



ANALYSIS

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An Act to consolidate and amend the law relating to the sale of food
[14 October 1981]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Food Act 1981.

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

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

“Advertisement” means—

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

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

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

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

“Advertising material” means material used or intended to be used as an advertisement:

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

“Analyst” means a person appointed to be an analyst under section 7 of this Act:

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

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

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

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

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

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

(e) Having an internal volume of one cubic metre or more;—

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

“Description” includes any pictorial representation; and “described” has a corresponding meaning:

“Director” means the person for the time being holding, or acting in, the office of Director of the Division of Public Health in the Department of Health:

“Director-General” means the person for the time being holding, or acting in, the office of Director-General of Health under the Health Act 1956:

“Entertainment” includes any social gathering, amusement, exhibition, performance, game, sport, or trial of skill:

“Examine” includes weigh, count, and measure; but does not include take or analyse samples:

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

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

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

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

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

- (a) The owner of any goods; or
- (b) Entitled to the possession of any goods; or
- (c) Beneficially interested in any goods—

on or at any time after the importation of those goods and before they have ceased to be subject to the control of the Customs in accordance with the Customs Act 1966:

“Label” means any written, pictorial, or other descriptive matter appearing on or attached to—

- (a) The exterior of any food; or
- (b) Any package containing a food;—

and “labelled” has a corresponding meaning:

“Labelling material” means material used or intended to be used as a label:

“Local authority inspector” means the health inspector of any territorial authority within the meaning of the Local Government Act 1974:

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

“Minister” means the Minister of Health:

“Officer” includes the Medical Officer of Health; and also includes—

(a) A medical practitioner employed in the Department of Health:

(b) An Inspector of Health within the meaning of the Health Act 1956:

(c) A person appointed to be an officer under section 7 of this Act:

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

“Port” means a port of entry appointed under section 26 of the Customs Act 1966; and includes a Customs airport appointed under section 30 of that Act:

“Prescribed” means prescribed by or under regulations made under this Act:

“Publish” means—

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

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

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

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

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

“Vehicle” includes an aircraft, a hovercraft, and a ship.
Cf. 1969, No. 7, s. 2; 1979, No. 27, s. 2; 1979, No. 59, s. 8 (3)

PART I

APPLICATION AND ADMINISTRATION OF ACT

Application

3. Act to bind Crown—This Act shall bind the Crown.

Cf. 1969, No. 7, s. 5; 1979, No. 27, s. 3

4. What constitutes “sale”—(1) In this Act, unless the context otherwise requires, “sell” means sell for human consumption or use; and includes—

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

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

(c) Barter; and

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

and “sale” and “sold” have corresponding meanings.

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

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

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

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

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

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

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

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

Cf. 1969, No. 7, s. 3

5. Food offered as prizes—(1) Where any food that is intended for human consumption is offered as a prize or reward in connection with any entertainment to which the public are admitted, whether on payment of money or not,

this Act shall apply in relation to the food, as if it were, or had been, exposed for sale by each person concerned in the organisation of the entertainment.

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

Cf. 1969, No. 7, s. 4; 1979, No. 27, s. 4

Administration

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

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

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

Cf. 1969, No. 7, s. 20; 1979, No. 27, s. 8

7. Appointment of analysts and officers—(1) There may from time to time be appointed under the State Services Act 1962 such analysts and officers as may be required for the purposes of this Act.

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

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

(4) There may be paid out of money appropriated by Parliament for the purpose to any person appointed under subsection (2) of this section such remuneration as may be fixed by the Minister with the concurrence of the Minister of Finance.

(5) No person appointed as an analyst or officer under subsection (2) of this section shall be deemed by reason of that appointment to be employed in the service of Her Majesty for the purposes of the State Services Act 1962 or of the Government Superannuation Fund Act 1956.

Cf. 1969, No. 7, s. 19; 1979, No. 27, s. 9

8. Exercise of powers of Director and other officers—

(1) The Director, every Medical Officer of Health, and every other officer of the Department of Health, shall exercise the powers and functions conferred on him by this Act subject to the direction and control of the Director-General of Health and of every other officer of the Department of Health to whom he is subordinate.

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

Cf. 1979, No. 27, s. 10

PART II

SALES AND ADVERTISEMENTS

9. General prohibitions on sales—(1) If a standard is prescribed in respect of the composition of any kind of food, no person shall sell any article under such a name or description as to lead an intending purchaser to believe that he is purchasing that kind of food unless the article complies with the standard.

(2) If a person sells an article to a purchaser in response to a request for a food of a kind for which a standard is prescribed, he shall be deemed to sell a food of that kind and under such description as is specified in subsection (1) of this section unless he clearly notifies the purchaser at the time of sale that the article is not of that kind.

(3) Notwithstanding that a food otherwise complies with the standard prescribed for that kind of food, it shall be deemed not to comply with that standard if anything has been added to it—

- (a) The addition of which to that kind of food is not expressly required or permitted by regulations made under this Act; or
 - (b) In a quantity or proportion greater than that so required or permitted; or
 - (c) That does not comply with the standard, if any, prescribed for that kind of food.
- (4) No person shall prepare or pack for sale, or sell,—
- (a) Any food that is unsound or unfit for human consumption or contaminated; or
 - (b) Any food containing or having attached to it or enclosed with it or in contact with any extraneous thing—
 - (i) That is injurious to health or harmful; or
 - (ii) That is offensive; or
 - (iii) The presence of which would be unexpected and unreasonable in food of that description prepared or packed for sale in accordance with good trade practice; or
 - (c) Any food in any package, or any package intended to contain food, if that package is made wholly or partly of a material that may render the food injurious to health or that may taint the food; or
 - (d) Any appliance that may render the food injurious to health or that may taint the food.
- (5) Every person who contravenes any of the provisions of this section commits an offence and is liable—
- (a) To imprisonment for a term not exceeding 3 months or a fine not exceeding \$3,000, in a case where he commits the offence knowingly; or
 - (b) To a fine not exceeding \$1,000, in any other case.
- Cf. 1969, No. 7, ss. 6, 39 (1)

10. Misleading labelling and packaging—(1) No person shall sell any food or appliance—

- (a) That bears or has attached to it, or is contained in a package that bears or has attached to it, any false or misleading statement, word, brand, picture, label, or mark purporting to indicate the nature, suitability, quantity, quality, strength, purity, com-

- position, weight, origin, age, effects, or proportion of the food or appliance, or of the food or appliance contained in the package, as the case may require, or of any ingredient or nutrient or other constituent of the food or any component of the appliance; or
- (b) That has been packaged, processed, or treated in a manner that is false or misleading in relation to any of the matters mentioned in paragraph (a) of this subsection.
- (2) Every person who contravenes any of the provisions of this section commits an offence and is liable—
- (a) To imprisonment for a term not exceeding 3 months or a fine not exceeding \$3,000, in a case where he commits the offence knowingly; or
- (b) To a fine not exceeding \$1,000, in any other case.
- Cf. 1969, No. 7, ss. 7, 39 (1)

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

- (a) Directly or by implication qualifies or is contrary to any particulars required by regulations made under this Act to be marked on or attached to that kind of food or on or to packages containing that kind of food; or
- (b) Is prohibited by any such regulations from being marked on or attached to that kind of food or on or to packages containing that kind of food; or
- (c) Omits from the name or description of the food any word or words required by any such regulations to be included in the name or description marked on or attached to that kind of food or on or to packages containing that kind of food; or
- (d) Fails to make any statement required by any such regulations to be made in an advertisement relating to any food of that description, kind, or class; or
- (e) Makes any statement prohibited by any such regulations to be made in an advertisement relating to any food of that description, kind, or class; or

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

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

(3) Without prejudice to his liability in respect of any offence against any regulations made under this Act, every person who contravenes any of the provisions of subsection (1) of this section commits an offence and is liable—

- (a) To imprisonment for a term not exceeding 3 months or a fine not exceeding \$3,000, in a case where he commits the offence knowingly; or
 (b) To a fine not exceeding \$1,000, in any other case.

Cf. 1969, No. 7, s. 8

PART III

ENFORCEMENT

12. Powers of officers—(1) In this section the expression “article to which this section applies” means—

- (a) Any food; and
 (b) Any appliance; and
 (c) Any advertising material or labelling material; and
 (d) Any package containing or intended to contain any food or appliance.

(2) An officer, and any other person assisting him and acting under his direct supervision, may at any reasonable time—

- (a) Enter and inspect any premises (not being a dwelling-house) or vehicle (including any fixtures, fittings, or appliances in the premises or vehicle) where the officer reasonably believes that any article to which this section applies is, for the purposes of sale, prepared, processed, manufactured, packed, stored, carried, or delivered, or is sold:

- (b) Enter any premises (not being a dwellinghouse) or vehicle where the officer reasonably believes that any books, documents, or other records are kept relating to—
 - (i) Any such preparation, processing, manufacture, packing, storage, carriage, delivery, or sale; or
 - (ii) The purchase or receipt of any food or appliance for such preparation, processing, manufacture, packing, storage, carriage, delivery, or sale:
- (c) Open and examine any appliance, receptacle, or package that the officer reasonably believes contains any article to which this section applies:
- (d) Examine any article to which this section applies:
- (e) Subject to sections 20 and 21 of this Act, purchase or take samples of—
 - (i) Any food that the officer reasonably believes to be intended for sale or to have been sold; or
 - (ii) Any appliance that the officer reasonably believes to be intended for sale or to have been sold for use in the preparation, processing, manufacture, packing, storage, carriage, delivery, or sale of food:
- (f) Purchase or take—
 - (i) Any package in which the officer reasonably believes food is intended to be packed for sale; or
 - (ii) Any advertising material or labelling material that the officer reasonably believes is intended for use in connection with the sale of any food or appliance, or to have been used for such purpose:
- (g) Examine any books, documents, or other records that the officer reasonably believes contain information relevant to the enforcement of this Act or any regulations made under this Act, and make copies of or take extracts from any such records:
- (h) Mark, fasten, seal, or otherwise secure on any premises—
 - (i) Any plant, machinery, or equipment that is used or intended to be used on those premises for the preparation or packing of any food and that the officer reasonably believes may render any food injurious to health or may taint any food; or

(ii) Any other article to which this section applies,—

and direct the owner of the plant, machinery, equipment, or other article to refrain from using it and to detain it for such time as may be necessary to obtain results of analysis or (where analysis is not appropriate) to take any necessary remedial action, but in no case longer than 14 days:

- (i) Seize and detain any article to which this section applies, not being an article of a kind referred to in paragraph (h) (i) of this subsection, by means of or in relation to which the officer reasonably believes an offence against this Act or against any regulations made under this Act has been committed:
- (j) Seize and detain any advertising material or labelling material that contravenes or does not comply with the requirements of this Act or any regulations made under this Act relating to advertisements or labels:
- (k) Take photographs of any premises or vehicle, or any article to which this section applies, or any other thing, where or by means of or in relation to which the officer reasonably believes an offence against this Act or against any regulations made under this Act has been committed.

(3) On demand by any person in any premises or vehicle, or claiming any interest in any article, in or in respect of which any power is exercised under this section, the officer exercising the power shall identify himself and produce evidence that he is an officer.

(4) Every person commits an offence against this Act who fails to maintain the secrecy of all matters that come to his knowledge in the performance of his duties under this section, or who communicates any such matters to any person, except for the purpose of carrying into effect the provisions of this Act.

Cf. 1969, No. 7, s. 21 (1), (2), (4); 1979, No. 27, s. 47 (1)–(6)

13. Powers of local authority inspectors—(1) A local authority inspector, and any other person assisting him and acting under his direct supervision, may at any reasonable time, within any district in which the inspector is employed,—

- (a) Enter and inspect any premises (not being a dwelling-house) or vehicle (including any fixtures, fittings, or appliances in the premises or vehicle) where the inspector reasonably believes that any article to which section 12 of this Act applies is, for the purposes of sale, prepared, processed, manufactured, packed, stored, carried, or delivered, or is sold:
- (b) Open and examine any receptacle or package that the inspector reasonably believes contains any food or appliance:
- (c) Examine any article to which section 12 of this Act applies:
- (d) Seize and detain any food or appliance by means of or in relation to which the inspector reasonably believes an offence against any of paragraphs (a) to (d) of section 9 (4) of this Act or against any regulations made under this Act has been committed:
- (e) Take photographs of any premises or vehicle, or any article to which section 12 of this Act applies, or any other thing, where or by means of or in relation to which the inspector reasonably believes any such offence has been committed.

(2) Subsections (3) and (4) of section 12 of this Act, with all necessary modifications, shall apply in respect of the exercise by a local authority inspector of any powers under this section.

(3) Every local authority shall furnish to the Medical Officer of Health from time to time such reports relating to the exercise of the powers of local authority inspectors in its district under this section as the Director-General or the Medical Officer of Health may require.

Cf. 1969, No. 7, s. 21 (3), (10)

14. Further provisions relating to seizure and detention of articles—(1) If any officer or local authority inspector seizes any article under section 12 or section 13 of this Act in any premises or vehicle that is not in the occupation or use of the owner of the article, he shall forthwith give notice in writing of the seizure to the owner, or to the consignor or consignee, or to the agent of the owner, of the article, if

his name and address are on or attached to the article or are otherwise known to the officer or inspector, and the address is that of a place in New Zealand.

(2) Subject to subsection (3) of this section, where any article is—

(a) Ordered to be detained under paragraph (h) of subsection (2) of section 12 of this Act; or

(b) Seized under paragraph (i) or paragraph (j) of that subsection; or

(c) Seized under section 13 (1) (d) of this Act,—

it may, at the option of the officer or local authority inspector concerned, be detained in the premises or vehicle where it was ordered to be detained or seized, or removed to another place and detained there, at the expense of the owner at the time of the order or seizure.

(3) An officer or local authority inspector shall release any article seized or ordered by him to be detained under section 12 or section 13 of this Act when he is satisfied—

(a) That all the provisions of this Act and of any regulations made under this Act, to the extent that they are material, have been complied with in respect of the article; and

(b) That the article is fit for the purpose for which it is intended to be sold or used.

(4) If, within the time limited by section 16 (1) of this Act, the seized article has not been released and no application for disallowance of that seizure has been made under that section or any such application has been dismissed, the article shall,—

(a) In the case of a seizure by an officer, become the property of the Crown; or

(b) In the case of a seizure by a local authority inspector, become the property of the corporation of the local authority in whose district he was employed at the time of the seizure;—

and, in either case, the owner of the article at the time of the seizure shall be liable for any costs or expenses incurred in the disposition of that article.

(5) Without prejudice to the owner's liability under subsections (2) and (4) of this section, where the article was, at the time of the seizure, in the possession of a person who was not the owner and the identity of the owner is not known to the officer or local authority inspector, the person

in whose possession the article was at that time shall be liable for any costs and expenses incurred in the detention, removal, or disposition of that article.

(6) If any article seized under section 12 or section 13 of this Act is not destroyed or otherwise disposed of under this section, it shall be returned to the person from whom it was seized when the officer or local authority inspector concerned is satisfied of the matters referred to in subsection (3) of this section.

Cf. 1969, No. 7, s. 21 (5)-(8)

15. Seizure and destruction of decayed or putrified food— Notwithstanding sections 12 to 14 of this Act, an officer or a local authority inspector may at any time seize and destroy any food that is decayed or putrified.

Cf. 1969, No. 7, s. 21 (9)

16. District Court may order return of property or compensation—(1) Any person claiming any interest in any article seized or ordered to be detained under section 12 or section 13 of this Act, may, within 3 days thereafter, apply to a District Court for an order—

- (a) That the seizure or the order for detention be disallowed and that the article be returned or otherwise made available to him:
- (b) That the Crown or the local authority, as the case may be, shall pay to him such sum by way of compensation for any depreciation in the value of the article resulting from its seizure, detention, or removal, and any transport and storage costs, as the Court thinks fit.

(2) On any such application, the Court may dismiss it, or, subject to subsections (3) and (4) of this section, order—

- (a) That the seizure be disallowed in whole or in part;
or
- (b) That the detention of the article be terminated in whole or in part; or
- (c) That compensation be paid by the Crown or the local authority for any depreciation in the value of the article resulting from its seizure, detention, or removal, and any transport and storage costs;—

and any such order may be made upon and subject to such terms and conditions as the Court thinks fit.

(3) No order that the seizure of the article be disallowed or that the detention of the article be terminated in whole or in part shall be made if the Court is of the opinion that the purpose to which that article or that part is intended to be put will probably involve the commission of an offence against this Act, or any regulations made under this Act, or that the continued detention of that article or that part is expedient for the purposes of its production in any pending proceedings under this Act.

(4) No order for the payment of compensation shall be made except in respect of an article or part that, in the opinion of the Court, ought not to have been seized or continued to be detained, as the case may be, and except to the extent that the Court disallows the seizure or terminates the detention.

(5) Where the Court makes an order for the payment of any sum by way of compensation to any person under this section, the sum so awarded shall be recoverable by that person as a debt due from the Crown or the local authority, as the case may be.

(6) Every application to the Court under this section shall be made and dealt with by way of originating application filed in the office of the Court nearest to the place where the article in dispute was seized or ordered to be detained.

(7) The applicant shall serve notice of his application on the respondent on or before the date on which he files it in the Court.

(8) Except as modified by subsections (6) and (7) of this section, the rules of procedure for the time being in force under the District Courts Act 1947 shall apply with respect to every application to the Court under this section.

(9) Every order made by the Court under this section shall be final and binding on all parties.

(10) Nothing in this section shall limit or affect the Customs Act 1966 or any other enactment.

Cf. 1969, No. 7, s. 22; 1979, No. 27, s. 49

17. Power of Medical Officer of Health to require information—(1) Without limiting section 12 of this Act, where the Medical Officer of Health reasonably suspects that any person is in possession—

- (a) Of any food for the purpose of sale; or
- (b) Of any substance, appliance, or article for the purpose of the manufacture, preparation, or sale of any food; or

(c) Of any advertising material or labelling material for use as an advertisement or label,—
in breach of this Act or of any regulations made under this Act, he may require that person to produce for his inspection, or to produce to any officer specially authorised by him for the purpose, any books, documents, or other records dealing with the importation, purchase, reception, manufacture, processing, preparation, packing, storage, carriage, delivery, or sale of any such food, substance, appliance, or article.

(2) The Medical Officer of Health may make or cause to be made copies of or extracts from any such books, documents, or other records, and the copies or extracts, certified as such by him or by any specially authorised officer, shall be deemed to be true and correct copies or extracts, unless the contrary is proved.

(3) Every person commits an offence against this Act who refuses or fails to comply with any requirement made under this section.

(4) Every officer commits an offence against this Act who fails to maintain the secrecy of all matters that come to his knowledge in the performance of his official duties under this section, or who communicates any such matters to any person, except for the purpose of carrying into effect the provisions of this Act.

(5) For the purposes of this section, any goods that have been seized or detained, whether under this Act or any other enactment, shall be deemed to be still in the possession of the person who had them in his possession when they were seized or ordered to be detained.

Cf. 1969, No. 7, s. 27; 1979, No. 27, s. 50

18. Power to require name and address of seller—(1) Any officer acting in the exercise of any of his powers under this Act may require any person who is in possession of any food for sale, or for delivery upon sale, to state correctly his name and address and, so far as he is aware of them, the name and address of the person from whom he obtained the food.

(2) Every person commits an offence against this Act who fails, without reasonable excuse, to comply with any requirement of an officer under subsection (1) of this section.

(3) In this section the term “officer” includes a local authority inspector.

Cf. 1969, No. 7, s. 28; 1979, No. 27, s. 51

19. Source of information or reports need not be disclosed—

(1) No prosecutor or witness in any prosecution under this Act shall be compelled to disclose the fact that he received any information, or the nature of such information, or the name of any person who gave such information; and no officer appearing as a prosecutor or witness shall be compelled to produce any confidential reports or documents made or received by him in his official capacity, or to make any statement in relation to any such report or document.

(2) In this section the term “officer” includes a local authority inspector.

Cf. 1969, No. 7, s. 37; 1979, No. 27, s. 52

20. Procuring of samples for analysis—(1) For the purposes of analysis, an officer may demand and select and take or obtain samples of any food, or of any substance reasonably believed by him to be a food, or any appliance, in accordance with this section.

(2) When an officer intends to procure a sample of a food, or an appliance, for the purposes of analysis, he shall—

(a) Pay or tender the current market value of the sample or appliance to the owner or the person from whom it is obtained:

(b) Before or forthwith after obtaining the sample or appliance, inform the owner or the person from whom it is obtained of his intention to submit it to an analyst:

(c) Thereafter, in the case of a sample, deal with the sample in the manner set out in section 21 of this Act.

(3) For the purposes of subsection (2) of this section, an officer may require the person in possession of a food, or his employee or agent, to show and permit the inspection of any package containing the food and to take therefrom the sample demanded.

(4) Where any food is kept for retail sale in an unopened package, no person shall be required by any officer to sell less than the whole of the contents of the package.

(5) Nothing in this section or in section 21 of this Act shall apply to the procuring of a sample of a food from a vending machine if the officer obtains the sample by properly making payment for it and no person present admits to being in charge of the machine.

(6) Notwithstanding anything in this section or in section 21 of this Act,—

- (a) An officer shall not be obliged to submit to an analyst any sample or appliance that he has obtained:
- (b) An officer may inspect, select, and take or purchase any sample, or appliance, for the purposes of analysis without complying with those sections, but in that event no regard shall be had to the results of any such analysis in any proceedings before any Court in respect of an offence against this Act or against any regulations made under this Act.

(7) Every person commits an offence against this Act who refuses or fails to comply with any demand or requirement made by an officer under this section.

(8) Without limiting the foregoing provisions of this section, an officer may submit any food or appliance or any part of it, in respect of which a complaint is made by any member of the public, to an analyst for analysis or a report in accordance with this Act.

Cf. 1969, No. 7, s. 23; 1979, No. 27, s. 53

21. How samples to be dealt with—(1) Subject to the succeeding provisions of this section, where an officer has procured a sample of a food under section 20 (except subsection (8)) of this Act, he shall—

- (a) Divide the sample into 3 parts; and
- (b) Mark and seal or fasten up each part in such manner as its nature will permit; and
- (c) Leave 1 part with the owner of the food from which the sample was taken or the person from whom the sample was procured.

(2) When any food is contained in a package in such quantity that its division into 3 parts would, in the opinion of the officer, furnish parts insufficient for accurate analysis, additional packages that purport to contain a similar food under the same brand or label may be taken or procured, and the contents of 2 or more packages may be mixed together and the mixture divided and submitted for analysis as provided in this section.

(3) If the officer who has procured the sample considers that it should be analysed, he shall submit 1 part of the sample to an analyst for this purpose and shall retain the third part.

(4) Where—

- (a) A sample of food is procured only for bacteriological analysis; or
- (b) A sample of milk is procured only for examination by the freezing point test for added water; or
- (c) A sample of milk is procured for bacteriological analysis and examination by the freezing point test for added water,—

the officer may submit the whole sample to the analyst instead of dividing it into parts, unless the owner of the food from which the sample was taken or the person from whom the sample was procured requires him to leave a part with such owner or person, in which case it shall be sufficient compliance with that requirement if the officer selects, marks, and seals 2 packages that purport to contain similar food under the same brand or label, as the case may require, and leaves 1 of them.

(5) Subject to subsection (6) of this section, if the officer reasonably believes that the food of which he seeks to procure a sample is of such a nature or so packed that there is a risk of its quality being affected in the course and by reason of the procedure prescribed in subsection (1) of this section, or there is a danger of the portions not being representative of the bulk of the sample, the officer may submit the whole sample to the analyst instead of dividing it into 3 parts.

(6) In any case to which subsection (5) of this section applies, if the owner of the food or the person from whom the sample was procured so requires, the officer shall select, mark, and seal another package that purports to contain a similar food under the same brand or label, as the case may require, and leave it with that owner or person.

Cf. 1969, No. 7, s. 24; 1979, No. 27, s. 54

22. Analysis of sample and certificate or report of analyst—

(1) The certificate of the analyst shall be in the prescribed form.

(2) Where any method of analysis for the analysis of any food is prescribed, an analyst shall use that method and shall declare in his certificate of analysis that he has done so.

(3) Any certificate of the result of an analysis or any report given by an analyst in pursuance of this section shall be signed by the analyst, but the analysis may be made by any person acting under the direction of the analyst.

(4) When any sample is procured by an officer under this Act and submitted for analysis, the person from whom the sample was procured, and the manufacturer or importer of the food, may, on payment of the prescribed fee, obtain a copy of the analyst's certificate or, if there is no such certificate, a copy of the report made by the analyst in respect of the sample.

(5) Except as provided in subsection (4) of this section, no person shall be entitled to obtain a copy of any analyst's certificate or report given in respect of any sample procured and submitted for analysis by an officer under this Act.

(6) Every person commits an offence against this Act who publishes or causes to be published any advertisement relating to any food or appliance which states that the food or appliance has been analysed by an analyst under this Act, or quotes or purports to quote the findings of any analyst under this Act in relation to the food or appliance, whether or not those findings are given in any certificate or report prepared for the purposes of this Act.

Cf. 1969, No. 7, s. 25; 1979, No. 27, s. 55

23. Evidence of analysis—(1) Subject to subsections (2) and (3) of this section, in any proceedings for an offence against this Act, a certificate purporting to be signed by an analyst in the prescribed form shall, in the absence of evidence to the contrary, be sufficient evidence of the authority of the person who signed the certificate and of the facts stated in the certificate.

(2) A certificate referred to in subsection (1) of this section shall be admissible in evidence only if—

(a) At least 14 clear days before the hearing at which the certificate is tendered, a copy of that certificate (in addition to the copy required by section 27 (4) of this Act to be served with the summons) is served, by or on behalf of the prosecutor, on the defendant, and the defendant is, at the same time, informed in writing that the prosecutor does not propose to call the analyst as a witness at the hearing; and

(b) The defendant does not, by notice in writing given to the prosecutor at least 7 clear days before the hearing, require the analyst to be called by the prosecutor as a witness at the hearing.

(3) No certificate referred to in subsection (1) of this section shall be admissible in evidence if the Court, of its own motion, directs that the result of the analysis shall be disregarded unless that result is proved by the oral evidence of the analyst.

(4) No certificate of an analyst and no other evidence of an analysis under this Act shall be ruled inadmissible or disregarded by reason only of the fact that any of the provisions of this Act or of any regulations made under this Act relating to the taking or analysing of samples have not been strictly complied with, if there has been reasonable compliance with those provisions.

Cf. 1969, No. 7, s. 36; 1979, No. 27, s. 56

24. Special provisions relating to imported consignments—

(1) Where, in any port, any officer takes any sample under section 20 of this Act from any imported consignment of any substance reasonably believed by him to be food, or takes any appliance under section 12 (2) (e) (ii) or section 20 of this Act, from any imported consignment the following provisions shall apply:

- (a) The officer shall forthwith notify the importer that he has taken the sample or appliance:
- (b) Subject to paragraphs (c) and (d) of this subsection, an officer shall direct the Collector of Customs to detain the remainder of the consignment in the port under the control of the Customs, at the expense of the importer, until the analysis or examination has been completed:
- (c) Any such consignment may, with the approval of an officer, be removed at the expense of the importer from the port to a specified place if the importer undertakes in writing, in a form approved by the officer, that he will detain the consignment for such time as may be necessary to obtain results of analysis or to complete an examination:
- (d) Where any such consignment is in a bulk cargo container, the officer may, in accordance with paragraph (c) of this subsection, approve the removal of that container to a specified place at which a sample can be taken or an examination undertaken:

- (e) Where any consignment is to be removed to a specified place under paragraph (c) or paragraph (d) of this subsection, an officer shall mark it:
- (f) If, as a result of the analysis or examination, an officer reasonably believes that the consignment does not comply with any of the provisions of this Act or any regulations made under this Act, he may—
 - (i) Seize and detain the goods; or
 - (ii) Order the goods returned by the importer to their place of origin, or some other place outside New Zealand, at the expense of the importer; or
 - (iii) Permit the goods to be released subject to such conditions as he may specify, including a condition that a new label be substituted for any label on each or any package comprising part of the consignment:
- (g) Nothing in paragraph (c) or paragraph (d) or paragraph (f) (iii) of this subsection shall limit or affect the Customs Act 1966.

(2) Where an officer seizes any goods under this section, he shall serve notice of his action on the importer of the goods; and, if the goods are still under the control of the Customs, he shall also serve a copy of the notice on the Collector of Customs who shall ensure that the goods are not delivered from the control of the Customs without the written consent of the officer.

(3) Where any goods are seized under this section, section 16 of this Act shall apply with all necessary modifications.

(4) It shall be the duty of all officers of the Customs to assist in carrying out the provisions of this section, and to prevent the introduction into New Zealand of anything contrary to this Act; and for that purpose they may, in respect of anything so introduced or attempted to be introduced, exercise all the powers conferred by the Customs Act 1966 in the case of uncustomed or prohibited goods.

Cf. 1970, No. 151, s. 9; 1979, No. 27, s. 57

25. Presumption that contents conform with label—In any prosecution for an offence against this Act or against any regulations made under this Act, it shall be presumed, until the contrary is proved, that the contents of a package conform with any purported description of the contents shown on any label.

Cf. 1979, No. 27, s. 58

26. Obstruction of officers—(1) Every person commits an offence against this Act who wilfully obstructs, hinders, resists, or deceives any officer in the execution of any powers conferred on that officer by or under this Act.

(2) Without limiting subsection (1) of this section, every person shall be deemed to have obstructed an officer if—

- (a) Except with the authority of an officer or under an order of a Court, he removes, alters, or interferes in any way with any article seized or detained under this Act; or
- (b) Except with the authority of an officer or of an analyst or under an order of a Court, he erases, alters, opens, breaks, or removes any mark, seal, or fastening placed by an officer under this Act on any sample or part of a sample procured under this Act, other than a part of a sample or a bottle or package left with the owner of the food from which the sample was taken or the person from whom the sample was procured; or
- (c) He refuses to sell to an officer, or to allow an officer to take, in the quantity that the officer reasonably requires as a sample, any food that appears to the officer to be intended for sale or to have been sold, or any advertising material or labelling material that appears to the officer to be intended for use in connection with the sale of any article to which section 12 of this Act applies or to have been so used; or
- (d) He refuses or fails to give to an officer any assistance that that officer may reasonably require him to give, or to give to an officer any information, or to produce or permit an officer to examine and make copies of and extracts from any books, documents, or other records, that that officer is expressly authorised by this Act to require to be given or produced or to examine or make, or may reasonably require to be given or produced or to examine or make, or when required to give any such information or to produce any such books, documents, or other records, knowingly makes any false statement in respect thereof.

(3) In this section the term “officer” includes a local authority inspector.

Cf. 1969, No. 7, s. 29; 1979, No. 27, s. 59

27. Jurisdiction of District Courts—(1) Every offence against this Act or against any regulations made under this Act shall be punishable on summary conviction.

(2) Notwithstanding anything in section 14 of the Summary Proceedings Act 1957, any information in respect of any offence against this Act or against any regulations made under this Act may be laid at any time within 1 year after the time when the matter of the information arose.

(3) The summons in any such proceedings shall not be made returnable in less than 14 days from the day on which it is served.

(4) There shall be served with the summons in any such proceedings a copy of the analyst's certificate or report (if any) relating to the prosecution.

(5) In any such proceedings, the Court shall, on the request of either party to the proceedings, and may if it thinks fit without such request, order that the part of the sample retained by the officer under section 21 of this Act be submitted, for analysis and report, to—

(a) An analyst named by the Court; or

(b) Two analysts together, of whom 1 shall be nominated by the defendant and the other shall be either the analyst whose certificate or report is before the Court or some other analyst appointed under this Act.

Cf. 1969, No. 7, s. 38; 1979, No. 27, s. 61

28. General penalty—Every person who commits any offence against this Act for which no penalty is provided elsewhere than in this section is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$500, and, if the offence is a continuing one, to a further fine not exceeding \$50 for every day or part of a day during which the offence has continued.

Cf. 1969, No. 7, s. 39; 1979, No. 27, s. 62

29. Liability of principal for acts of agents, etc.—

(1) Where an offence is committed against this Act or against any regulations made under this Act by any person acting as the agent or employee of another person, that other person shall, without prejudice to the liability of the first-mentioned person, be liable under this Act in the same manner and to the same extent as if he had personally committed the offence.

(2) Notwithstanding anything in subsection (1) of this section, where any proceedings are brought by virtue of that subsection—

- (a) For an offence against section 9 or section 10 of this Act, knowledge shall not, for the purposes of subsection (5) of section 9 or subsection (2) of section 10 of this Act, be imputed to the defendant by reason only of the knowledge of the agent or employee; or
- (b) For any other offence against this Act, it shall be a good defence to the charge if the defendant proves that the offence was committed without his knowledge and that he took all reasonable steps to prevent the commission of the offence.

(3) Where any body corporate is convicted of an offence against this Act or against any regulations made under this Act, every director and every person concerned in the management of the body corporate shall be guilty of a like offence if it is proved that the act that constituted the offence took place with his authority, permission, or consent, or that he knew the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it.

Cf. 1969, No. 7, s. 30; 1979, No. 27, s. 63

30. Strict liability—(1) In any prosecution for selling a food contrary to any provision of this Act or of any regulations made under this Act it shall not be necessary for the prosecution to prove that the defendant intended to commit an offence.

(2) Subject to subsection (3) of this section, it shall be a good defence in any such prosecution if the defendant proves—

- (a) That he did not intend to commit an offence against this Act or any regulations made under this Act; and
- (b) That—
 - (i) In any case where it is alleged that anything required by this Act or any regulations made under this Act to be done to or with or in relation to the food was not done, he took all reasonable steps to ensure that it was done; or
 - (ii) In any case where it is alleged that anything prohibited by this Act or any regulations made under

this Act was done to or with or in relation to the food, that he took all reasonable steps to ensure that it was not done.

(3) Except as provided in subsection (4) of this section, subsection (2) of this section shall not apply unless, within 7 days after the service of the summons, or within such further time as the Court may allow, the defendant has delivered to the prosecutor a written notice—

- (a) Stating that he intends to rely on subsection (2) of this section; and
- (b) Specifying the reasonable steps that he will claim to have taken.

(4) In any such prosecution, evidence that the defendant took a step not specified in the written notice required by subsection (3) of this section shall not, except with the leave of the Court, be admissible for the purpose of supporting a defence under subsection (2) of this section.

Cf. 1969, No. 7, s. 31

31. Further defences—(1) Subject to subsections (2) and (4) of this section, it shall be a good defence in a prosecution for selling any food contrary to any provision of this Act or any regulations made under this Act if the defendant proves—

- (a) That he purchased the article sold by him in reliance on a written warranty or other written statement as to the nature of the article purchased, signed by or on behalf of the person from whom the defendant purchased the article; and
 - (b) That if the article had truly conformed to the warranty or statement, the sale of the article by the defendant would not have constituted the offence charged against him; and
 - (c) That he had no reason to believe or suspect that the article sold by him did not conform to the warranty or statement; and
 - (d) That at the time of the commission of the alleged offence, the article was in the same state as it was when he purchased it.
- (2) No warranty or statement shall be any defence under this section unless—
- (a) It was given or made by or on behalf of a person resident in New Zealand or a company having a registered office in New Zealand or a firm having a place of business in New Zealand; and

- (b) The signature to the warranty or statement is written by hand; and
- (c) The defendant proves that at the time he received the warranty or statement he took reasonable steps to ascertain, and did in fact believe, that the signature was that of the person from whom he purchased the article, or, as the case may be, of some person purporting to sign on behalf of the person from whom the defendant purchased the article.

(3) Subject to subsection (4) of this section, it shall be a good defence in a prosecution for selling any food contrary to any provision of this Act or of any regulations made under this Act if the defendant proves—

- (a) That he purchased the article sold by him in a package and sold it in the same package and in the same condition as the article was in at the time when he purchased it; and
- (b) That he could not with reasonable diligence have ascertained that the sale of the article would constitute the offence charged against him.

(4) Neither subsection (1) nor subsection (3) of this section shall apply unless, within 7 days after the service of the summons, or within such further time as the Court may allow, the defendant has delivered to the prosecutor a copy of the warranty or statement, if any, and a written notice to the effect that he intends to rely on it or on subsection (3) of this section, as the case may require, and specifying the name and address of the person from whom he received the warranty or statement or package, and has also, within the same time, sent by post a like notice of his intention to that person.

(5) Where the defendant is an agent or employee of the person who purchased the article under such a warranty or statement or in such a package, he shall be entitled to the benefit of this section in the same manner and to the same extent as his principal or employer would have been if he had been the defendant.

Cf. 1969, No. 7, s. 32

32. Liability of persons named on labels—(1) If any food is sold in the package in which it was contained when purchased by the person who sells the food and which has not

since that purchase been opened by that person or any agent or employee of that person, every person who appears from any statement or label on or attached to the package to be—

- (a) The person who has manufactured, imported, or prepared the food; or
- (b) The person who is the owner of the rights of manufacture of the food or has enclosed it in the package; or
- (c) The agent of any such person,—

shall, unless he proves the contrary, be deemed to have so manufactured, imported, prepared, or enclosed the food or, as the case may require, to be the agent of such a person, and shall be liable in the same manner and to the same extent as if he had actually sold the food at the time and place at which the sale was made, and, if that sale involved the commission of an offence against this Act, he shall be deemed to be a party to that offence.

(2) Subject to subsection (3) of this section, it shall be a good defence in a prosecution under subsection (1) of this section if the defendant proves—

- (a) In the case of a prosecution relating to the condition of a food, that when the package left his possession, the food was in such a condition that its sale then would not have involved the commission of the offence with which he is charged; or
- (b) In the case of a prosecution relating to the condition of a food, that when or before the food left his possession, he gave notice to the person to whom he consigned or delivered the food that it was not intended for human consumption; or
- (c) In the case of a prosecution relating to packing or labelling, that the offence with which he is charged arises from an alteration made to the package or labelling since the package left his possession.

(3) Subsection (2) of this section shall not apply unless, within 7 days after the service of the summons, or within such further time as the Court may allow, the defendant has delivered to the prosecutor a written notice—

- (a) Stating that he intends to rely on subsection (2) of this section; and
- (b) Identifying the person to whom the defendant consigned or delivered the food or explaining why he is unable to identify that person.

Cf. 1969, No. 7, s. 33

33. Payment of expenses of analysis on conviction—

(1) Where any person is convicted of an offence against this Act or any regulations made under this Act, the Court may order that all fees and other expenses incidental to any analysis of the food in respect of which the conviction is entered (including any analysis under section 27 (5) of this Act) shall be paid by the defendant.

(2) All such fees and expenses shall be deemed to be part of the costs attending the conviction, and shall be recoverable accordingly.

Cf. 1969, No. 7, s. 41; 1979, No. 27, s. 65

34. Forfeiture on conviction—(1) Where any person is convicted of an offence against this Act or any regulations made under this Act, the Court may order that all articles (if any) in respect of which the offence was committed and in the possession of that person, and any similar articles found on the premises of the defendant or in his possession at the time of the commission of the offence, shall be forfeited to the Crown.

(2) Every article so forfeited to the Crown shall be disposed of as the Minister directs.

Cf. 1969, No. 7, s. 40; 1979, No. 27, s. 66

35. Courts may order withdrawal of goods from circulation—

(1) If any person who manufactures, packs, or imports foods of any description, or appliances of any kind, is convicted of an offence against any of the provisions of Part II of this Act in respect of food of that description, or appliances of that kind, the Court may in its discretion order that person to withdraw from sale all food of that description, or appliances of that kind, until the matter in relation to which the offence was committed has been remedied.

(2) If the Court makes an order under subsection (1) of this section, the Director-General shall cause particulars of the order and of the offence in relation to which the order was made to be published in the *Gazette*; and thereupon every distributor, wholesaler, or retailer who has possession of any food of the same description, or appliances of the same kind, that are packed and labelled in the same way as the food or appliances in relation to which the offence was committed shall withdraw them from sale, and may—

- (a) Return them to the person who supplied them; or
- (b) Remedy the matter in relation to which the offence was committed.

(3) Every distributor, wholesaler, or retailer who takes action in accordance with paragraph (a) or paragraph (b) of subsection (2) of this section may recover all the costs and expenses incurred in so acting (including, if action is taken under the said paragraph (a), the purchase price of the food, or appliances) from the person who supplied them as a debt due by that person to the distributor, wholesaler, or retailer.

(4) Without limiting subsection (1) of this section, if any person referred to in that subsection is convicted of an offence against any of the provisions of Part II of this Act in respect of any package, or of any advertising material or labelling material, the Court may in its discretion order that person to withdraw from use all packages or material of the same description until the matter in relation to which the offence was committed has been remedied; and in any such case subsections (2) and (3) of this section shall apply with any necessary modifications.

(5) Where any person referred to in subsection (1) of this section is convicted of an offence against any of the provisions of Part II of this Act, the Director-General may cause particulars of the offence and a description of the food or appliances in relation to which the offence was committed to be published in the *Gazette*.

Cf. 1969, No. 7, s. 35

PART IV

MISCELLANEOUS PROVISIONS

36. Duty of officer to procure sample for analysis on request—(1) Where any person, other than the manufacturer of the food or any agent or employee of the manufacturer, requests any officer in writing to procure a sample of any food that is for sale and submit it for analysis for any purpose specified by that person, the officer, on payment by that person of the prescribed fee together with the cost of the sample, shall procure or arrange for another officer to procure a sample of the food and submit it for analysis for the specified purpose, unless he reasonably believes that the request is frivolous or vexatious.

(2) Sections 20 to 22 of this Act shall, so far as they are applicable and with the necessary modifications, apply with respect to the procuring and analysis of the sample.

Cf. 1969, No. 7, s. 26

37. Statements by Director-General—(1) The Director-General may from time to time, for the purpose of protecting the public, publish statements relating to any food or appliance, or to any matter contained or implied in advertisements, either generally or in any particular advertisement or class or classes of advertisements, relating to any food or appliance.

(2) Every statement published under this section shall be protected by qualified privilege.

Cf. 1969, No. 7, s. 42; 1979, No. 27, s. 77

38. Examination of Customs entries—For the purposes of this Act, any officer shall have the right at all times, subject to the convenience of the Collector or other responsible officer of Customs, to inspect any Customs entry relating to any goods imported or proposed to be imported into New Zealand, or to inspect any certificate or invoice relating to those goods, if and so long as any such document is in the possession or control of the Collector or other responsible officer.

Cf. 1969, No. 7, s. 43; 1979, No. 27, s. 79

39. Protection of persons acting under authority of Act—No person who does any act in pursuance or intended pursuance of any of the functions conferred on him by or under this Act shall be under any civil or criminal liability in respect of the act, whether on the grounds of want of jurisdiction, or mistake of law or fact, or on any other ground unless he has acted in bad faith or without reasonable care.

Cf. 1969, No. 7, s. 44; 1979, No. 27, s. 80

40. Recall of food—(1) The Minister may, for the purpose of protecting the public, issue to any importer, manufacturer, or seller of food, an order directing the recall of any food or appliance, or requiring the destruction or denaturing of any food that is unsound or unfit for human consumption or is damaged or deteriorated or perished, or that is contaminated with any poisonous, deleterious, or injurious substance.

(2) The importer, manufacturer, or seller shall, on receipt of the recall order, advise the Minister of the details of the

manner in which he proposes to comply with the order, and shall give written notice to the Minister when the recall has been completed.

(3) Every person commits an offence against this Act who fails to comply in any respect with any of the provisions of this section or any order issued under this section.

41. Records—(1) Every person who, in the course of any business, imports, prepares, processes, manufactures, packs, stores, carries, delivers, or sells any food or appliance shall keep, in some place of security at his place of business, such records as may be prescribed and shall retain them for such period as may be prescribed.

(2) Every person who, in the course of any business, imports, prepares, processes, manufactures, packs, stores, carries, delivers, or sells any food or appliance, shall at all reasonable times permit any officer to inspect and make copies of any such record, and shall at all reasonable times on demand afford to any officer all further information in his possession with respect to any dealings by that person relating to any food or appliance.

(3) Every person commits an offence against this Act who contravenes or fails to comply in any respect with any of the provisions of this section.

42. Regulations—(1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Prescribing standards of composition, including standards of strength, weight, microbiological quality and content, quality, purity, or quantity for any food or for anything contained in or added to or intended to be contained in or added to any food:
- (b) Permitting the addition of a specified thing, or a specified thing in a specified quantity or proportion, to any food for which a standard is prescribed:
- (c) Prohibiting the sale of any food for which a standard is not prescribed and to which a specified thing has been added or has been added in a quantity or proportion in excess of a specified quantity or proportion:
- (d) Prohibiting, regulating, restricting, or imposing conditions in respect of, the importation, preparation, processing, manufacture, packing, storage, carriage, delivery, or sale of any food:

- (e) Prescribing the manner and mode of testing of any food during manufacture, preparation, or storage:
- (f) Prescribing or regulating the keeping of records by persons who import, prepare, process, manufacture, pack, store, carry, deliver, or sell any food:
- (g) Providing for and regulating the inspection of records of persons who import, prepare, process, manufacture, pack, store, carry, deliver, or sell any food:
- (h) Securing the cleanliness and freedom from infection, deterioration, or contamination of any food in the course of its preparation, processing, manufacture, packing, storage, carriage, delivery, or exposure for sale; securing the cleanliness of places, packages, receptacles, appliances, and vehicles used for the sale of any food or in such preparation, processing, manufacture, packing, storage, carriage, or delivery; preventing the use of any such place, receptacle, appliance, or vehicle contrary to any such regulation; and conferring powers and imposing duties on local authorities in relation to the administration and enforcement of any regulations made under this paragraph:
- (i) Prohibiting, restricting, or regulating the sale or supply for human consumption of any food that is infected or contaminated or that is reasonably suspected by any Medical Officer of Health of being infected or contaminated:
- (j) Prescribing the mode of labelling, branding, printing, or marking of appliances, containers, or instruments used or intended for use in or in connection with the preparation or storage of any food; and prohibiting the sale of any such appliance, container, or instrument that is not labelled, branded, printed, or marked in accordance with any such regulations:
- (k) Requiring any labelling material or any class of labelling material to be submitted before use to the Director for his approval, and prohibiting the use of any such material without such approval:
- (l) Prescribing the mode of labelling of packages containing any substance or preparation used or intended for use or held or kept for use in the manufacture or preparation of, or as an ingredient or nutrient or other constituent of, any food:

- (m) Prescribing the mode of labelling of any food sold in a package, and requiring any matter to be printed, embossed, impressed, branded, stamped, or otherwise marked on any food, or on any package containing any food, in such manner as may be prescribed:
- (n) Prescribing the matter to be contained or not to be contained in any label for any of the purposes mentioned in paragraphs (j) to (m) of this subsection, and the nature and appearance of any package containing a particular kind of food:
- (o) Prescribing the matters to be contained or not to be contained in any advertisement, or otherwise regulating the contents of any such advertisements, relating to any food or appliance, or any class of food or appliances:
- (p) Requiring, where the label on any package that contains food bears any statement to the effect that the package contains any number of portions or servings of food, that the label shall also bear a statement giving particulars of the quantity of each purported portion or serving, by weight or volume, when ready for consumption:
- (q) Requiring, in the case of any specified class or classes of food imported into New Zealand, all articles belonging to any such class, or the packages containing such articles, to be branded, stamped, or marked so as to indicate the fact of their importation and the country of origin:
- (r) Prohibiting or restricting the sale of any food that is not marked or labelled in accordance with any regulations made under this section, and the sale of specified articles of food otherwise than in a package or otherwise than by weight or volume or number:
- (s) Requiring, with respect to any specified article of food, that, when it is sold otherwise than in packages, or when it is sold in a vending machine, there shall be conspicuously displayed in the place of sale, so as to be easily read by the purchaser, the same particulars (if any), but subject to such necessary modifications as may be expressed or indicated in the regulations, as are required by any regulations made under this section to be contained in the labels when the article is sold in packages:

- (t) Requiring that any specified food or foods of any specified class or classes shall be artificially coloured by the addition of such colouring substance or substances as may be prescribed, and in such proportion or proportions as may be prescribed, and prohibiting the sale of any such food not so coloured:
- (u) Prohibiting or restricting the sale of any appliance intended for use in the preparing, processing, manufacturing, packing, storing, carrying, delivery, or selling of food and made of any material containing any substance capable of imparting any poisonous or injurious property to any food that might be stored, prepared, or cooked in the appliance:
- (v) Requiring and providing for the destruction or denaturation of any food that is damaged, deteriorated, impoverished, contaminated, or perished, and specifying the circumstances in which any such food shall be destroyed or denatured:
- (w) Prescribing the minimum size of, and the packing required for, any article (not being food) that is to be included in a package of food:
- (x) Prescribing the temperature at which food, or food of any specified class or description, that is stored or conveyed for sale shall be kept:
- (y) Prescribing the method of analysis of any food and prescribing the form of the certificate of an analyst and any other forms that may be required for the purposes of this Act or of any regulations made under this section:
- (z) Exempting or providing for exemptions from any specified provision of any regulations made under this section:
- (za) Prohibiting the use of any package of a kind specified or described in the regulations for any purpose other than the storage or sale of food:
- (zb) Prescribing fees in respect of the analysis by an analyst of any food and in respect of any licence issued or registration effected or renewed under any regulations made under this Act:
- (zc) Prescribing offences in respect of the contravention of or non-compliance with any regulations made under this Act, and the amount of the fines that may be

imposed in respect of any such offences, which fines shall be an amount not exceeding \$500 and, where the offence is a continuing one, a further amount not exceeding \$50 for every day or part of a day during which the offence has continued:

(zd) Providing for such other matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.

(2) The Minister may, by notice in the *Gazette*, vary for such period (not exceeding 12 months) as may be specified in the notice, any requirement imposed by any such regulations on any specified thing that may be contained in any food, or may, in like manner, permit the addition of a specified thing, or of a specified thing in any quantity or proportion to a food, or may vary any labelling requirement.

(3) Any regulations under this section may be made applicable either to foods generally or to specified foods only.

(4) Notwithstanding anything contained in any regulations made under this section, it shall be lawful for any person, at any time within 12 months after the date of the commencement of the regulations, to sell any food of which the sale is otherwise lawful, if he proves that at the said date the food was part of the existing stock-in-trade in New Zealand of any person carrying on business there, and that since the said date no act has been done whereby the food fails to conform to the regulations.

(5) For the purposes of subsection (4) of this section, any goods purchased before the said date for importation into New Zealand shall be deemed to be part of the purchaser's stock-in-trade in New Zealand.

Cf. 1969, No. 7, s. 46; 1979, No. 27, s. 82

This Act is administered in the Department of Health.
