aforesaid.

Offender to  
conform with laws  
and regulations.  
*Amended by:*  
*L.N. 426 of 2007.*

46. Where an offence against any of the provisions of this Act or of any regulations made thereunder is proved to have been committed, the court shall order the forfeiture and destruction of the food to which the offence relates.

Seizure of food in  
relation to court  
cases.

47. Where a person is charged with an offence against any of the provisions of this Act but is not found guilty of such offence, the court may, if it deems fit according to the circumstances of the case, order the Government, as represented by the health authority, to pay such person an amount fixed by the court as compensation for any damage caused in the articles seized or in any part thereof,

Payment of  
compensation as  
ordered by the  
court.

by the examination or analysis referred to in article 10(1)(k) to (p).

Accused may plead  
warranty.

**48.** (1) Subject to the provisions of this article, in any proceedings for an offence against this Act or any regulations made thereunder, being an offence consisting of selling, or offering, exposing or advertising for sale, or having in one's possession for the purpose of sale, any article or substance, it shall be a defence for the accused to prove that -

- (a) he purchased it as being an article or substance which could lawfully be sold or otherwise dealt with as aforesaid, or, as the case may be, could lawfully be so sold or dealt with under the name or description or for the purposes under or for which he sold or dealt with it, and with a written warranty to that effect;
- (b) that he had no reason to believe, at the time of the commission of the alleged offence, that it was otherwise; and
- (c) it was, at the time of the commission of the alleged offence, in the same state as when he purchased it.

(2) Where the accused in any such proceedings is an employee or an agent of the person who purchased the article or substance under a warranty, he shall be entitled to rely on the provisions of this article in the same way as his employer or principal would have been entitled to do if he had been the accused.

(3) Where the accused in any such proceedings has been acquitted under the foregoing provisions of this article, new proceedings may be taken against the person by whom the warranty relied on by the accused in the original proceedings is alleged to have been given.

(4) For the purposes of this article and article 49, a name or description entered in an invoice shall be deemed to be a written warranty that the article or substance to which the entry refers can be sold or otherwise dealt with under that name or description.

Misleading  
warranty.

**49.** (1) An accused who, in any proceedings under this Act wilfully applies to any article or substance a warranty given in relation to any other article or substance shall be guilty of an offence against this Act.

(2) A person who, in respect of any article or substance in respect of which a warranty might be pleaded under the provisions of article 48, gives to the purchaser a false warranty in writing, shall be guilty of an offence against this Act, unless he proves that he gave such warranty more than one year or such longer period in respect of which the warranty was given before the facts otherwise constituting the offence took place.

Prosecution  
officers may be  
called as witnesses.

**50.** (1) Any of the officers mentioned in article 42(2) may be called as a witness at the request of the accused.

(2) Where, however, the evidence of such officer is required by the Police, the said officer shall be heard before he assumes the duties of prosecuting officer, unless the necessity of his evidence arises at a later stage of the proceedings.

## PART VI

## Miscellaneous

**51.** Where any food has been seized under the provisions of this Act, and the owner thereof consents in writing to the destruction of such food, the health authority may, after taking such samples as may be required to prove the offence, direct that the said food be destroyed, without prejudice to the taking of any proceedings against the person responsible for the offence.

Voluntary  
surrender of food  
for destruction.

**52.** (1) Any regulation or order made, or any licence granted, under the provisions of the Food, Drugs and Drinking Water Act prior to its repeal by this Act shall, in so far as they are not inconsistent with the provisions of this Act, or of any regulations made thereunder, continue in force and have effect as if they had been made or granted under the relative provisions of this Act.

Savings.  
Cap. 231.

(2) Any legal proceedings instituted under the Food, Drugs and Drinking Water Act prior to its repeal shall continue as if those proceedings had been commenced under this Act.

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