

FOOD AMENDMENT BILL

EXPLANATORY NOTE

General Policy Statement

This Bill amends the Food Act 1981 (“the principal Act”) in 2 respects.

First, it makes amendments providing for the transfer of the administration of the principal Act from the Ministry of Health to another department of State. Those amendments are drafted in general terms, so that in future, if required, its administration can be transferred to any department without legislation. But for the foreseeable future it will be administered in the Ministry of Agriculture and Forestry, to facilitate the establishment of a single food regulatory agency in that ministry.

Secondly, it makes amendments relating to ceramic containers and vessels used in connection with the cooking, preparation, serving, or storage of food. Some doubt has arisen about the extent of the powers given by the principal Act to deal with these containers and vessels; and the amendments clarify the situation, and validate certain actions taken in the past.

Clause by Clause Analysis

Clause 1 relates to the Bill’s Short Title and commencement.

Part 1 and the Schedule, which relate to the administration of the principal Act, come into force on 1 July 1999.

The rest of the Act (that is to say *Part 2*, which relates to ceramic containers and vessels, and *clause 1* itself) comes into force on assent.

PART 1

ADMINISTRATION OF PRINCIPAL ACT

Amendments Relating to Administration of Principal Act

Clause 2 replaces the definitions in section 2 of the principal Act of the terms “Director-General”, “Minister”, and “Officer” with definitions drafted in general terms. It also inserts new definitions of the terms “Ministry” and “designated officer”.

The Wine Makers Act 1981, and other provisions of the principal Act, are consequentially amended.

Transitional Matters

Clauses 3 to 8 provide for the practical consequences of the transfer of the administration of the principal Act, and the consequential transfer of some employees, from the Ministry of Health to the Ministry of Agriculture and Forestry.

Clause 3 defines certain terms used in *clauses 4 to 6*. They are “transferred employee” and “old contract”; and mean, respectively, an employee of the Ministry of Health who transfers to the Ministry of Agriculture and Forestry, and the employment contract applying to a transferred employee at the time he or she transfers to the Ministry of Agriculture and Forestry.

Clause 4 relates to the effect of the contracts of employment of transferred employees. It provides that the employees must have conditions of employment no less favourable than those they were entitled to under their old contracts.

Clause 5 makes clear that the continuity of the employment of transferred employees is not affected by their transfer.

Clause 6 makes clear that transferred employees do not become entitled to any redundancy or severance payment merely because of their transfer.

Clause 7 provides for the continuation of existing legal proceedings (relating to the administration of the principal Act) begun by or against the Minister of Health or Director-General of Health.

Clause 8 provides for references in existing enactments and documents (relating to the administration of the principal Act) to the Director-General of Health to have effect as references to the chief executive of the department responsible for administering the principal Act.

PART 2

SAFETY OF CERTAIN APPLIANCES

Part 2 relates to appliances used in connection with the cooking, preparation, serving, or storage of food that are made of materials containing substances capable of contaminating food cooked, prepared, served, or stored in or with them. In particular, it relates to ceramic containers (glass, earthenware, and enamelled metal) that may contain heavy metals or similar poisons.

Clause 9 amends the definition in section 2 of the principal Act of the term “appliance” so as to make clear that containers and vessels are appliances.

Clause 10 amends section 42 of the principal Act, which relates to the making of regulations. The amendments have the effect of making clear that the principal Act gives the same powers to make regulations in relation to appliances used in connection with the cooking, preparation, serving, or storage of food as it does to make regulations in relation to food.

Clause 11 effects validations. For many years the Ministry of Health (and its predecessor Department) have undertaken the surveillance and testing of imported ceramic containers. And in 1991, the Food Regulations 1984 were amended to prohibit the importation of “enamelware or ceramicware” unless the Medical Officer of Health is satisfied that it is safe. Recently, it has been realised that the powers contained in the principal Act may not be sufficient to allow the present surveillance and testing programme, and may not have been sufficient to authorise the making of the 1991 amendments to the Food Regulations 1984.

The amendments effected by *clause 10* regularise the position for the future.

Subclause (1) validates regulations under the principal Act relating to the importation of ceramic containers.

Subclause (2) validates actions taken under the principal Act, and the regulations made under it, in relation to containers and vessels.

The Government is not aware of any pending or proposed legal actions that would be affected by the validation, but in case there may be such actions, *subclause (3)* provides that *subclauses (1) and (2)* have no effect in relation to proceedings commenced before 17 December 1998.
