

**IICA/CARICOM SECRETARIAT**

**FOOD SAFETY BILL**

22 March 2017

# **FOOD SAFETY BILL**

## **Arrangement of Sections**

### **PART I PRELIMINARY**

- 1. Short title and commencement**
- 2. Interpretation**
- 3. Application of the Act**

### **PART II ADMINISTRATION**

- 4. Establishment and functions of the Food Safety Authority**
- 5. Chairperson of the Food Safety Service**
- 6. Functions of the Food Safety Authority**
- 7. Proceedings of the Food Safety Authority**
- 8. Food Safety Service**
- 9. Operating Principles**
- 10. Authorisation to carry out functions of Food Safety Service**
- 11. Director of Food Safety**
- 12. Programme of work and Budget of Food Service**
- 13. Appointment of Food inspectors**
- 14. Duties and responsibilities of Food inspector**
- 15. Obligations of Food inspectors**
- 16. Identification of Food inspectors**
- 17. Appointment of Food analysts**
- 18. Designation of Reference Laboratory**
- 19. Designation of Official laboratories**

### **PART III FOOD STANDARDS AND CONTROL**

- 20. Food standards and requirements**
- 21. Food to comply with food safety standards and requirements**
- 22. Labelling and packaging**
- 23. Traceability**
- 24. Recall procedure**
- 25. Recall responsibilities and procedures involving an importer or exporter**
- 26. Food hazard or disease on premises**
- 27. Non-compliance by owner**
- 28. Limiting or banning substances or processes in food**
- 29. Information to be provided to public**

**PART IV  
EMERGENCY PREPAREDNESS**

- 30. Emergency response plan and early warning system**
- 31. Emergency measures**

**PART V  
LICENSING AND CERTIFICATION**

- 32. Licensing authority**
- 33. Application for licence to operate food business**
- 34. Consideration of application**
- 35. Grant of food business operator's licence**
- 36. General conditions respecting licences**
- 37. Grounds of refusal to grant licence**
- 38. Licensing responsibilities of food business operator**
- 39. Amendment of licence**
- 40. Renewal of licence**
- 41. Voluntary surrender of licence**
- 42. Suspension of licence**
- 43. Revocation of licence**
- 44. Procedure in case of suspension or revocation of licence**
- 45. Food Handler Certificates**
- 46. Food handling requirements**
- 47. Application for food handler's certificate**
- 48. Issuing of food handler's certificate**
- 49. Cancellation of food handler's certificate**
- 50. Street food vending certificate**

**PART VI  
FOOD BUSINESSES AND STREET FOOD**

- 51. General obligations of food business operators**
- 52. Monitoring of medical conditions**
- 53. Medical practitioners' duty to report**
- 54. Food business licence required**

**PART VII  
IMPORT AND EXPORT OF FOOD**

- 55. Power to designate ports**
- 56. Import requirements**
- 57. Import and export inspections**
- 58. Food for personal consumption**
- 59. Export certification**
- 60. Report on activities**

**PART VIII  
POWERS AND DUTIES**

- 61. Powers of entry, search, etc.**
- 62. Powers to enter dwelling places**
- 63. Inspection and seizure of suspected food**
- 64. Objects of Inspection**
- 65. Duty not to disclose information**
- 66. Enforcement policy**
- 67. Food unfit for consumption**
- 68. Improvement notice**
- 69. Emergency hygiene prohibition notices**
- 70. Information to members of the public**

**PART IX  
OFFENCES, PENALTIES AND ADMINISTRATIVE PROCEEDINGS**

- 71. Unsafe food, food injurious to health etc.**
- 72. Selling unsafe food**
- 73. Importation of Food**
- 74. Offence in respect of misbranded foods**
- 75. Misleading advertisements**
- 76. Food containing extraneous matter**
- 77. Unhygienic or unsanitary processing or manufacturing of food**
- 78. Possession of adulterant**
- 79. False information**
- 80. Obstructing or impersonating a food inspector.**
- 81. Falsely describing food**
- 82. Carrying on business without licence**
- 83. Failure to comply with the directions of food inspector**
- 84. Subsequent offences**
- 85. Offences by companies**
- 86. Administrative Penalty notice**
- 87. Procedures for challenging alleged non-prosecutable breach**
- 88. Administrative penalty to constitute a debt to the State**
- 89. Certain offences may be dealt with administratively**
- 90. Prosecution avoidance Notice**
- 91. Procedure for payment**
- 92. Effect of payment of prosecution avoidance penalty**
- 93. Outstanding prosecution avoidance penalty a debt to the State**
- 94. Conduct of officials**
- 95. Forfeiture**
- 96. Good faith defence**
- 97. Presumptions**
- 98. Application for reconsideration**
- 99. Powers of the Director in administrative proceedings**
- 100. Consideration of application by Director**

- 101. Establishment of Tribunal**
- 102. Commencement of proceedings**
- 103. Nature of appeal**
- 104. Tribunal may extend time for appeal**
- 105. Hearing**
- 106. Tribunal may decide appeal without oral hearing if both parties consent**
- 107. Tribunal's powers**
- 108. Evidence**
- 109. Powers of investigation**
- 110. Powers to summon witnesses**
- 111. Service of summons by the Tribunal**
- 112. Protection of persons appearing.**
- 113. Grounds of appeal and burden of proof**
- 114. Sittings of Tribunal**
- 115. Tribunal may dismiss frivolous or vexatious appeal**
- 116. Decision of Tribunal**
- 117. Appeals to High Court**
- 118. Stating Case for High Court**

**PART X  
MISCELLANEOUS**

- 119. Agreements and memoranda of understanding**
- 120. Manuals**
- 121. Duty of other authorities to assist and cooperate**
- 122. Regulations under this Act**
- 123. Repeal and savings**

# DRAFT CARICOM MODEL FOOD SAFETY BILL, 2016

## A BILL

### ENTITLED

An Act to provide for food safety and food quality in [*Country*], to establish the Food Safety Authority and the Food Safety Service, to promote trade in safe and wholesome food and for connected purposes.

BE it enacted ...

### PART I PRELIMINARY

#### Short title and commencement.

1. This Act may be cited as the Food Safety Act [*insert date*], and shall come into force on a day to be appointed by the Minister by notice published in the *Gazette*..

#### Interpretation.

2. In this Act, unless the context otherwise requires —

“**additive**” in relation to food-

(a) means any substance –

- (i) not normally consumed by itself as a food or used as an ingredient of food whether or not the substance has nutritive value;
- (ii) which is intentionally added to food for a technological (including organoleptic) purpose in the manufacture, processing, preparation, treatment, packing, transport or holding of foods; and
- (iii) that results or may reasonably result (directly or indirectly) in it or its by-products becoming a component of or otherwise affecting the characteristics of such food; and

(b) does not include –

- (i) contaminants; or
- (ii) any substance that is added to food for maintaining or improving nutritional quality;

“**adulterate**” means to make food impure in order to give a false impression or value or to hide defects, by the addition of a foreign, inferior or inert substance to the food, or by the exclusion or removal of a valuable or necessary ingredient;

**“advertisement”** includes any representation whether written, pictorial, visual or otherwise, made for the purpose of promoting directly or indirectly the sale or disposal of any food or any substance represented as food, and “advertise” shall have a corresponding meaning;

**“batch or lot number”** where used in relation to –

- (a) goods means a reference number assigned by a food business operator to a series of similar goods, or goods produced under similar conditions; or
- (b) crops, means the crop harvesting date, as determined by the date on which the harvesting of the crop commences;

**“Codex Alimentarius Commission”** means the international organisation so named, and established in 1961 by the Food and Agriculture Organization of the United Nations;

**“contaminant”** means any substance, which is present in food as a result of the production (including operations carried out in crop husbandry, animal husbandry or veterinary medicine), manufacture, processing, preparation, treatment, packing, packaging, transport or holding of such food or as a result of environmental contamination;

**“Director”** means the Director of Food Safety appointed pursuant to section 11;

**“export”** means the sending of commodities to another country by any means, and **“exportation”** has a corresponding meaning;

**“exporter”** includes any person who, whether as owner, consignor, consignee, agent or broker, is in possession of or is in any way entitled to the custody or control of any food exported from [*Country*];

**“food”** means any substance, whether processed, semi-processed or raw, which is intended for human consumption, and includes drink, chewing gum and any substance which has been used in the manufacture, preparation or treatment of “food” but does not include cosmetics or tobacco or substances used only as drugs;

**“food analyst”** means a person or institution appointed as a food analyst under section 17;

**“food borne disease”** means an infectious, toxic or other disease caused by agents that enter the body through the ingestion of food;

**“food business”** means any business where food is produced, manufactured, prepared, treated, processed, packed, packaged, transported, handled, served, stored or sold, whether for profit or not;

**“food business operator”** means a person granted a licence under section 35 to operate a food business or where expressly provided, a person issued with a street food vending certificate under section 50;

**“food fraud”** means a false representation of a food whether by description, labelling, false or misleading representations or by concealment of what should have been disclosed, that is intended to deceive another;

**“food handler”** means a person who handles packaged or unpackaged food, food equipment and utensils, or food contact surfaces in a food business;

**“food hygiene”** comprises conditions and measures necessary for the production, processing, storage and distribution of food designed to ensure a safe, sound, wholesome product fit for human consumption;

**“food inspector”** means a person appointed as a food inspector under section 13;

**“food safety”** means an [assurance]<sup>1</sup> that food will not harm the consumer when prepared and or eaten in accordance with its intended use;

**“Food Safety Authority”** means the Food Safety Authority established under section 4;

**“food safety standards and requirements”** means –

- (i) the standards and requirements approved by the Food Safety Authority under section 20;
- (ii) the procedures and standards and criteria respecting food safety prescribed by the Minister by Regulations under 124; and
- (iii) in respect of any person issued with a licence or certificate under this Act, any term or condition of the licence mandating compliance with any standard or requirement respecting food;

**“Food Safety Service”** means the Food Safety Service established under section 8;

**“functions”** includes duties;

**“governmental entity”** means any government institution responsible for carrying out food safety control functions;

**“HACCP”** means the Hazard Analysis and Critical Control Points and refers to a system which identifies, evaluates and controls hazards significant for food safety;

**“hazard”** means - a biological, chemical or physical agent present in food that may cause an adverse health effect to the consumer.

**“import”** means the act of bringing into [*Country*] by any means, and **“importation”** has a corresponding meaning;

**“importer”** includes any person who, whether as owner, consignor, consignee, agent or broker is in possession of or in any way entitled to the custody or control of any food imported into [*Country*];

**“ingredient”** means any substance, including a food additive, used in the manufacture or preparation of food and present in the final product although possibly in a modified form;

---

<sup>1</sup> Square bracketed based on comments from the 21<sup>st</sup> Meeting of SOLAC.



**“inspection”** means the examination, by any person authorized under this Act, of food or systems put in place for the control of raw materials, processing or distribution of food, and includes process and finished product testing to verify that they conform to the requirements of this Act or any other law;

**“label”** means any tag, brand, mark, pictorial or other descriptive matter, written, printed, stenciled, marked, embossed or impressed on, or attached to, a container of food; and **“labelling”** includes any written, printed or graphic matter that is present on the label, accompanies the food, or is displayed near the food, including that for purpose of promoting its sale or disposal;

**“Minister”** means the Minister responsible for food safety;

**“National Codex Committee”** means the body responsible for the strategic leadership and coordination of the food standardization, food quality and food safety issues which are related to the work undertaken by the Codex Alimentarius Commission so that national interests are taken into account, or considered, when international standards are discussed.

**“non-prosecutable breach”** means a breach of this Act expressly described as a non-prosecutable breach;

**“official laboratory”** means a laboratory designated under section 19;

**“owner”** in relation to an article, object or thing, includes any person who has possession, custody or control;

**“personal consumption”** *refers to food being consumed or intended for consumption which is not prepared, produced, processed, manufactured, handled, sold, distributed, imported, transited or exported in connection with, or in furtherance of a food business; 2*

**“premises”** includes any building, tent or other structure, whether permanent or temporary, together with the land on which the same is situated and any adjoining land used in connection therewith, and includes any street, open space or place of public resort, or vehicle used for the sale, packaging, preparation, preservation, transportation or storage of any food;

**“prescribed”** means prescribed by Regulations made under this Act;

**“recall”** means the action of removing food from the market at any stage of the food chain, including food that is in consumers’ possession;

**“reference laboratory”** means a laboratory designated under section 18;

**“risk analysis”** means a process composed of risk assessment, risk management and risk communication in accordance with internationally accepted procedures and standards;

**“risk assessment”** means a scientifically based process consisting of hazard identification, hazard characterization, exposure assessment, and risk characterization;

---

<sup>2</sup> The 21<sup>st</sup> Meeting of SOLAC decided that there should be a definition of the term “personal consumption”.

“sell” includes to put up for sale, advertise, keep, store, display, transmit, consign, convey or deliver for sale, or to exchange, or to dispose of to any person in any manner for profit, exhibition, donation or public gathering, and “sold”, “selling” and “sale” shall have corresponding meanings;

“street food” means ready-to-eat food or drink prepared or sold along streets or similar public places;

“street food vending” means operating a food business to sell street food either from —

- (a) a vehicle, water craft or similar means of conveyance; or
- (b) a tray, container or other article used to move food from one place to another

“traceability” means the ability to follow the movement of a food through specified stages of production, processing and distribution;

“traceable item” means any item that is subject to the obligation of traceability under this Act and encompassing food, all food ingredients, feed, raw materials used in food production, and any other substance entering, within, or exiting from an operation or intended to be, incorporated into a food through all stages of processing and distribution, as well as packaging materials intended to be in direct contact with food;

“Tribunal” means the Sanitary and Phytosanitary Appeal tribunal established under section 102;

“vehicle” means an aircraft, train, vessel, motor vehicle, or other thing used to transport food from one place to another;

“WTO SPS Agreement” means the Agreement on the Application of Sanitary and Phytosanitary Measures of the World Trade Organization, as may be amended from time to time.

### **Application of the Act.**

3. (1) Subject to subsection (2), this Act applies to -
  - (a) food safety at all stages in the production chain<sup>3</sup> including —
    - (i) production, processing, manufacturing and preparation;
    - (ii) handling, sale and distribution;
    - (iii) import, transit and export;
    - (iv) transport, packaging and storage;
    - (v) any other activity related to the stages mentioned in subparagraphs (i) to (iv) whether such food is prepared in a permanent or temporary structure and whether on land, air or at sea; and
  - (b) all food, notwithstanding the scope of any legislation already in effect regarding fish and aquaculture products, meat or other specific food products.

---

<sup>3</sup> “Production Chain” was substituted for “Food Safety” following discussions at the 21<sup>st</sup> Meeting of SOLAC.

(2) Notwithstanding subsection (1) this Act shall not apply to food for personal consumption. <sup>4</sup>

## PART II ADMINISTRATION

### Establishment of the Food Safety Authority.<sup>5</sup>

4. (1) There is established a body to be known as the Food Safety Authority which shall be responsible for the administration and enforcement of this Act.

(2) The Food Safety Authority shall be a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property, to contract and to sue and be sued in its name.

(3) The Food Safety Authority shall subject to subsection (3) comprise [seven (7)] members appointed by the Minister from among persons appropriately qualified and experienced in matters respecting food safety.

(4) [Four (4)] members of the Food Safety Authority shall be appointed from Government departments and agencies with responsibility for -

- (a) [agriculture;
- (b) health;
- (c) consumer affairs; and
- (d) legislative affairs.]

(5) Three (3) members of the Food Safety Authority shall be appointed from the private sector from among persons having experience and expertise in -

- (a) [the food industry;
- (b) manufacturing; and
- (c) retailing.]

(6) The members of the Food Safety Authority shall -

- (a) be appointed in such a manner as to secure the highest standards of competence and a broad range of relevant expertise;

---

<sup>4</sup> At the 21<sup>st</sup> Meeting of SOLAC the applicability of the previous reiteration of this subclause generated a lot of discussion. The previous reiteration read as follows: "(2) This Act shall not apply to food that is produced, prepared, imported or exported for personal consumption." The clause was considered by some delegates as being too vague and could lead to problems in its application. The clause was amended as appears above, and supported by the new definition of "*personal consumption*" appearing in Clause 2.

<sup>5</sup> Delegates at the 21<sup>st</sup> Meeting of SOLAC queried why the Food Safety Committee did not have legal status to better enable it to carry out its functions, in particular, with respect to the making of staff appointments and to enter into other contracts. Subsequent to the meeting discussions were held with IICA on this issue and it was agreed that it would be the preferable for the Food Safety Authority to have corporate legal status and would be the body responsible for food safety matters. The Food Safety Service would remain unincorporated and would operate as an office through which enforcement and similar functions are carried out. The Director of the Food Safety Service would be an ex officio member of the Food Safety Authority. This decision necessitated the insertion of additional provisions to deal with the composition and proceedings of the Food Safety Authority.

- (b) hold office for an initial term of three years; and
- (c) be eligible for re-appointment.

(7) The person for the time being holding the position of operational head of a Government department or agency referred to in subsection (4) shall provide to the Minister a list of their employees who are appropriately qualified and experienced to be appointed as members of the Food Safety Authority.

#### **Chairperson of the Food Safety Authority.**

5. The Chairperson of the Food Safety Authority shall be appointed by the Minister from among the members of the Food Safety Authority with demonstrated expertise and experience in the field of food safety or food science.

#### **Functions of Food Safety Authority<sup>6</sup>**

6. (1) The Food Safety Authority shall be the competent authority for food safety matters in [*Country*], and shall:

- (a) monitor the implementation of this Act and from time to time issue reports and recommendations to the Minister on the implementation of this Act;
- (b) establish a risk-based food safety and quality control framework to protect, enhance and ensure food safety and to protect consumers against food fraud;
- (c) analyse data issued by the Codex Alimentarius and carry out or commission studies analysing [*Country*] interest in food standards and the Codex Alimentarius Commission;
- (d) [promote, and formulate] programmes for consumer education regarding food safety and quality as well as other aspects of risk communication;
- (e) serve as or participate in the National Codex Committee;
- (f) establish certification requirements for food business operators with respect to hygiene and manufacturing, recognised by Codex Alimentarius Commission;
- (g) give directions to the Food Safety Service in relation to –
  - (i) food safety matters, including those related to the production, manufacture, import, export, labelling and sale of food;
  - (ii) food-consumer protection and emerging food safety and quality issues, including those relating to street food vending;
  - (iii) the formulation, review and implementation of a draft food safety and quality policy, for the approval of the Food Safety Authority including procedures for emergency response;
  - (iv) participation in the work of the Codex Alimentarius Commission and other international and regional entities including representations at meetings; and
  - (v) the formulation of food standards, codes of practice and notices under this Act; and

---

<sup>6</sup> The 21<sup>st</sup> Meeting of SOLAC noted that some of the functions attributed to the Food Safety Authority should have been carried out by the Food Safety Service and vice versa. The Meeting assisted with the rationalization of the functions as appears in Clauses 6 and 8 of the current draft.

- (h) carry out such other functions as may be required by the Minister.
- (2) The Food Safety Authority may —
- (a) in consultation with the Minister, negotiate and enter into agreements or memoranda of understanding with other governmental entities; and
  - (b) enter into any other transaction or operation which, in the opinion of the Food Safety Authority, is necessary for the discharge of its functions.
- (3) The Food Safety Authority may, where necessary, establish *ad-hoc* or permanent sub-committees to advise it or to fulfil specific functions under this section.

### **Proceedings of the Food Safety Authority.**

7. (1) The Food Safety Authority shall meet, at the request of the Chairman, as often as may be necessary for the conduct of its business.
- (2) The quorum for a meeting of the Food Safety Authority shall be five members.
- (3) Decisions of the Food Safety Authority shall be by consensus. Where consensus cannot be obtained decisions shall be taken by a majority vote of the members present and voting. In the event of an equality of votes, the Chairperson or the person presiding over the meeting in the absence of the Chairperson shall exercise a second or casting vote.
- (4) Except as provided in this section, the Food Safety Authority shall regulate its own procedures.

### **Food Safety Service.**

8. (1) There shall be a Food Safety Service which shall be headed by the Director of Food Safety.
- (2) The Food Safety Service shall implement the policies and directives approved by the Food Safety Authority with respect to the manufacture, processing, distribution, sale, import and export of food so as to ensure that food complies with food safety standards and requirements.
- (3) Without prejudice to the generality of subsection (2) the Food Safety Service shall —
- (a) issue reports to the Food Safety Authority with respect to the performance of its functions under this Act;
  - (b) develop requirements for food safety and quality for all aspects of the food chain;
  - (c) carry out risk assessments and analyses based on available scientific evidence in an independent, objective and transparent manner, and issue guidelines for risk assessment and analysis methodologies;

- (d) ensure that all food produced, distributed or marketed whether for domestic consumption or export, and of whatever origin, meets food safety standards and requirements;
- (e) review, evaluate and audit the performance of other governmental entities responsible for food safety and arrange for its own performance to be subject to review, evaluation and audit by an external body;
- (f) carry out inspections for the purpose of preventing food safety risks;
- (g) develop and sustain effective food borne disease surveillance;
- (h) develop and coordinate a food safety early warning and emergency response system;
- (i) develop, implement and monitor traceability systems;
- (j) prohibit or set limits for food additive usage, the use of pesticide and veterinary drugs residues, contaminants of heavy metals, and irradiation of food and such other substances and food processing methods, according to international standards and as may be prescribed;
- (k) issue, suspend, cancel and revoke food business licences in accordance with this Act;
- (l) coordinate and provide advice, information or assistance to any governmental entity with responsibility for any aspect of food safety and food trade;
- (m) develop import and export requirements and procedures for food;
- (n) evaluate equivalence of sanitary measures taken by trading partners;
- (o) provide justification to other countries concerning sanitary measures applied;
- (p) provide information regarding import requirements for food on request from any international, regional or local food safety organization or person;
- (q) train and facilitate food inspectors in –
  - (i) the monitoring, inspection and control of food safety and quality systems;
  - (ii) using analytical methods and enforcing laboratory quality assurance;
  - (iii) assessing the compliance of food vendors and other food handlers with the provisions of this Act; and
  - (iv) conducting risk-based inspection and applying quality control systems for food businesses;
- (r) develop and deliver training programmes and manuals, in consultation with relevant stakeholders, for the guidance of government entities having responsibilities under this Act with respect to the execution and enforcement of food safety standards or requirements; and
- (s) carry out such other activities as may be assigned by the Food Safety Authority.

(4) The first of the reports referred to in subsection (3)(a) shall be issued before the end of the period of three years beginning with the day on which this Act comes into force. Subsequent reports shall be published at intervals not exceeding three years.

### **Operating Principles.**

9. (1) In the administration of this Act, the Food Safety Authority and the Food Safety Service shall give consideration to the principles of:

- (a) harmonization with international standards;
- (b) risk analysis or risk assessment and science-based actions; and
- (c) being least-trade restrictive, necessary and proportional to the risk,

and such other principles as may be contained in the WTO SPS Agreement and the Codex Alimentarius Commission.

(2) Where relevant scientific evidence is insufficient, the Food Safety Service and Food Safety Authority may adopt food safety measures on the basis of available pertinent information, including information from international organizations.

#### **Authorisation of third parties to carry out functions of Food Safety Service.<sup>7</sup>**

10. (1) The Food Safety Authority may, by instrument in writing, with the approval of the Minister and subject to such terms and conditions as the Minister thinks fit, authorise any organisation, corporation agency or person to carry out any of the functions of the Food Safety Service under this Act.

(2) The instrument referred to in subsection (1) shall set out the terms and conditions of the authorisation, including —

- (a) the scope and duration of the functions authorised to be performed;
- (b) remuneration arrangements;
- (c) the means of monitoring and supervision by the Food Safety Service;
- (d) the minimum qualifications required to perform specific functions, if any; and
- (e) the conditions on which the authorisation may be terminated.

(3) The Food Safety Authority shall not issue an authorisation under subsection (2) in relation to —

- (a) official liaison duties with Ministries, or foreign authorities;
- (b) approval of standards, requirements, rules or sanitary measures; or
- (c) any function specified in Regulations for the purpose of this subsection.

(4) An authorisation under this section does not prevent the Food Safety Service from performing that function on the request of the Food Safety Authority.

#### **Director of Food Safety.**

11. (1) The Minister shall, on the advice of the Food Safety Authority, appoint a Director of Food Safety (hereinafter referred to as “the Director”) on such terms and conditions as the Minister may determine.

---

<sup>7</sup> At the 21<sup>st</sup> Meeting of SOLAC this provision which appeared in Clause 6 of the bill, dealt with the delegation of functions of the Food Safety Service. The Meeting thought that the issue was not one of delegation but one of authorization to carry out the functions. The provision has accordingly been amended to give effect to that view.

(2) The term of appointment of the Director shall not exceed three years and may be renewed.

(3) The Director shall be an Ex officio member of the Food Safety Authority and shall be responsible for –

- (a) the day-to-day administration of the Food Safety Service;
- (b) drawing up proposals for the Food Safety Service work programmes in consultation with the Food Safety Authority;
- (c) implementing the work programmes and the decisions adopted by the Food Safety Authority;
- (d) ensuring the provision of appropriate scientific, technical and administrative support for the Food Safety Authority; and
- (e) ensuring that the Food Safety Service carries out its tasks in accordance with the requirements of this Act.

(4) The Food Safety Authority shall, with the approval of the Minister, approve the remuneration and allowances of the Director of Food Safety.

#### **Programme of work and Budget of Food Service.**

**12.** The Director shall, by September 30, in each year, submit to the Food Safety Authority for its approval:

- (a) a report covering all the activities of the Food Safety Service in the preceding year;
- (b) the annual accounts for the preceding year; and
- (c) the budget for the next year.

#### **Appointment of food inspectors.**

**13.** (1) The Food Safety Authority shall, on the advice of the Director appoint and employ at such remuneration and on such terms and conditions as the Food Safety Authority thinks fit, such number of food inspectors as may be necessary for the purposes of this Act.

(2) The Food Safety Authority shall, on the advice of the Director, prescribe the qualifications and experience required of a food inspector.



## **Duties and responsibilities of Food inspector.<sup>8</sup>**

**14.** (1) A food inspector shall perform the duties assigned by, or on behalf of the Director or delegated by the Director under subsection (2), and shall perform his duties in accordance with any instructions issued by the Director, and the hierarchical or other system of management determined by the Director to be appropriate, whereby food inspectors are entrusted with responsibilities according to rank or other specified basis.

(2) The Director may delegate to any food inspector, any power or duty imposed on the [Director] by this Act, but not the power of delegation.

(3) A food inspector may, subject to subsection (2) and except as is otherwise provided in this Act perform enforcement functions at any time and place without a warrant or prior notice.

(4) When performing an enforcement function, a food inspector may:

- (a) be accompanied and assisted by one or more police officers or such other persons as may reasonably be required for the performance of that function;  
or
- (b) use any aids, including any equipment or device, subject to compliance with any applicable law regarding the use of such aids.

## **Obligations of Food inspectors.**

**15.** (1) A food inspector shall avoid acts which may give rise to a conflict between his private interests and his duties and responsibilities under this Act, or in which his private interests could improperly influence the performance of his duties and responsibilities under this Act.

(2) A food inspector shall upon appointment, submit to the Director a declaration of interest in the prescribed form, specifying whether he has any material, financial or other interest in, or stands to benefit materially from any business activity relating to any food or food business to which this Act applies.

(3) Without prejudice to the requirements of subsection (2) a food inspector shall as soon as may be practicable, notify the Director of any situation or circumstance which may give rise to a conflict of interest under subsection (1) or in relation to which he stands to benefit materially under subsection (2).

(4) A declaration of interest under subsection (2) and notification under subsection (3) shall, in the case of the Director be submitted to the Chairperson of the Food Safety Authority.

(5) The failure of a food inspector to comply with subsection (2) or subsection (3) constitutes misconduct within the meaning of paragraph [ ] of the [General Orders of the Public Service.]

(6) A Food inspector who fails to comply with subsection (3) commits an offence and is liable

---

<sup>8</sup> The previous reiteration of the bill provided for the appointment of food inspectors but did not impose any duties, responsibilities or obligations. Clauses 13-16 seek to strengthen and to introduce increased transparency in the regulatory framework within which food inspectors carry out their work.

on conviction to a fine of [ ], and any interest or benefit acquired as a result of such conflict of interest shall be forfeited.

(7) Regulations may prescribe a form of declaration for the purposes of subsection (2) and the form of notice for the purposes of subsection (3).

#### **Identification of food inspectors.**

16. (1) The Director shall issue an identification card to each person appointed as a food inspector under this Act.

(2) When performing an enforcement function under this Act, a food inspector shall on demand by a member of the public in relation to whom a request is made, produce the identification card issued under subsection (1).

#### **Appointment of food analysts.**

17. (1) The Food Safety Authority shall appoint persons or institutions as food analysts for the purposes of this Act.

(2) A person or institution appointed as a food analyst under subsection (1) shall, in the case of a person possessing such qualifications and experience, and in the case of an institution satisfy such criteria as may be prescribed by the Food Safety Authority.

(3) The Food Safety Service shall publish, [by notice in the *Gazette*], a list of food analysts who are appointed to conduct inspections and tests for the purposes of this Act.

(4) No owner, director, partner, employee or agent of a food business, or person or institution having a beneficial interest in food or a food business shall be appointed as a food analyst for the purposes of this Act.

#### **Designation of Official laboratories**

18. (1) The Minister may by Order, on the recommendation of the Food Safety Authority, designate official laboratories for the purposes of conducting specified laboratory tests required to be done under this Act.

(2) An Order under subsection (2) shall specify the tests or testing procedures which may be performed by an official laboratory under this Act.

(3) The Minister may prescribe standards and criteria for the designation of official laboratories.

#### **Designation of Reference Laboratories**

19. (1) The Minister may, by Order, on the recommendation of the Food Safety Authority designate such number of reference laboratories as may be necessary for the purposes of this Act.

(2) An Order under subsection (1) shall specify the tests or testing procedures which may be performed by a reference laboratory under this Act.

(3) A reference laboratory shall —

- (a) be used for comparative testing in the case of conflicting results or in the case of contested results and ensure an appropriate follow-up of such comparative testing;
- (b) collaborate with official laboratories in their area of competence;
- (c) ensure the dissemination to official laboratories of information relating to testing procedures in relation to food safety;
- (d) provide scientific and technical assistance to the Food Safety Service for the implementation of this Act; and
- (e) carry out such other duties as may be set out in regulations under this Act.

(4) Where a reference laboratory is located outside of [*Country*] the services of the reference laboratory may be procured by such contractual or other means as the Minister thinks fit.

(5) The Minister may prescribe additional standards and criteria for the designation and observance of a reference laboratory under this Act.

### **PART III**

#### **FOOD STANDARDS AND CONTROL**

#### **Food standards and requirements.**

**20.** (1) The Food Safety Authority<sup>9</sup> in consultation with the Food Safety Service] shall develop draft food safety standards and requirements for all stages and aspects of the food production chain and shall provide an adequate opportunity for the public to provide comments.

(2) The Food Safety Service [or Bureau of Standards] shall give consideration to the comments received from the public under subsection (1) and shall make such enquiries and seek such clarifications as may be necessary, and shall recommend draft food safety standards and requirements for the consideration of the Food Safety Authority, together with a report of all pertinent issues.

(3) The Food Safety Authority shall give consideration to the draft food safety standards and requirements recommended under subsection (2) together with the report of the pertinent issues, and shall, if satisfied that the recommended draft standards and requirements are appropriate and expedient in the national interest, and consistent with the principles and objectives of this Act, approve them as food safety standards and requirements for the purposes of this Act.

(4) The food safety standards and requirements approved under subsection (3) shall be published in the Gazette and shall take effect from the date of its publication and may be amended from time to time by the Food Safety Authority on the recommendation of the Food Safety Service.

---

<sup>9</sup> Where necessary, Member States can modify this provision to reflect responsibilities assigned to other local authorities under other national food safety standards legislation.

### **Food to comply with food safety standards and requirements.**

21. No person shall, produce, process, manufacture, distribute supply, sell, or import into or export from [*Country*] any food which does not comply with food safety standards and requirements.

### **Labelling and packaging.**

22. (1) No person shall package food intended for sale in [*Country*] which does not bear a label which—

- (a) is in [*Official Language of the Member State*];
- (b) permits its traceability; and
- (c) sets out such particulars as may be prescribed.

(2) The packaging of food shall be in accordance with food safety standards and requirements.

(3) Where food other than packaged food is displayed for sale, it shall be labelled as prescribed.

### **Traceability.**

23. (1) The Food Safety Service shall ensure that there is a traceability system to —

- (a) trace back through all stages of processing to the supplier of ingredients, raw material and primary packaging materials, including transportation, storage and distribution;
- (b) trace forward from the supplier of ingredients, raw material and primary packaging materials through all stages of processing, including transportation, storage and distribution, to sale to the customer, and
- (c) enable the identification of all traceable items throughout the food production chain.

(2) A food business operator shall:

- (a) establish and maintain records identifying the —
  - (i) immediate previous source of a traceable item as well as the traceable item itself; and
  - (ii) immediate subsequent recipient of a traceable item, as well as the traceable item itself;
- (b) assign an identification number and either a batch or lot number to any food processed by the food business operator; and

- (c) make the records referred to in paragraph (a) and any identification numbers referred to in paragraph (b) available upon request to the Food Safety Service in accordance with procedures prescribed by regulations.
- (3) In implementing the provisions of this section, the Director –
- (a) shall have regard to the characteristics, scales, and capacities of food businesses; and
  - (b) may establish different criteria, requirements and other provisions for different classes of food business.

**Recall procedure.**

**24.** (1) Where a food business operator knows or reasonably believes that a traceable item which the food business operator has imported, produced, processed, manufactured, holds or distributed presents a food safety risk, or is not otherwise in compliance with food safety standards and requirements, the food business operator shall immediately take the necessary measures to —

- (a) stop the distribution of the traceable item;
- (b) notify the Food Safety Service and provide detailed information on the actions taken for recall and the information provided to consumers;
- (c) notify the public, consumers and relevant parties of the reason behind the product's recall and withdrawal in accordance with the procedure established by the Food Safety Service;
- (d) withdraw from the market any product that may create a food safety risk or potentially mislead consumers; and
- (e) recall from consumers and other relevant parties the traceable item already purchased when other measures are not sufficient to guarantee food safety.

(2) Notwithstanding subsection (1) a food business operator may initiate recall actions due to a deficiency in the quality of the food, food labelling or packaging, and the procedures set out in subsection (1) shall apply mutatis mutandis as if the deficiency was a traceable item under that subsection.

(3) Where a food business operator receives a recall notice from his supplier, the food business operator shall —

- (a) immediately inform the Director and initiate recall of the food product for disposal;
- (b) advise the Director of actions taken to protect the consumer;
- (c) comply with all directives issued by the Director; and
- (d) liaise with the supplier from whom the food product was imported or to whom the product was exported.

(4) The Food Safety Authority shall, on the advice of the Food Safety Service, and with the approval of the Minister prescribe a classification system for food based on the level of risk to public health.

(5) The Food Safety Service shall issue a recall order to a food business operator where a food presents a food safety risk or does not otherwise comply with food safety standards or requirements.

(6) Where a food business operator fails to comply with the obligations imposed in a recall order under subsection (5), the Food Safety Service shall initiate a recall action and shall dispose of any food which does not comply with food safety standards or requirements.

(7) In cases where an emergency gives rise to an urgent need to act in the interest of the public, the Food Safety Service may take a recall action without giving prior notice to the responsible food business operator and may recover any cost incurred from the food business operator subsequently.

(8) A food business operator who fails to comply with the recall obligations under subsection (7) shall be responsible for the costs associated with any enforcement action incurred by the Food Safety Service.

#### **Recall responsibilities and procedures involving an importer or exporter.**

**25.** (1) Where an importer has reason to believe that a food which the food importer has imported is not in compliance with food safety standards and requirements, or receives a recall notice from a supplier or a recall order from the Food Safety Service, the food importer shall—

- (a) carry out a recall;
- (b) provide the consignees with information necessary to make it possible to locate the product in its distribution system;
- (c) inform the Food Safety Service of where and how far into the supply chain the food has gone and whether any of the targeted products has reached consumers; and
- (d) notify the public, trading partners and consignees of the recall.

(2) For recall action involving exported food, the Food Safety Service shall, at the request of the exporter or on its own initiative, summarize and transmit essential information to the food safety authority in the importing country and the food exporter shall inform his or her trading partner of the reasons for the recall.

#### **Food hazard or disease on premises.**

**26.** (1) Where the Food Safety Service believes that a food hazard or the threat of a food borne disease exists on or in relation to any premises, it shall serve a written notice on every food business operator carrying out business on those premises, or whose business may be otherwise affected by such hazard or disease.

(2) A notice under subsection (1) shall include —

- (a) a request that the owners or occupiers of the premises take such action as the Food Safety Service determines to be necessary to eliminate the risk to public

health and safety posed by the food hazard or food borne disease, within the time specified in the notice; and

- (b) an invitation to the owners to make representations to the Food Safety Service within the time specified in the notice, in relation to the matters specified in the notice.

**Non-compliance by owner.**

27. (1) Where an owner or occupier on whom a notice has been served under this Act fails to comply with the requirements of that notice, the Food Safety Service may authorise a food inspector to enter the premises to carry out the requirements of the notice and take such other action in connection with such requirements as it considers necessary.

(2) The Food Safety Service shall recover the costs of any action taken under subsection (1) from the owner or occupier of the premises.

**Limiting or banning substances or processes in food.**

28. (1) The Food Safety Authority may establish food requirements based on the standards issued by the National Codex Authority on —

- (a) the presence of additives, biological or chemical contaminants and other residues; and
- (b) the types of food processes.

(2) The Food Safety Authority may ban or set limits on the presence, in food, of additives, contaminants, veterinary drugs, fertilizers, pesticides and other residues on the basis of a risk-based approach or international standard.

**Information to be provided to public.**

29. (1) A food inspector or any person who becomes aware of any situation in which any food is likely to harm or cause harm to human health shall immediately notify the Director

(2) Where the Director becomes aware of any situation in which any food is likely to harm or cause harm to human health he shall notify the relevant governmental and non-governmental entities and request that measures be taken to ensure the protection of consumers.

(3) The measures referred to in subsection (2) include public warnings, recalls orders, marketing restrictions, marketing bans and other appropriate measures.

(4) The Food Safety Service shall, where it is appropriate to do so, provide information to the public in such form as it considers expedient, in connection with food safety matters including -

- (a) annual progress reports on the implementation of this Act by the food industry, including information on levels of compliance and non-compliance by food businesses;
- (b) information and guidance to food business operators on food safety requirements, standards and best-practices; and
- (c) advice to consumers on food safety matters.

(5) The Food Safety Service shall endeavour to ensure that the means used to disseminate information under subsection (3) is adequate to achieve wide circulation among persons most affected by -

- (a) laws, regulations, standards and other rules concerning food safety;
- (b) policies, plans and programmes concerning food safety;
- (c) reports produced pursuant to section 8 (2) (a); and
- (d) such other information, whether for the general public or persons connected to the food sector, which will promote the achievement of the objectives of this Act.

#### **PART IV EMERGENCY PREPAREDNESS**

##### **Emergency response plan and early warning system.**

**30.** (1) The Food Safety Service shall develop—

- (a) mechanisms for an early warning system; and
- (b) a food safety emergency response plan,

approved by the Food Safety Authority to enable an effective and rapid response to food borne diseases, incidents and emergencies.

(2) The food safety emergency response plan developed under subsection (1)(b) shall:

- (a) require the establishment of a multi-sectoral and multidisciplinary response team specific to the nature of the emergency, which shall be led and coordinated by the Food Safety Service; and
- (b) contain a clear structure for command and implementation.

##### **Emergency measures.**

**31.** (1) Any person who reasonably suspects that a food hazard or an outbreak of a food borne disease exists or is imminent shall as soon as possible notify the Food Safety Service.

(2) Where the Minister, on the advice of the Food Safety Authority considers that a food hazard or an outbreak of a food borne disease exists or is likely to exist on the basis of a risk-based approach, the Minister may undertake any emergency response measure he considers necessary to minimize or eliminate the risk to public health and safety including —



- (a) declaring a food safety emergency by using all reasonably available media platforms ;
- (b) prohibiting or stipulating conditions on the production, processing, handling or sale of the food suspected to be hazardous;
- (c) causing any food to be tested or examined as prescribed;
- (d) recalling food that has been distributed for sale or consumption;
- (e) causing any food to be held or isolated in any place, and prohibiting the removal of food from that place for such time as shall be prescribed;
- (f) ordering and monitoring the destruction of the food suspected to be hazardous; and
- (g) requiring the disposal of food, food products or the treatment of premises, in order to prevent the further spread of the hazard or disease.

(3) The operator of a food business shall be responsible for the costs associated with the taking of any measures that are required under subsection (2).

## **PART V LICENSING AND CERTIFICATION**

### **Licensing authority.**

**32.** (1) The Director is the licensing authority responsible for issuing food business operator licences under this Act.

(2) The Food Safety Service shall—

- (a) maintain an up-to-date register of food business operators which includes the name and current contact information for each food business operator;
- (b) assign to each food business operator a food business identification number as determined by the Food Safety Service;
- (c) assign a location identifier that identifies and distinguishes each of the locations from which the food business operator grows or distributes its traceable item;
- (d) conduct informational or training sessions on the requirements under the traceability system for capacity building for food business operators, regulatory officials and the public; and
- (e) issue supplementary guidelines and record keeping requirements for particular food sectors when appropriate, for ensuring the effectiveness of the food traceability system.

### **Application for licence to operate food business.<sup>10</sup>**

---

<sup>10</sup> Clauses 33-44 establishes a comprehensive regime for, *inter alia*, the application and grant of licenses at the request of the 21<sup>st</sup> Meeting of SOLAC.

- 33.** (1) Subject to subsections (2) and (3), any person who wishes to apply for a licence to operate a food business shall submit a completed application to the Director in the prescribed form.
- (2) An application under subsection (1) shall be accompanied by—
- (a) evidence of payment of any fees payable;
  - (b) a certificate of title, lease agreement or other evidence with respect to the authorisation or right to use the premises for the purpose of a food business;
  - (c) a copy of a report, in relation to the premises intended to be used as the food business, from the competent authorities, evidencing that the statutory requirements respecting health and safety at the work place are satisfied;
  - (d) where applicable, a certified copy of the detailed plan of the construction, description and location of the premises intended to be used as a food business;
  - (e) a list of raw materials, components, machinery and equipment that the applicant intends to use in the food business;
  - (f) information regarding the nature of any manufacturing process or other operations;
  - (g) the particulars of imported and other goods proposed to be used in the manufacturing process or other operations;
  - (h) the detailed plan and description of the food business; and
  - (i) data regarding the volume of trade anticipated of the manufacturing process or other operations to be employed.

**Consideration of application.**

**34.** (1) The Director shall as soon as may be practicable, give consideration to an application received under section 33.

(2) In considering an application under section 33 the Director shall carry out an inspection of the premises specified in the application, evaluate the application on the basis of the need to promote food safety standards and requirements and such other criteria as may be prescribed, including but not limited to whether:

- (a) the applicant has sufficient resources to operate the food business;
- (b) there are safety and security issues arising from the location of the facility proposed to be used as a food business;
- (c) the facility proposed to be used as a food business contains adequate space commensurate with the nature of the operations; and
- (d) the structure of the facility proposed to be used as a food business is suited to the operations proposed to be carried out therein.

(3) Where, during the consideration of an application, the Director has reasons to believe that the applicant has not provided sufficient information to permit the Director to complete the consideration of the application, the Director shall, by electronic means or otherwise, send to the applicant a notice requiring the applicant—

- (a) to provide, within [ ] days from the date of receipt of the notice, the additional information which the Director considers necessary; or
- (b) within [ ] days from the date of receipt of the notice, to make representation in respect of the application.

(4) Where the Director gives notice under subsection (3)(a) the applicant shall furnish the additional information specified in the notice.

(5) The Director shall make a decision in respect of the application—

- (a) subject to paragraph (b), within [ ] days of the receipt of the application; or
- (b) where the applicant is required to provide additional information under subsection (3)(a) or make representation under subsection (3)(b), within [ ] days from the date of submission of the additional information or date of making representation as the case may be.

### **Grant of food business operator's licence.**

**35.** (1) The Director shall grant the licence if he is satisfied that the requirements of this Act have been satisfied.

(2) A licence granted under this section —

- (a) is not transferrable without the consent of the Director;
- (b) may, subject to subsection (3), be granted on payment of the prescribed licence fees and on such terms and conditions as the Director may stipulate;
- (c) shall, unless cancelled, continue in force from the date of grant until such period as may be prescribed or specified in the licence.

(3) The Director may, in relation to a licence specify—

- (a) the processes or other operations permitted to be carried on in the food business;
- (b) the types and nature of imported and other goods permitted to be used;
- (c) the period for which the licence is valid;
- (d) the conditions, if any, subject to which the processes or other operations may be carried on in the food business; and
- (e) the standard input-output norms, wherever considered necessary, for the raw-materials and the finished food.

### **General conditions respecting licences.**

**36.** The Director shall, in every licence granted to operate a food business, specify—

- (a) the rights, duties and obligations of the food business operator;
- (b) the location of the food business;
- (c) the approved building and site plan;
- (d) the manufacturing processes and other operations;

- (e) the goods and materials authorized to be stored in the premises of the food business; and
- (f) such other conditions as may be required by the Director.

**Grounds of refusal to grant licence.**

**37.** (1) Notwithstanding anything contained in this Part the Director may refuse to grant a licence for the operation of a food business if the Director is satisfied that:

- (a) the applicant—
  - (i) is under the age of eighteen years;
  - (ii) was the holder of a food business licence which was revoked for non-compliance with food safety standards and requirements within the period of two years immediately preceding the date of the application;
  - (iii) was in the period of two years immediately preceding the date of the application convicted of an offence involving the breach of, intentional evasion, attempt to evade the provisions of this Act or any other enactment with respect to public health; or
  - (iv) furnishes, in the application for the licence, information that is false or incorrect in a material particular; or
  - (v) has failed to pay any fee applicable to the grant of the licence; or
- (b) the premises to which the application relates is not suitable for the operation of the type of food business which the applicant intends to operate.

(2) Where the Director is satisfied that the requirements for the grant of a food business operator's licence have not been met the Director shall inform the applicant in writing of the reasons why the license cannot be granted and shall permit the applicant the opportunity to make representations or, where applicable, to rectify any deficiency in the application, premises or operating procedures as the case may be.

**Licensing responsibilities of food business operator.**

**38.** A food business operator shall—

- (a) be responsible for all expenses for the operation, maintenance, security, safety and repair of the food business, and for expense for services provided by the Food Safety Service;
- (b) not make any alteration or addition to the premises of the food business without first obtaining the written permission of the Director;
- (c) facilitate all requests made by the Food Safety Service under this Act for the inspection of the premises;
- (d) ensure that adequate procedures are in place to maintain the security and safety of the premises and operational processes; and
- (e) employ sufficient staff to control the food business, to maintain records, and to provide records to the Food Safety Service when required.

### **Amendment of licence.**

**39.** The Director may, on the application of the licensed operator of a food business or on the Director's own initiative, amend a licence granted under this Part —

- (a) to change any restriction or condition specified in the licence regarding the goods authorised to be stored on the premises of the food business; or
- (b) to specify such restrictions and conditions as the Director considers necessary.

### **Renewal of licence.**

**40.** (1) A food business operator who is desirous of renewing a food business operator's licence shall, not later than 60 days before the date of expiry of the licence, apply to the Director in the prescribed form, for its renewal.

(2) The provisions of section 33 and 36 shall, in like manner apply to the renewal of a licence under this section.

### **Voluntary surrender of licence.**

**41.** (1) The Director shall revoke a food business operator's licence if the holder of the licence, upon application to the Director in the prescribed form, requests that the licence be revoked.

(2) A licence to which subsection (1) applies shall terminate at the expiration of the period of two months from the date of receipt of the application by the Director.

### **Suspension of licence.**

**42.** The Director may, in the prescribed form suspend a food business operator's licence if the Director has reasons to believe that the food business operator —

- (a) made or caused to be made any alteration or addition to the premises of the food business without first obtaining the written permission of the Director;
- (b) failed to ensure that the food business is adequately secured;
- (c) failed to facilitate a request made by the Food Safety Service under this Act for the inspection of the food business;
- (d) failed to ensure that the goods are securely and safely stored in the food business and adequate procedures are in place to maintain the security and safety of the goods;
- (e) does not have sufficient staff to control the food business, to maintain records, and to provide records to the Food Safety Service when required; or
- (f) is knowingly evading or attempting to evade the provisions of this Act regarding the operations or processes being carried out in the food business or with respect to compliance with the food safety standards and requirements.

### **Revocation of licence.**

**43.** (1) The Director may revoke a licence for the operation of a food business granted if the holder of the licence —

- (a) no longer owns, or has a sufficient interest in, the premises appointed as a food business;
- (b) is found by a court to be bankrupt;
- (c) is the subject of a receivership;
- (d) no longer meets the requirements respecting the grant of the licence;
- (e) is convicted of an offence involving the intentional evasion or attempt to evade the provisions of this Act or any other enactment with respect to the public health and hygiene.
- (f) has operated the food business in a manner which is not in compliance with the terms or conditions of the licence or otherwise in a manner which is dangerous to the public or to the health and safety of any person; or
- (g) the premises comprising the food business is no longer suitable for the purpose.

(2) Where the Director intends to revoke or not to renew a licence for the operation of a food business, the Director shall, not later than [three months] before the proposed date of revocation or date of expiration of the licence as the case may be, give written notice to the holder of the licence of the Director's intention.

(3) Notwithstanding subsection (1) or Section 42, the Director shall take immediate action to suspend or revoke a food business licence where the risk to public health requires immediate action.

### **Procedure in case of suspension or revocation of licence.**

**44.** (1) Where the Director decides to suspend or revoke a licence for the operation of a food business, the Director shall, as soon as may be practicable following the decision furnish to the holder of the licence a notice in the prescribed form, of the suspension or revocation, and the reasons in support.

(2) Where the circumstances giving rise to the revocation or suspension involves a risk to the public if the food business did not immediately cease operation, the Director shall cause a seal to be placed on the premises of the food business together with such notices as may be necessary in the circumstances.

### **Food handler certificates.**

**45.** (1) The Director is the certifying authority responsible for issuing food handler certificates under this Act.

(2) The Food Safety Service shall—

- (a) maintain an up-to-date register of street food vendors which includes the name and current contact information for each food handler;

- (b) assign to each street food vendor an identification number as determined by the Food Safety Service; and
- (c) conduct informational or training sessions on the requirements of the traceability system for capacity building for street food vendors.

**Food handling requirements.**

**46.** (1) A person who wishes to operate as a food handler shall be in possession of a valid food handler's certificate.

(2) A person who operates as a food handler and fails to comply with subsection (1) commits an offence and shall be liable on summary conviction to a fine not exceeding [ ].

**Application for food handler's certificate.**

**47.** (1) A person who wishes to operate as a food handler shall apply to the Director in the manner prescribed, for a food handler's certificate.

(2) The application shall be accompanied by such information or supporting documents as may be prescribed and shall be submitted together with the prescribed fee.

**Issuing food handler's certificates.**

**48.** Upon the applicant's successful completion of any food safety and hygiene practices training carried out by or authorised by the Food Safety Service as a condition for the grant of a food handler's certificate, the applicant shall be issued with a food handler's certificate.

**Cancellation of food handler's certificate.**

**49.** A food handler's certificate may be cancelled where—

- (a) the holder is found, on medical examination, to be suffering from a communicable disease;
- (b) the information given by the food handler in relation to the application is found to be false in any material particular;
- (c) there has been a contravention of the Act or regulations made thereunder;
- (d) there are reasonable grounds to believe that the food handler poses a risk to food safety; or
- (e) the holder requests its cancellation.

**Street food vending certificate.**

**50.** (1) A person who, being in possession of a food handler's certificate wishes to engage in street food vending shall apply to the Director in the prescribed form for a certificate of registration as a street food vendor. -

(2) Regulations may provide for the form of application under subsection (1), and the requirements and conditions required for the issue of a certificate of registration.

(3) The provisions of this Act applicable to food business operations shall, except as provided by regulations under subsection (2), apply *mutatis mutandis* to street food vending operations.

## **PART VI FOOD BUSINESS**

### **General obligations of food business operator.**

**51.** (1) A food business operator shall be responsible for ensuring the safety of the food produced in the food business to which the licence relates.

(2) A food business operator shall, in accordance with food safety standards and requirements —

- (a) clearly identify the activities which are critical to the safety of food; and
- (b) ensure that appropriate food safety procedures are identified, implemented, maintained and reviewed by—
  - (i) analysing the potential food hazards in the operations of the food business;
  - (ii) identifying the points in the operation of the food business where food hazards may occur;
  - (iii) determining the points which are critical to ensuring food safety; implementing effective control and monitoring procedures at the critical points; and
  - (iv) periodically reviewing the analysis of food hazards, the critical points and the control and monitoring procedures, and whenever the operations of the food business change.

(3) A food business operator shall, in respect of any food handler in their employment —

- (a) ensure that the person is the holder of a valid a food handler's certificate in accordance with section 45;
- (b) ensure that the food handler is appropriately supervised and instructed commensurate with their work activities; and
- (c) ensure that the health status of the food handler does not pose a risk to the safety of food.

(4) A food business operator shall allow access to premises and records by food inspectors lawfully carrying out their duties in connection with this Act.

(5) A food business operator shall keep records of the food business operations under this Act and make available to the Food Safety Service, the prescribed information and records for inspection.



## **Monitoring of medical conditions.**

- 52** (1) Where a food handler knows or suspects that he is—
- (a) suffering from or is a carrier of an infectious or communicable disease; or
  - (b) afflicted with an infected wound, a skin infection, sores, diarrhoea or with any analogous medical condition, or circumstances where there is any likelihood of him directly or indirectly contaminating food with pathogenic micro-organisms,

the food handler shall report that knowledge, suspicion or affliction to the operator of the food-handling establishment at which he works and shall immediately cease work until he receives a medical certificate in accordance with subsection (3).

(2) Where a food business operator suspects or is informed that a person who is employed within his establishment is in a situation described in subsection (1), the food business operator shall:

- (a) have the person removed from the work premises immediately;
- (b) record the suspected illness of the person; and
- (c) maintain a log of all reports of employees' illnesses which shall be submitted to the Food and Safety Service, upon request.

(3) A food business operator, upon receipt of a report under subsection (1), or in the case of a suspicion or information under subsection (2), shall not permit the food handler concerned to commence or to continue employment as a food handler until a medical practitioner certifies that—

- (a) the person is free from any infectious or communicable disease likely to contaminate food; and
- (b) there is no likelihood of the food handler directly or indirectly contaminating food with pathogenic micro-organisms.

(4) Where the results of any medical examination indicate that the person is suffering from a disease likely to contaminate the food such as salmonella, shigella, e.coli, hepatitis A virus or other pathogens that can be transmitted through food—

- (a) the business operator shall immediately notify the Food Safety Service of the name and address of the person; and
- (b) the Food Safety Service may, for the purpose of safeguarding the public health, by notice in writing—
  - (i) prohibit that person from being so employed; and
  - (ii) suspend or cancel that person's food handler's certificate.

## **Medical practitioners' duty to report.**

**53.** (1) A medical practitioner shall report every incidence of suspected food-related illness to the Food Safety Service on a regular basis.<sup>11</sup>

**Food business licence required.**

**54.** (1) Every food business operator shall have on display at the premises or location at or on which the food business is operated a valid licence or certificate or registration issued by the Food Safety Service, as the case may be, to operate the food business.

(2) A person who fails to comply with subsection (1) commits an offence and shall be liable, on summary conviction, to a fine not exceeding [ ] or to imprisonment for a term not exceeding [ ].

**PART VII  
IMPORT AND EXPORT OF FOOD**

**Power to designate ports.**

**55.** [The Minister may designate the ports of entry and exit for the import and export of food.]<sup>12</sup>

**Import requirements.**

**56.** (1) No person shall import food into [Country] which does not comply with food safety standards and requirements.

(2) A person who wishes to import food into [Country] shall submit an application to the Director in the prescribed form, together with the prescribed fee.

(3) An application under subsection (2) shall be accompanied by a—

- (a) prescribed certificate of analysis or certificate of conformity or other required certification from the exporting country which indicates that the requirements of applicable food safety standards and requirements have been met; and
- (b) an agreement or contract between the importer in [*insert the name of State*] and trading partner in the country of origin which indicates that food which is subsequently found not to be safe or not to meet the requirements of applicable food safety standards and requirements shall be re-shipped to the

---

<sup>11</sup> [Formerly Clause 39] The 21<sup>st</sup> Meeting of SOLAC thought that there should be a provision which treats with the nature and scope of the information which is provided by the medical practitioner to enable the chief medical officer to conduct investigations in respect of food safety. Subsequent research as well as discussions with IICA reveal that reporting of such illnesses and follow up investigations are primarily public health functions dealt with under public health legislation. The reporting under this bill should therefore be directed to the Food Safety Service for the purpose of its records and not for an immediate investigation. Possibly, there needs to be a link between both the current bill and the Public Health legislation which involves the Food Safety Service in assisting the public health authorities in such investigations where necessary. The flexibility to solicit assistance may already exist under the public health legislation.

<sup>12</sup> Formerly Clause 41. The 21<sup>st</sup> Meeting of SOLAC did not think that there was need for this Clause. The Clause has been left in and square bracketed for member states which may require such a provision, given especially that it may not be possible to import food through any port.

country of origin or to such place as the Director may approve, or otherwise destroyed.

- (4) The Director shall oversee the review of the application to determine whether—
- (a) the importer has complied with the applicable food safety standards and requirements;
  - (b) a physical inspection or sampling shall be made by the Food Safety Service at the point of entry; and
  - (c) the food may be released without physical inspection or sampling to the importer.

### **Import and export inspections.**

**57.** (1) A decision made by the Food Safety Service to collect a sample or to inspect food that is to be imported or exported shall be based on—

- (a) risk;
- (b) the nature of the food; and
- (c) the past history of the commodity, the importer or exporter.

(2) Where the Food Safety Service determines that an inspection of the food is required, the food shall not be released pending a physical inspection, and where necessary, the collection of a sample for analysis.

(3) Any sample taken under this section shall be sent to an official laboratory for analysis.

(4) The containers, packaging material, labelling and ingredients of food imported into [*insert name of State*] may also be subject to sampling and inspection.

(5) Where a sample is not required, upon completion of documentary inspection or physical inspection where it is required, where the food meets import requirements under this Act, the Food Safety Service shall release the food shipment to the [*Customs authority*] for clearance.

(6) Where the taking of a sample of food from a consignment is required and the Food Safety Service finds that the sample—

- (a) complies with the requirements of applicable food safety standards or requirements, the Food Safety Service shall authorize the release of the consignment to the [*Customs authority*] and shall submit a written notice to the [*Customs authority*] and the importer to that effect;
- (b) does not comply with the requirements of applicable food safety rules, the Food Safety Service shall—
  - (i) detain the consignment and issue a written notice of detention to the [*Customs authority*] and to the importer; or
  - (ii) issue a written notice ordering the immediate destruction of the food.

- (7) Inspections shall be carried out—
- (a) during the normal business hours of the Food Safety Service or at any other reasonable time upon agreement by the Food Safety Service; and
  - (b) either,
    - (i) at the port of entry; or
    - (ii) at the final destination in consideration of the perishability of the food, subject to prior approval and agreement of the Food Safety Service.

**Food for personal consumption.**

**58.** Any person bringing into [*insert name of State*] any food for personal consumption not exceeding a prescribed amount, and not for sale, shall be exempt from the requirements of this Part.

**Export certification.**

**59.** (1) Any person who wishes to export food from [*insert name of State*] shall apply to the Director in the form prescribed, for an inspection of the food to be exported.

(2) Following an inspection of the food, the food business premises, records and any other aspect relating to the food as may be required, and upon consideration of the requirements of the importing country, the Food Safety Service shall, where the food —

- (a) meets the requirements, issue any required documentation; or
- (b) fails to meet the requirements deny issuance of a certificate or other documentation and provide the reasons in a written notice to the exporter, including where relevant, any remedial action or treatment that may be taken.

(3) Where the exporter takes the remedial action or treatment under subsection (2)(b), the exporter may apply to the Director for re-inspection.

**Report on activities.<sup>13</sup>**

**60.** (1) Every importer and exporter shall, not later than forty-five days after the end of each operating year, prepare a report relating to the activities for the previous calendar year including —

- (a) types and quantities of food imported or exported;
- (b) prescribed data concerning shipments of food;
- (c) food found by an importing country not to be in compliance with the statutory requirements of the importing country;
- (d) food sought to be imported that was rejected and destroyed or detained;
- (e) a summary of any incidents or accidents that may have occurred and any action taken regarding food found not to be safe for export; and

---

<sup>13</sup> Formerly Clause 47 – The 21<sup>st</sup> Meeting of SOLAC required that the provision be re-drafted to provide greater clarity with respect to the commencement of the operating year.

(f) such other information as may be prescribed.

(2) For the purpose of section (1) an operating year shall be the period from January 1 to December 31 in each year.

(3) The obligation of an importer and exporter under subsection (1) shall commence during the first full operating year following the commencement of this Act.

## **PART VIII POWERS AND DUTIES**

### **Powers of entry, search, etc.**

**61.** (1) Subject to Section 64, a food inspector may, without warrant but upon the presentation of his official identification card issued by the Food Safety Service—

- (a) enter any premises in which food is being, or is suspected of being, produced, manufactured, treated, graded, packed, packaged, labelled, stored, handled, prepared, served or sold, or in which any other operation or activity in connection with food is being, or suspected of being, carried out, and may, for the purpose of determining whether this Act was, or is being contravened—
  - (i) inspect or search such premises, and examine any food, appliance, product, material, object or substance which is being used, or is suspected of being used or destined for use in connection with the production, manufacture, treatment, grading, packing, packaging, labelling, storage, handling, preparing, serving or sale of any food;
  - (ii) demand any information, records, or documents regarding the food business;
  - (iii) weigh, count, measure, mark, open, collect and take samples in the prescribed manner of any food, product, material, object or substance; or its package or container; or lock, secure, seal or close any door giving access to it;
  - (iv) examine, make copies of or take extracts from any book, statement or other document found at such premises which refers to or is suspected of referring to such food, and demand from the owner or any person in charge of the premises an explanation of any entry in it; and where such record or document is kept by means of computer to have access to it or any associated apparatus or material;
  - (v) inspect any operation, record, document or process carried out on such premises, and demand any information regarding such operation or process from the owner of such premises or from any person carrying out such operation or process;
  - (vi) read any values recorded by measuring instruments installed on the premises or by instruments in the possession of the food inspector;

- (vii) take any photographs or video recordings relating to the food business; and
  - (viii) seize any food, appliance, product, material, object, substance, book, statement or document which appears to provide proof of a contravention of any provision of this Act, providing a signed receipt in the prescribed form detailing the reasons for such action, which shall be countersigned immediately by owner or other person in charge of such premises, food or object;
- (b) stop and search any vehicle in which food is being or is suspected of being transported, produced, manufactured, treated, graded, packed, packaged, stored, handled, prepared, served or sold or in which any other operation or activity in connection with food is being, or is suspected of being, carried out; and
  - (c) for a prescribed period, stop the distribution or sale of food products which the food inspector has reason to believe is contaminated or unwholesome.

(2) A food inspector exercising his duties under this section, may request the presence and assistance of a [*law enforcement*] officer as he considers necessary.

(3) Where a food inspector takes an action under subsection (1), he shall prepare a written notice and provide a copy to the licensed operator of the food business in the form and manner prescribed.

(4) if a food inspector has reasonable grounds to believe that any activity, operation or situation in a food business is in contravention of this Act he may serve a written notice on the operator of the food business —

- (a) stating the grounds for believing that the Act is not being complied with;
- (b) specifying the measures to be taken in order to remedy the contravention referred to in paragraph (a); and
- (c) requiring the operator of the food business to implement those measures, or measures which are at least equivalent to them, within the time period specified in the notice.

(5) Where the food business operator is not physical occupation of the premises, or cannot be located, service of any notice under this Act maybe made by affixing the notice to a conspicuous place on the premises, and such affixing shall be considered as good service of the notice.

**Powers to enter dwelling places.**

**62.** (1) A food inspector may not enter a dwelling place without the consent of the occupier unless:

- (a) entry has been refused by the occupier or the occupier’s conduct makes it impossible for his consent to be obtained and the food inspector has

reasonable grounds to believe that food business operations are being carried out at the time entry is sought; or

- (b) the food inspector has reason to believe that a contravention of food safety standards and requirements has occurred or is about to occur in circumstances where the giving of notice of the intended entry would defeat the purpose for which entry is sought and the consent of the Director has been obtained; or
- (c) the food inspector obtains a warrant issued by a magistrate for the purposes of entering the premises and carrying out functions under this Act.

(2) Any premises specified in a licence as a place at which a food business may be carried on shall be deemed not to be a dwelling house for the purpose of subsection (1).

### **Inspection and seizure of suspected food.**

**63.** (1) A food inspector may inspect any food which —

- (a) has been sold or is offered or exposed for sale; or
- (b) is in the possession of, or has been deposited with or consigned to, any person for the purpose of sale or of preparation for sale.

(2) Where a food inspector has reasonable grounds to believe that food does not comply with food safety standards and requirement, he or she may either —

- (a) give notice in writing to the person in charge of the food that, until the notice is withdrawn, the food or any specified portion of it is not to be—
  - (i) used for human consumption; or
  - (ii) moved except to some place specified in the notice;
- (b) collect spilt samples of the food;
- (c) seize the food; or

(3) Where the food inspector exercises the powers conferred by subsection (2) (a) or (b) he shall, as soon as is reasonably practicable and in any event within fourteen days of the date of notice or seizure as the case may be, determine whether or not he is satisfied that the food complies with food safety standards or requirements and —

- (a) if he is so satisfied, shall forthwith withdraw the notice or release the food; or
- (b) if he is not so satisfied, shall destroy or dispose of the food.

(4) Where the food inspector exercises the powers conferred by subsection (2) (c), as requested by the seller or the person responsible for the food, the food inspector shall—

- (a) divide the sample into approximately three equal parts;

- (b) ensure each sample is numbered and securely sealed in a manner that shall not cause it to be opened without breaking the seal;
- (c) hand over one part thereof to the seller or person responsible for the food and the other two parts to be retained by the Food Safety Service for analysis or examination thereof; and
- (d) ensure, as far as practicable, that sampling is carried out in such a manner as to prevent cross contamination of the food sample.

5. Any costs incurred in connection with the destruction or disposal of food under this section shall be borne by the owner of the food.

**Objects of Inspection.**

64. Inspections carried out under this Act by food inspectors may have as their object -

- (a) food products, whether raw or processed, including as imported or exported consignments of food;
- (b) food ingredients, additives, disinfectants and any substances or processes used in the production, manufacturing, handling or packaging of food;
- (c) the premises from which food businesses are or may be conducted and their surroundings and installations, as well as means of transportation, equipment and materials;
- (d) personnel employed at the food business;
- (e) packaging material;
- (f) cleaning, disinfecting and maintenance at the food business;
- (g) food labels;
- (h) all records and documents related to the food production chain; and
- (i) such other objects as may be prescribed by regulations.

**Duty not to disclose information.**

65. (1) A food inspector or food analyst shall not disclose any information acquired in the performance of his duties to a third party unless otherwise ordered to do so in writing by the Director, the Minister or by a court.

(2) Where a food inspector obtains information from a person who asserts a claim that the information provided to the food inspector should be treated as a trade secret or as confidential business information, the food inspector, Director, or any other person or entity to whom or to which the information is disclosed shall treat that information as confidential.

**Enforcement policy.**

66. In the absence of any evidence that indicates a significant risk to food safety, as a first step towards ensuring compliance with food safety standards or requirements, a food inspector shall adopt an educative approach and discuss the requirements of the Act relating to food safety risks, hazard analysis, supervision, instruction and training with the food business operator.



### **Food unfit for consumption.**

**67.** (1) Notwithstanding the responsibility of food business operators to recall products under this Act, where a food inspector finds that any food is unfit for human consumption or is likely to cause harm to human health, and that the food business operator fails to withdraw the product from the market, the food inspector shall—

- (a) seize and seal such food, and issue a written notice to the food business operator requiring that the food or any specified portion of it is temporarily not to be sold, removed, manipulated, tampered with or otherwise altered without the authorisation of the food inspector;
- (b) issue a written notice temporarily ordering the food removed to a specified place; or
- (c) issue a written notice ordering the immediate destruction of the food.

(2) Where any action is taken under subsection (1) because of a risk to human health, the food inspector shall immediately notify the Director who shall take action to notify other relevant governmental and non-governmental entities so that all measures necessary to ensure public safety and the protection of consumers, including public warnings, recall orders, marketing restrictions, marketing bans or other appropriate measures, may be adopted.

(3) As soon as practicable, and no later than fourteen days after issuing a written notice under subsection (1), a food inspector acting under that subsection shall review the situation to determine whether the circumstances that caused the notice no longer exist, and where the food inspector—

- (a) finds this to be the case, he shall withdraw the notice, and where appropriate, allow the release of any food from the place where it is stored;
- (b) finds this not to be the case, he may order that any such food be destroyed or disposed of so as to prevent its use for human consumption, and shall supervise the destruction or disposal.

### **Improvement notice.**

**68.** (1) Where a food inspector has reasonable grounds for suspecting that a food business operator has failed or neglected to comply with food safety standards and requirements, or the terms of any licence or other authorisation issued pursuant to this Act, the food inspector may serve on the food business operator an improvement notice in accordance with subsection (2).

(2) The improvement notice shall —

- (a) state the food inspector's grounds for believing that the food business operator is failing to comply with the food safety requirements;
- (b) specify the matters which constitute the food business operator's failure to comply;
- (c) specify either—

- (i) the measures which the food business operator must take to prevent, decrease, control or eliminate a food safety risk that has resulted from or is likely to result from anything that the food business operator has done or not done and to ensure compliance; or
- (ii) that measures at least equivalent to those indicated in paragraph (i) must be taken;
- (d) specify the period within which, the measures referred to in paragraph (c) shall be taken;
- (e) specify the time within which the person should report to the food inspector any measures taken; and
- (f) specify that the recipient of a notice has the right to request a hearing by the Food Safety Service.

(3) A food business operator who is served with an improvement notice under this section shall comply with the improvement notice within the period of time specified in the improvement notice.

**Emergency hygiene prohibition notices.**

**69.** (1) If a food inspector is satisfied *that the health risk condition is fulfilled* with respect to any food business, the food inspector may by a notice served on the relevant food business operator (in this Act referred to as an “emergency hygiene prohibition notice”) impose the appropriate prohibition.

(2) The health risk condition is fulfilled with respect to any food business if any of the following involves an imminent risk of injury to health (including any impairment, whether permanent or temporary), 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; and
- (c) the state or condition of any premises or equipment used for the purposes of the business.

(3) The appropriate prohibition is—

- (a) in a case falling within subsection (2)(a), a prohibition on the use of the process or treatment for the purposes of the business;
- (b) in a case falling within subsection (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; and
- (c) in a case falling within subsection (2)(c), a prohibition on the use of the premises or equipment for the purposes of any food business.

(4) As soon as practicable after the service of a hygiene emergency prohibition notice, an authorised officer must affix a copy of the notice in a conspicuous place on such premises used for the

purposes of the food business as the officer considers appropriate, and any person who knowingly contravenes such a notice commits an offence.

(5) Without prejudice to the jurisdiction of any court or the Tribunal to reverse or vary any decision to impose an emergency hygiene prohibition notice, a hygiene emergency prohibition notice ceases to have effect on the issue by the Director of a certificate to the effect that the Food Safety Service is satisfied that the food business operator has taken sufficient measures to ensure that the health risk condition is no longer fulfilled with respect to the food business.

(6) The criteria for determining a health risk condition that serves as a grounds for an emergency hygiene prohibition in subsection (1) and the emergency hygiene prohibitions that may be imposed shall be prescribed by regulations.

(7) Any person to whom an emergency hygiene prohibition has been issued shall comply immediately with the requirements stipulated therein.

### **Information to members of the public.**

**70.** The Director shall —

- (a) at the request of the public or on his own initiative, provide and disseminate information and guidance concerning the implementation of this Act; and
- (b) ensure the publication and dissemination of all laws, regulations and other rules concerning food safety.

## **PART IX OFFENCES, PENALTIES AND ADMINISTRATIVE PROCEEDINGS**

### **Unsafe food, food injurious to health etc.**

**71.** (1) For the purposes of this Part, food is unsafe if it—

- (a) has been rendered injurious to health by means of adulteration or other means;
- (b) is unfit for human consumption;
- (c) has passed its expiration date for human consumption;
- (d) 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
- (e) should not be consumed due to its long-term effects on health.

(2) Where any unsafe food is part of a batch, lot or consignment of food of the same class or description, it shall be presumed for the purposes of this Part, until the contrary is proved, that all of the food in that batch, lot or consignment is unsafe.

(3) In determining whether any food is unsafe, regard shall be had to—

- (a) the normal conditions—
    - (i) at each stage of production, processing, storage and distribution of the food; and
    - (ii) of use of the food by the consumer; and
  - (b) the information provided to the consumer, including information on the label, or other information generally available to the consumer concerning the avoidance of specific adverse health effects from a particular food or category of foods.
- (4) In determining whether any food is injurious to health, regard shall be had to —
- (a) the probable immediate, short-term or long term effects of the food on the health of a consumer and subsequent generations of the consumer;
  - (b) the probable cumulative toxic effects of the food; or
  - (c) any particular health sensitivities of a specific category of consumers if the food is intended for that category of consumers.

(5) In determining whether any food is unfit for human consumption, regard shall be had to whether the food is unacceptable for human consumption according to its intended use, for reasons of contamination, whether by extraneous matter or otherwise, or through putrefaction, deterioration or decay.

### **Selling unsafe food.**

**72.** (1) Any person who sells or offers for sale for human consumption any food which is unsafe or injurious to health commits an offence and is liable, on summary conviction, to a fine not exceeding [ ] or to imprisonment for a term not exceeding [ ].

(2) A person who sells or offers for sale for human consumption any food which is unfit for human consumption commits a non-prosecutable breach and is liable to an administrative penalty of [ ].

### **Importation of Food**

**73.** (1) Any person who imports into [Country] –

- (a) any food which is unsafe or injurious to health;
- (b) any article of food the import of which requires a licence under any Act, except in accordance with the conditions of the licence; or
- (c) any article of food in contravention of any other provision of this Act.

commits an offence and is liable on summary conviction to a fine of [ ] or to imprisonment for a term of [ ] years.

(2) Any person who imports into [Country] any food which is unfit for human consumption commits a non-prosecutable breach and is liable to an administrative penalty of [ ].

#### **Offence in respect of misbranded foods**

**74.** (1) Any person who whether by himself or by any other person on his behalf manufactures for sale or stores or sells or distributes or imports any article of food for human consumption which is misbranded commits an offence and is liable on summary conviction to a fine of [ ] or to imprisonment for a term of one year.

(2) The court may in addition to any sentence imposed on a person convicted under subsection (1), require that the convicted person take such corrective measures as may be expedient, or, alternatively that the article of food be destroyed.

#### **Misleading advertisements.**

**75.** (1) Any person who publishes, or is a party to the publication of an advertisement, which—

- (a) falsely describes any food; or
- (d) is likely to mislead as to the nature or substance or quality of any food or
- (e) gives false guarantee

commits non-prosecutable breach and is liable to an administrative penalty of [ ]

(2) In any proceeding for a non-prosecutable breach under subsection (1), a finding that the food in respect of which the contravention is alleged to have been committed contained an accurate statement of the composition of the food shall not preclude a finding that the accused person has committed the breach.

#### **Food containing extraneous matter.**

**76.** Any person whether by himself or by any other person on his behalf manufactures for sale or stores or sells or distributes or imports any article of food for human consumption containing extraneous matter, commits a non-prosecutable breach and is liable to an administrative penalty of [ ].

#### **Unhygienic or unsanitary processing or manufacturing of food.**

**77.** Any person who, whether by himself or by any other person on his behalf, manufactures or processes any article of food for human consumption under unhygienic or unsanitary conditions commits a non-prosecutable breach and is liable to an administrative penalty of [ ], and to a further administrative penalty of [ ] for each subsequent breach of this section.

#### **Possession of adulterant.**

**78.** (1) A person who whether by himself or by any other person on his behalf, imports or manufactures for sale, or stores, sells or distributes any adulterant which is injurious to health commits a non-prosecutable breach and is liable:

- (a) where the adulterant is not injurious to health, to an administrative penalty of [ ] dollars; and
- (b) where such adulterant is injurious to health, to an administrative penalty of [ ] dollars.

(2) In a proceeding under sub-section (1), it shall not be a defence that the person accused of the breach was holding such adulterant on behalf of another person.

**False information.**

**79.** A person who, in connection with a requirement under this Act, provides any information or produces any document to the Food Safety Authority, a food inspector or any employee of the Food Safety service known by him to be to be false or misleading, commits a non-prosecutable breach is liable to an administrative penalty of [ ].

**Obstructing or impersonating a food inspector.**

**80.** A person who without reasonable excuse, resists, obstructs, or attempts to obstruct, impersonate, threaten, intimidate or assault a food inspector in the course of exercising the food inspector's functions commits an offence and is liable on summary conviction to a fine of [ ] or to imprisonment for a term of [ ].

**Falsely describing food.**

**81.** (1) No person shall —

- (a) sell food with a label, whether or not attached to or printed on the wrapper or container of the food; or
- (b) publish or cause to be published, an advertisement,

which falsely describes the food or is likely to be misleading as to the nature or substance of the food.

(2) A person who contravenes subsection (1) commits a non-prosecutable breach and is liable to an administrative penalty of [ ].

**Carrying on business without licence.**

**82.** A person, who by himself or by any person on his behalf manufacturers, sells, stores or distributes or imports any article of food without licence, commits an offence and is liable on summary conviction to a fine of [ ] or to imprisonment for a term of [ ].

**Failure to comply with the directions of food inspector.**

**83.** A food business operator or importer who without reasonable ground, fails to comply with directions or orders issued by a food inspector, commits a non-prosecutable breach and is liable to an administrative penalty of [ ].

#### **Subsequent offences.**

**84.** (1) If any person, after having been previously convicted of an offence punishable under this Act subsequently commits and is convicted of the same offence, any licence issued to him under this Act may be cancelled by the Director of Food Safety.

(2) The Court may also, on a subsequent conviction cause the offender's name and place of residence, the offence and the penalty imposed to be published at the offender's expense in such newspapers or in such other manner as the court may direct and the expenses of such publication shall be deemed to be part of the cost attending the conviction and shall be recoverable in the same manner as a fine.

#### **Offences by companies.**

**85.** (1) Where an offence under this Act is committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to have committed the offence and shall be liable to be proceeded against and punished accordingly:

(2) Provided that where a company has different establishments or branches or different units in any establishment or branch, the concerned Head or the person in-charge of such establishment, branch, unit nominated by the company as responsible for food safety shall be liable for contravention in respect of such establishment, branch or unit:

(3) Provided further that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(4) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

#### **Administrative Penalty notice.14**

---

**14** The imposition of administrative penalties was provided for in Clause 59 of the earlier reiteration of the bill. There was however no framework for supporting the imposition of the such penalties. The 21<sup>st</sup> Meeting of SOLAC noted that the duty to be heard was missing. The previous bill also did not identify the breaches in relation to which the penalties could be imposed. Clauses 87 to 89 of the bill seek to establish a framework through the mechanism of the administrative penalty notice issued for the commission of a non-prosecutable breach. Some non-prosecutable breaches are expressly set out in the bill but provision is also made in Clause 123 for administrative penalties to be imposed in the Regulations. The framework also provides for challenging the imposition of the penalty through a request for reconsideration under Clause 99 and an appeal to the Tribunal under Clause 102.

**86.** (1) The Director may issue an administrative penalty notice in the prescribed form to any person if the Director is satisfied that that person has committed a non-prosecutable breach.

(2) An administrative penalty notice shall specify the nature of the act constituting the non-prosecutable breach and the penalty to be paid, and shall require the person to whom it is addressed to pay the administrative penalty within a period of 14 days from the date of the notice.

(3) If the non-prosecutable breach to which an administrative penalty notice relates is still uncured on the date on which the administrative penalty notice is to be issued, the Director may additionally include in the administrative penalty notice a request to the person to whom it is addressed to comply within the period specified in the notice.

(4) A person who is in receipt of an administrative penalty notice issued under subsection (1) shall, in the manner prescribed subject to section 88, pay the amount of the administrative penalty and comply with any additional requirement contained in the notice on or before the date specified in the notice.

#### **Procedures for challenging alleged non-prosecutable breach.**

**87.** A person to whom an administrative penalty notice is addressed and who wishes to challenge the alleged non-prosecutable breach, may instead of paying the amount of the administrative penalty, apply to the Director for a reconsideration of the matter.

#### **Administrative penalty to constitute a debt to the State.**

**88.** (1) The amount of an outstanding administrative penalty constitutes a debt due to the State and is recoverable by legal action at the suit of the Director on behalf of the State.

(2) The debt in respect of an administrative penalty is incurred from the day immediately following the last day on which an application could be made under section 87 or, if an application is made under that section and the administrative penalty is affirmed by the Director, seven days after the date of such affirmation.

#### **Certain offences may be dealt with administratively.<sup>15</sup>**

**89.** A person who commits an offence described in sections [ ]. [ ], [ ], [ ] and [ ] may, subject to this Act, elect to have that offence dealt with administratively in accordance with Sections 90 to 93.

#### **Prosecution avoidance Notice.**

---

<sup>15</sup> Formerly Clause 61 – with marginal note “Fixed Penalty notices for prescribed offences”. The 21<sup>st</sup> Meeting of SOLAC noted the need to identify which offences would be fixed penalty offences. The offences which could be dealt with administratively are to be inserted in Clause 90 of the bill. Member states are likely to have differences with respect to which offences should be so treated and so square brackets have been inserted into the provision. The Harmonised Customs Bill employed a schedule of offences which could administratively treated, but is a much more voluminous document with many more offences than the current bill. It is thought that the offences which could be dealt administratively in this bill could be identified under Clause 90.



**90.** (1) Subject to subsection (2) if the Director is satisfied that an offence described in section 89 has been committed by any person, the Director may, in such form as may be prescribed, and subject to the approval of the Director of Public Prosecutions, notify the accused person of the particulars of the alleged offence and that the accused person may elect to have the offence dealt with administratively by the Director by the payment of a prosecution avoidance penalty in lieu of prosecution for the offence, in the amount and within the period specified in the notice.

(2) A prosecution avoidance notice shall—

- (a) be in the prescribed form;
- (b) set out the circumstances alleged to constitute the offence to which the notice relates; and
- (c) state—
  - (i) the amount of the prosecution avoidance penalty, which shall not exceed [twenty per cent of the maximum] amount of any fine or fines that are specified under this Act in respect of the offences to which the fixed penalty notice relates;
  - (ii) the period for paying the prosecution avoidance penalty, which shall not exceed twenty-one days upon receipt of the prosecution avoidance penalty notice;
  - (iii) the person to whom and the address at which the prosecution avoidance penalty may be paid and any correspondence relating to the prosecution avoidance penalty notice may be sent;
  - (iv) the method or methods by which payment may be made; and
  - (v) the consequences of not making a payment within the period for paying the prosecution avoidance penalty.

(3) The Director may extend the period for paying the prosecution avoidance penalty in any particular case if he considers it appropriate to do so by sending notice to the person to whom the prosecution avoidance penalty notice was given.

(4) Subsection (1) shall not apply to a person who has paid or has agreed to pay a prosecution avoidance penalty under this Act on two or more occasions within the period of two years immediately preceding the date of the commission of the act which is the subject of the prosecution avoidance notice.

(5) In determining whether to grant approval for the Director to issue a prosecution avoidance notice under subsection (1) the Director of Public Prosecution shall give consideration to whether the facts alleged to have been committed by the accused person are of such a serious nature that it would not, having regard to the amount of the prosecution avoidance penalty under section 92, be in the national interest to permit the offence to be dealt with administratively.

#### **Procedure for payment.**

**91.** (1) A person notified of the commission of an offence under Section 90 shall within 14 days of the date of receipt of the notice or such longer period as may be prescribed, notify the

[Comptroller] whether he elects to pay the prosecution avoidance penalty or be prosecuted for the offence.

(2) A notification to the Director under subsection (1) shall be in the form set out in Part B of the [ ] Schedule.

(3) A prosecution avoidance penalty shall be paid within 30 days of the date on which an accused person notifies the Comptroller under subsection (1) of his election to have the offence dealt with administratively.

#### **Effect of payment of prosecution avoidance penalty.**

**92.** The payment of a prosecution avoidance penalty shall not constitute a conviction for any offence under this Act and shall indemnify the accused person from prosecution for the offence.

#### **Outstanding prosecution avoidance penalty a debt to the state.**

**93.** (1) The amount of an outstanding prosecution avoidance penalty constitutes a debt due to the State and is recoverable by legal action at the suit of the Director on behalf of the State.

#### **Conduct of officials.**

**94.** (1) A food inspector, food analyst or member of staff of the Food Safety Service shall not—

- (a) seize food for any reason other than those prescribed in this Act;
- (b) disclose any information acquired in the course of exercising his official functions under this Act, except where required to do so by his supervisor or by a court;
- (c) directly or indirectly procure any monetary or other benefit from a person affected by the exercise of official powers under this Act;
- (d) agree to do or abstain from doing, permit, conceal, or connive in doing, any act or thing contrary to the proper execution of his or her official duties under this Act; or
- (e) otherwise abuse or act outside the scope of his duties.

(2) A person referred to in subsection (1) who contravenes subsection (1) commits an offence and is liable to dismissal by the Food Safety Service and he shall cease to function as a food inspector and may be ineligible for reappointment and shall be subject to such other penalty as is applicable to civil servants in [*insert name of State*].

#### **Forfeiture.**

**95.** (1) Where a person is convicted of an offence under this Act the court may, on its own motion or at the request of any party to the proceedings, in addition to any penalty imposed, order that any food or other thing by means of or in relation to which the offence was committed or any proceeds realized from its disposition, be forfeited to the [*State/Crown*].

(2) Where the owner of a food, or other thing to which a conviction relates, is convicted of an offence under this Act and a fine is imposed, the food or other thing may be—

- (a) detained until the fine is paid; or
- (b) sold in satisfaction of the fine.

(3) The owner or other person subject to forfeiture under subsection (1) may appear before the court at the hearing of the application and show cause why the food or other thing to which the conviction relates should not be forfeited.

(4) Where the court does not order the forfeiture of the food or other thing, then the food or other thing shall be returned to the owner.

(5) Any property, food or other thing ordered to be forfeited under this Act may be destroyed, sold, leased or donated to a charitable organization at the expiry of the time limited for appeal if no appeal is lodged.

(6) The proceeds of any sale of any item forfeited in accordance with this section shall be deposited into the [*to be specified at the national level*].

#### **Good faith defence.**

**96.** (1) No member of the Food Safety Service, food inspector, food analyst or official or reference laboratory or any government entity shall be liable to suit or to prosecution in respect of anything done in good faith in the performance of his official functions under this Act.

(2) Subsection (1) shall not apply to civil or criminal liability for personal injury or death.

#### **Presumptions.**

**97.** (1) Any food, food ingredient or food additive commonly used for human consumption shall, if offered for sale or distributed for the purposes of sale or found on premises used for the preparation, storage or sale of that food may be presumed, unless the contrary is proved, to be intended for human consumption.

(2) Where any person demands any food by a name prescribed for a food for which there is a mandatory standard prescribed, it shall be presumed that, unless the contrary is proved, that he demanded food which complies with that mandatory standard.

(3) In any proceedings under this Act, the production by one of the parties—

- (a) of a document purporting to be a certificate given by a food analyst; or
- (b) of a document supplied to him by the other party as being a copy of such a certificate,

shall be sufficient evidence of the facts stated therein unless, in a case falling within paragraph (a) above, the other party requires that the food analyst shall be called as a witness.

### **Application for reconsideration.**

**98.** (1) Subject to subsection (2), where a person to whom this subsection applies is not satisfied with a decision of the Food Safety Authority or Food Safety Service, that person may, within [14] days of the date of that decision, apply to the Director in the form set out in the [] Schedule for a reconsideration of the decision through administrative proceedings.

(2) Subsection (1) applies to—

- (a) the importer, exporter, manufacturer or supplier of a food;
- (b) the operator of a food business;
- (c) any person expressly permitted under this Act to apply to the Director for a reconsideration;
- (d) any person who has made an application for permission or for a license or registration in respect of any benefit or matter under this Act;
- (e) any person aggrieved by the manner in which any right, or interest in any matter or any obligation has been dealt with by a food inspector, the Food Safety Service or any person under this Act;
- (f) any person whose liability to pay or right to receive a benefit under this Act is affected; and
- (g) any person in relation to an administrative penalty notice issued in accordance with section 87.

(3) An application for reconsideration under subsection (1) shall be in such form as may be prescribed and shall —

- (a) state the grounds on which the application is based; and
- (b) submit for consideration any documentation or other information relied upon in support of the request for reconsideration.

### **Powers of the Director in administrative proceedings**

**99.** Where a matter is dealt with administratively by the Director, the Director may —

- (a) stay the proceedings for condemnation of anything forfeited under this Act;
- (b) restore anything seized under this Act, subject to conditions, if any;
- (c) impose or reinstate or revoke penalties or fines as the case may be, in respect of non-prosecutable breaches or offences dealt with administratively under this Act
- (d) seize food or other goods; or
- (e) mitigate or remit any fine or penalty imposed or restore anything seized under this Act.

### **Consideration of application by Director.**

**100.** (1) The Director shall consider an application under section 98 as soon after its receipt as may be practicable and, after taking into account any further submissions of the person making the application, endeavour to make a decision as soon as may be practicable but not later than under [45 days] of the filing of the application for reconsideration.

(2) The Director shall keep a Register in which shall be recorded, the proceedings of all administrative matters considered under this section.

(3) This section shall not affect any right conferred by any written law to claim goods in case of a seizure or to commence legal proceedings at any time.

(4) A person dissatisfied by a decision of the Director may appeal to the Tribunal within twenty-one days of the date of the decision.

#### **Establishment of Tribunal.**

**101.** (1) There is established the Sanitary and Phytosanitary Appeal Tribunal (hereinafter referred to as the "Tribunal") to hear and determine appeals brought under section 100 (4).

(2) The Tribunal shall consist of three persons appointed by the Minister, one of whom shall be the chairperson.

(3) At least two of the members shall have a scientific or technical background in food safety matters.

(4) Except as otherwise provided by this section, the Minister may prescribe constitution and rules of procedure of the Tribunal.

(5) The Tribunal shall determine the appeal within 3 working days of receiving the appeal and may confirm, reverse or vary the action or decision against which the appeal is brought.

(6) An appeal shall lie within seven days to the court on a question of law from a decision of the Tribunal which otherwise shall be final on technical issues.

(7) Unless the court so orders, the lodging of any appeal shall not operate to stay the effect of a decision pending the determination of the appeal.

### **Commencement of proceedings.**

**102.** Proceedings before the Tribunal shall be commenced by the lodging with the Tribunal of an application in the form set out in the [ ] Schedule, together with the prescribed fee, if any.

### **Nature of appeal.**

**103.** Appeals shall be by way of a hearing de novo.

### **Tribunal may extend time for appeal.**

**104.** Where under this Act a person is entitled to appeal to the Tribunal within a specified time, the Tribunal may, on an application made within the specified time, extend the time within which the appeal may be brought.

### **Hearing.**

**105.** (1) Subject to section 103, if the Tribunal considers that an appeal is ready to be heard, the Tribunal shall—

- (a) fix a date, time, and place for the hearing of the appeal; and
- (b) notify the appellant and the Director of the date, time, and place fixed.

(2) A notice to the appellant under subsection (1) —

- (a) shall, in addition to the matters referred to in subsection (1), inform the appellant of the provisions of subsections (5) and (6); and
- (b) shall be served on the appellant by personal service or by post in accordance with this Act.

(3) At the hearing of an appeal before the Tribunal the appellant and the Director may provide evidence and shall be given an opportunity to be heard either in person or by a person authorised by the appellant or the Director to appear on his behalf, without regard to whether that person is an attorney at law.

(4) Where the appellant or the Director fails to appear before the Tribunal at the time and place appointed, the Tribunal may nevertheless, upon proof of service of the notice of the hearing, proceed to determine the appeal.

(5) Subject to subsection (6), the hearing of an appeal before the Tribunal shall be in public.

(6) Where the Tribunal is of the opinion that it is proper to do so, having regard to the interests of any party and to the public interest, it may hold a hearing or any part of a hearing in private.

(7) The Tribunal may order that any part of any evidence given or the name of any witness not be published, and any such order may be subject to such conditions as the Tribunal thinks fit.

**Tribunal may decide appeal without oral hearing if both parties consent.**

**106.** (1) Notwithstanding section 104, the Tribunal may, if it thinks fit and if both parties consent, decide an appeal without holding an oral hearing.

(2) Where the Tribunal, at any time during its consideration of an appeal in accordance with subsection (1), decides that an oral hearing should be held, the Tribunal shall fix a date, time, and place for the hearing of the appeal in accordance with section 102.

**Tribunal's powers.**

**107.** For the purpose of a hearing and deciding any appeal before it, the Tribunal shall have —

- (a) the powers, duties, functions, and discretions of the Director in making its decision; and
- (b) the powers of the High Court, in the exercise of its civil jurisdiction, in respect of citing parties and conducting and maintaining order at the hearings of the Tribunal.

**Evidence.**

**108.** (1) The Tribunal may receive as evidence any statement, document, information, or matter that, in the opinion of the Tribunal, may assist the Tribunal to deal effectually with the proceedings.

(2) The Tribunal may take evidence on oath.

(3) The Tribunal may permit a person appearing as a witness before it to give evidence by tendering a written statement and verifying it by oath.

**Powers of investigation.**

**109.** (1) For the purposes of dealing with the matters before it, the Tribunal or any person authorised by the Tribunal in writing to do so may —

- (a) inspect and examine any papers, documents, records, or articles;
- (b) require any person to produce for examination any papers, documents, records, or articles in that person's possession or under that person's control, and to allow copies of or extracts from any such papers, documents, or records to be made; and
- (c) require any person to furnish, in a form approved by or acceptable to the Tribunal, any information or particulars that may be required by it.

(2) The Tribunal may, if it thinks fit, require that any written information or particulars or any copies or extracts furnished under this section be verified by statutory declaration or otherwise.

(3) For the purposes of dealing with the matters before it, the Tribunal may of its own motion, or on application, order that any information or particulars, or a copy of the whole or any part of any paper, document, or record, furnished or produced to it be supplied to any person appearing before the Tribunal, and in the order impose such terms and conditions as it thinks fit in respect of the production of and use that is to be made of the information.

(4) Every person shall have the same privileges in relation to the giving of information to the Tribunal, the answering of questions put by the Tribunal, and the production of papers, documents, records, and articles to the Tribunal as witnesses have in a court of law.

**Power to summon witnesses.**

**110.** For the purposes of dealing with the matters before it, the Tribunal may of its own motion, or on application, issue in writing a summons requiring any person to attend at the time and place specified in the summons and to give evidence, and to produce any papers, documents, records, or articles in that person's possession or under that person's control that are relevant to the matters before the Tribunal.

**Service of summons by the Tribunal.**

- 111.** (1) A summons by the Tribunal to a witness shall be served by —
- (a) delivering it to the person summoned at least [24 hours] before the attendance of the witness is required; or
  - (b) sending it registered post addressed to the person summoned at that person's usual place of residence or business at least [10 days] before the date on which the attendance of the witness is required.

(2) Where the summons is delivered by registered post, it shall be deemed for the purposes of subsection (1)(b) to have been served at the time when a letter would be delivered in the ordinary course of post.

**Protection of persons appearing.**

**112.** Every witness giving evidence, and every counsel or agent or other person appearing before the Tribunal, shall have the same privileges and immunities as witnesses and counsel in a court of law.

**Grounds of appeal and burden of proof.**

**113.** (1) Subject to subsection (2), in an appeal, the appellant is limited to the grounds stated in the appellant's application, and the burden of proof is on the appellant.

(2) The Tribunal may, either on the application of the appellant or of its own motion, amend the grounds stated in the application.

**Sittings of Tribunal.**

**114.** (1) Sittings of the Tribunal shall be held at such times and places as the Tribunal determines.

(2) The Tribunal may adjourn a sitting or modify the place of a sitting either before the time of the sitting or at the sitting.

**Tribunal may dismiss frivolous or vexatious appeal.**

**115.** The Tribunal may at any time dismiss an appeal if it is satisfied that the appeal is frivolous or vexatious.

**Decision of Tribunal.**

**116.** (1) Every decision of the Tribunal shall be given in writing, with a statement of the reasons for the decision.

(2) A copy of the decision shall be given to the parties to the appeal.



### **Appeals to High Court.**

**117.** (1) A party who is dissatisfied with a decision of the Tribunal as being erroneous in point of law or fact may appeal to the High Court.

(2) Every appeal under this section shall be made by filing a notice of appeal within [30 working days] after the date of the decision appealed against or within such further time as the High Court may allow.

(3) Where a notice of appeal is filed in accordance with subsection (2), the appellant shall also, within the time specified in that sub-section, serve a copy of the notice on the Tribunal, and, except in the case of an appeal by the Director, shall give security for the costs of the appeal of such amount and in such form as may be fixed by the High Court.

### **Stating case for High Court.**

**118.** (1) The Tribunal may, on the application of the appellant or the Director or of its own motion, state a case for the opinion of the High Court on any question of law arising in respect of any appeal that was heard before the Tribunal.

(2) The Tribunal shall give notice to the Director and the appellant of the Tribunal's intention to state a case under this section.

## **PART X MISCELLANEOUS**

### **Agreements and memoranda of understanding.**

**119.** Where the Food Safety Service enters into an agreement or memorandum of understanding pursuant to section 5 (6) the agreement or memorandum of understanding shall, subject to such conditions, qualifications and exceptions as may be specified —

- (a) provide generally for functional cooperation between or amongst the parties; and
- (b) specify duties, powers and functions that one party may exercise, carry out or perform on behalf of another party.

### **Manuals.**

**120.** (1) Where, pursuant to section 5 (2) (v) the Food Safety Service develops a manual, the Minister may approve the manual.

(2) A government entity for whose use the Minister approves a manual shall have regard to the provisions of the manual and comply with applicable directions.

### **Duty of other authorities to assist and cooperate.**

**121.** Customs, port, airport, airline, postal, shipping, police, consumer protection and other governmental entities, shall assist food inspectors in the performance of their functions under this Act by providing such assistance as the Food Safety Service may request from time to time.

## Regulations under this Act.

**122.** (1) The Minister may make regulations for the purposes of giving effect to the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations for the following—

- (a) the procedures, criteria for approval and required forms for the issuance of permits, licenses and other authorisations required by the Food Safety Service under this Act, including the expiry, renewal, suspension and revocation and conditions attached thereto;
- (b) the procedures to be followed by food inspectors, food analysts and official laboratories in the exercise of their functions under this Act;
- (c) the procedures relating to auditing of the Food Safety Service and governmental entities with a role in food safety control;
- (d) the production, manufacture, storage, transport, packing, packaging, labelling and sale of all types of food;
- (e) the preparation, handling and serving of food, including technical requirements, standards, procedures or rules for good hygiene practices.
- (f) the requirements and obligations of food business operators;
- (g) the location, design, construction, alteration, operation, including hours of operation and maintenance, of premises, facilities, equipment and conveyances used in any food business;
- (h) traceability and recall systems;
- (i) the control of street food;
- (j) procedures and conditions for the issuance of export certificates;
- (k) the requirement for the designation of official and reference laboratories;
- (l) the establishment, operation and maintenance of laboratories or laboratory activities;
- (m) the use or prohibition of chemicals, chemical compounds, hormones or additives in the production, harvesting, handling and processing of food;
- (n) the import and export of foods, including any documentation, procedures and inspections required;
- (o) the treatment, destruction and disposal of any food unfit for human consumption;
- (p) the qualifications, education, training and certification of a food inspector, food analyst or any other staff of the Food Safety Service
- (q) the offences subject to the fixed penalty procedure outlined in section 60;
- (r) the forms to be used for the purposes of this Act; and
- (s) the fees payable in respect of this Act;
- (t) any other matter required to be prescribed under this Act or for the better carrying out of the provisions of this Act.

(3) Regulations made under this Act may-

- (a) specify administrative penalties for non-prosecutable breaches under the Regulations; and
- (b) vary the amount or rate of the administrative penalties set out in this Act.

(3) The Minister shall consult with governmental entities, the food industry, consumer groups and other persons who may have an interest in or be affected by the proposed regulations.

**Repeal and savings.**

**123.** (1) The [*Reference to repealed provisions on food safety matters found in various Acts or Food Safety Act, if this exists*] [is] [are] hereby repealed.

(2) [*General reference to savings and transitional, if any*].

(3) An order issued by the Minister may revoke or modify any permit or certificate granted by authority of the legislation referred to in subsection (1).

(4) All regulations [*notices or orders*] in effect on the coming into force of this Act shall continue in force as if they were issued under the present Act, except where they conflict with, and until they are replaced by regulations [*notices or orders*] made under, this Act.