

FOOD SAFETY AND QUALITY ACT, 2011

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Food Safety and Quality Act, 2011



THE GAMBIA

NO. 07 OF 2011

Assented to by The President,

this 08th day of August, 2011



YAHYA A. J. J. JAMMEH
President

AN ACT to establish a food safety and quality regime by instituting structures and control mechanisms to ensure the safety and quality of food and feed at the national level and for connected matters.

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ENACTED by the President and the National Assembly.

PART I- PRELIMINARY

Short title and commencement

1. This Act may be cited as the Food Safety and Quality Act 2011 and shall come into force on such date as the Vice President may appoint by Order published in the Gazette.

Interpretation

2. In this Act, unless where the context otherwise requires-

“additive” means any substance not normally consumed as food by itself or used as a typical ingredient of food, whether or not it has nutritional value, the intentional addition of which to food for a technological purpose results or may reasonably be expected to result in it or its by products becoming a component or otherwise affecting the characteristics of such food;

“animal” includes all domestic, wild, terrestrial and aquatic animals;

“Authority” means the Food Safety and Quality Authority of The Gambia;

“Competent Body” means a public or private institution delegated and overseen by the Competent Authority to undertake specified official food safety and quality controls;

“Competent Person” means a public officer or private person who has the training, knowledge, skills and ability to perform an assigned task and who is subject to requirements specified by the Authority;

“establishment” means any premises engaged in placing food on the market, including premises where products are prepared, processed (including slaughtered) packaged or stored;

“feed or feedstuff” means any substance or product, including additives, whether processed, partially processed or unprocessed, intended to be used for oral feeding of animals;

“feed business operator” means the natural or legal persons responsible for ensuring that the requirements of this Act are met within the feed business under their control;

“feed business” means any undertaking whether for profit or not and whether public or private, carrying out the production, manufacture, processing, storage, transport or distribution of feed including any producer who produces, processes or stores feed for feeding to animals on his or her own holding;

“final consumer” means the ultimate consumer of a foodstuff who does not use the food as part of any food business operation or activity;

“food” or ‘foodstuff’ means any substance or product-

- (a) whether processed, partially processed or unprocessed, intended to be or reasonably expected to be ingested by humans; or
- (b) intentionally incorporated into the food during its manufacture, preparation or treatment.

“food business operator” means the natural or legal persons responsible for ensuring that the requirements of this Act are met within the food business under their control;

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

“food quality” means the aggregate characteristics of a food product that bear on its ability to satisfy the needs of the final consumer;

“food safety” means the assurance that food will not cause harm to the consumer when it is prepared or eaten according to its intended use;

“genetically modified organism” means any biological entity capable of reproducing itself or transferring genetic material, except the human species, whose genetic material has been modified in a way which is produced neither naturally in the environment nor by natural recombination;

“Government” means the Government of the Republic of The Gambia;

“hazard” means a biological, chemical or physical agent in, or condition of, food or feed which has the potential to cause an adverse effect on human health;

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

“labelling” means any words, trade marks, brand name, pictorial matter or symbol relating to a food and placed on any packaging, document, notice, label, ring or collar accompanying or referring to such foodstuff;

“novel foods” means foods and food ingredients which have not hitherto been used for human consumption to a significant degree within The Gambia and which fall under the following categories-

- (a) foods and food ingredients containing or consisting of genetically modified organisms,
- (b) foods and food ingredients produced from, but not containing genetically modified organisms,
- (c) foods and food ingredients with a new or intentionally modified primary molecular structure,

- (d) foods and food ingredients consisting of or isolated from micro-organisms, fungi or algae,
- (e) foods and food ingredients consisting of or isolated from plants and food ingredients isolated from animals, except for foods and food ingredients obtained by traditional propagating or breeding practices and having a history of safe food use, or
- (f) foods and food ingredients to which has been applied a production process not currently used, where that process gives rise to significant changes in the composition or structure of the foods or food ingredients which affect their nutritional value, metabolism or level of undesirable substances;

“official control of food” means an inspection by the Competent Authority of the compliance of food with the provisions of this Act followed by measures to ensure that any contraventions are corrected;

“placing on the market” means the holding of food or feed for the purpose of sale or any other form of transfer, and the sale, distribution, and other forms of transfer undertaken within The Gambia whether or not intended for sale on the domestic market or for export;

“pre-packaged foodstuff” means any single item packaged for presentation to the ultimate consumer and to mass caterers, consisting of a foodstuff and the packaging into which it was put before being offered for sale, in such a way that the contents cannot be altered without opening the packaging.

“primary production” means the production, rearing or growing of primary products including harvesting, milking and farmed animal production prior to slaughter, as well as the hunting, fishing and the harvesting of wild products;

“retail” means the handling or processing of food and its storage at the point of sale or delivery to the final consumer, and includes distribution terminals, catering operations, factory canteens, institutional catering, restaurants, shops, supermarket distribution centres, wholesale outlets and other similar food service operations;

“risk analysis” means the process consisting of the three interconnected components of risk assessment, risk management and risk communication;

“risk assessment” means the scientifically based process consisting of hazard identification, hazard characterisation, exposure assessment and risk characterisation;

“risk communication” means the interactive exchange of information and opinions throughout the risk analysis process as regards hazards and risks, risk-related factors and risk perceptions among risk assessors, risk managers, consumers, feed and food businesses, the academic community and other interested parties, including the explanation of risk assessment findings and the basis of risk management decisions;

“risk management” means the process, distinct from risk assessment, of weighing policy alternatives in consultation with interested parties, considering risk assessment and other legitimate factors, and, if need be, selecting appropriate prevention and control options;

“risk” means a function of the probability of an adverse health effect and the severity of that effect, consequential to a hazard;

“stages of production, processing and distribution” means any stage, from the primary production of a food, its storage, transport, sale or supply to the final consumer and, where relevant, the importation, production, manufacture, storage, transport, distribution, sale and supply of feed;

"substance" means any solid, liquid or gaseous material;

"traceability" means the ability to trace and follow a food, feed, food-producing animal or substance intended to be, or expected to be incorporated into a food or feed, through all stages of production, processing and distribution.

(2) For the purposes of this Act-

(a) 'Food 'does not include-

(i) feed,

(ii) live animals unless they are prepared for placing on the market for human consumption,

(iii) plants prior to harvesting,

(iv) medicinal products within the meaning of the Medicines Act,

(v) tobacco and tobacco products,

(vi) narcotic or psychotropic Substances within the meaning of of the United Nations Single Convention on Narcotic Drugs, 1961, and the United Nations Convention on Psychotropic Substances, 1971, and

(vii) residues and contaminants,

(b) food quality does not relate to characteristics which affect the health of the final consumer; and

(c) additive does not include contaminants or substances added to food for the purpose of maintaining or improving nutritional qualities.

PART II- FOOD SAFETY AND QUALITY AUTHORITY OF THE GAMBIA

The Food Safety and
Quality Authority

3. (1) There is established by this Act the Food Safety and Quality Authority of The Gambia.

(2) The Authority is a body Corporate with perpetual succession and a common seal.

(3) The Authority may-

- (a) sue and be sued in its corporate name;
- (b) enter into contracts, acquire, hold, manage and dispose of property; and
- (c) so far as is possible for a body corporate, exercise the rights, powers and privileges and incur the liabilities and obligations of a natural person of full age and capacity.

Functions of the
Authority

4. The Authority shall be responsible for-

- (a) the overall official control of food safety and quality;
- (b) ensuring that food and feed comply with legal requirements, or where appropriate with approved codes of good practice;
- (c) carrying out inspection, sampling and certification of food and feed for import and export when so required;
- (d) inspecting establishments, processes and products throughout the production and distribution chain;
- (e) assessing laboratory services in terms of technical capacity to carry out food and feed analysis for official control;
- (f) delegating food and feed safety and quality responsibilities to Competent

Bodies and Persons where appropriate;

- (g) participating in activities relating to standards and technical regulations for food and feed at the national, regional and international levels;
- (h) promoting the development of frameworks of mutual recognition with foreign food safety authorities;
- (i) ensuring that the adopted inspection procedures are based on risk assessment;
- (j) developing and enforcing a code of conduct for Competent Bodies and Persons; and
- (k) maintaining well trained and competent staff within the Authority.

Structure of the Authority

5. The Authority shall comprise the following-

- (a) a Board of Directors;
- (b) a Director General and his or her staff;
- (c) a Stakeholder Consultative Forum; and
- (d) a Scientific Committee.

Composition, appointment and terms of Board of Directors

6. (1) There is established by this Act, a Board of Directors which shall consist of-

- (a) a Chairperson;
- (b) Director General of the Authority;
- (c) one representative of primary food producers;
- (d) one representative of food manufacturers;

- (e) one representative of the tourism and hospitality sector;
- (f) one representative of the transport and distribution sector;
- (g) one representative of a Consumers' Association

(2) The members of the Board shall be appointed by the President after consultation with the Public Service Commission.

(3) The members of the Board shall elect one of their member to be the vice chairperson of the Board.

(4) The Board of Directors may invite other individuals of recognised academic, scientific and technical competence to participate in the work of the Board.

(5) A member of the Board who has an interest in a company or an undertaking with which the Authority proposes to enter into a contract shall-

(a) disclose to the Board the nature of his or her interest; and

(b) not participate in any deliberation and voting of the Board in respect of the contract.

(6) The members of the Board other than ex officio members shall hold office for three years and may be reappointed for one further term.

(7) A member of the Board may resign his or her office by notice in writing addressed to the President.

Criteria for
appointment of
Directors and Board
Members

7. As far as possible, persons appointed into the Board shall have a valid interest in the safety of food and feed and an appropriate range of expertise and experience.

Duties of the Board
of Directors

8. (1) The Board of Directors shall-

- (a) determine the overall policy and strategy of the Authority, with particular regard to the financial, operational, organisational and administrative programmes and to ensure the implementation of the policy;
- (b) Control the management, property, business, funds and other matters relating to the Authority;
- (c) make decisions by a majority of its members, with the Chairperson having the casting vote;
- (d) approve and adopt the procedural internal rules of the Authority and its component parts, including its own rules of procedure;
- (e) adopt the Authority's financial regulation which specifies the procedure for drawing up and implementing the Authority's budget for financing from the State Budget;
- (f) meet at the invitation of the Chairperson or the Director General or at the request of at least a third of its members;
- (g) ensure that the Authority carries out its functions and performs the tasks assigned to it under this Act;
- (h) adopt before 31st December each year, the Authority's programme of work for the coming year. It shall also adopt a revisable multi-annual programme;
- (i) ensure that work programmes of the Authority are consistent with the Government's legislative and policy priorities in the area of food safety;

- (j) adopt before 30th March each year, the general report on the Authority's activities for the previous year;
- (k) ensure that the reports and publications of the Authority are published; and
- (l) define a code of ethics for Competent Persons which inter alia defines conflicts of personal and professional interests.

(2) The Authority shall provide the Secretariat to the Board.

Director General of
the Authority

9. (1) The Director General of the Authority shall be appointed by the President after consultation with the Public Service Commission.

(2) The Board of Directors shall appoint the necessary staff for the efficient operation of the Authority.

(3) The Director General is responsible for-

- (a) the day-to-day administration of the Authority;
- (b) drawing up a proposal for the Authority's work programmes;
- (c) implementing the work programmes and the decisions adopted by the Board of Directors;
- (d) ensuring the provision of appropriate scientific, technical and administrative support for the Scientific Committee and the Scientific Working Group;
- (e) ensuring that the Authority carries out its tasks in accordance with the requirements of this Act;

- (f) the preparation of the statement of revenue and expenditure and the execution of the budget of the Authority;
- (g) ensuring that the Authority is adequately staffed for the performance of its functions; and
- (h) developing and maintaining contact with all relevant stakeholders in the areas of food safety and quality.

(4) Each year, the Director General shall submit to the Board of Directors for approval-

- (a) a draft annual report covering all the activities of the Authority in the previous year;
- (b) draft programmes of work;
- (c) the draft annual accounts for the previous year; and
- (d) the draft budget for the coming year.

(5) The Director General shall, following adoption by the Board of Directors, publish the annual report and the programmes, accounts and budget and shall submit them to Government.

(6) The Director General shall approve all financial expenditures of the Authority and report on the Authority's activities to the Board of Directors.

Duties of the
Scientific Committee

10. (1) The Scientific Committee shall be responsible for developing and proposing the scientific opinions of the Authority, including the assessment of food safety risks, and requesting information and research directed at providing information for the assessment of food safety risks.

(2) The Scientific Committee shall after approval by the Board, adopt its working procedures in relation to the preparation of scientific opinion on matters of food and feed safety and these may relate in particular to-

- (a) the number of times that a member can serve consecutively on the Scientific Committee;
- (b) the existence of any working groups to consider specialised subjects;
- (c) the manner in which tasks and requests for scientific opinions are assigned to the Scientific Committee;
- (d) the creation and organisation of the working groups of the Scientific Committee and the possibility of external experts being included in those working groups;
- (e) the possibility of observers being invited to meetings of the Scientific Committee and the working groups; and
- (f) the possibility of organising public hearings.

(3) The Scientific Committee shall be composed of six independent scientific experts with relevant qualifications and experience, who shall be appointed for a renewable period of three years.

(4) The members of the Scientific Committee shall be appointed by the Board of Directors, on the advice of the Director General, following a call for expressions from candidates published in the national media and relevant scientific journals.

(5) The members of the Scientific Committee shall choose a Chairperson and a Vice-Chairperson from among themselves.

(6) Where a subject on which the Scientific Committee is to give an opinion does not fall within the competence of its members, the Scientific Committee shall request the Board of Directors to appoint an ad hoc working group for this purpose.

(7) The Scientific Committee shall provide an opinion by a majority of their members although the minority opinions shall also be recorded.

(8) The representatives of the Authority are entitled to be present in the meetings of the Scientific Committee and the working groups and they may assist in providing clarification or information.

Scientific opinions

11. (1) The Scientific Committee shall issue a scientific opinion-

(a) at the request of the Board of Directors, in respect of any matter within its mandate, and in all cases where any law makes provision for the Scientific Committee to be consulted;

(b) on its own initiative, on matters falling within its mandate.

(2) A request referred to in sub-section (1) shall be accompanied with background information explaining the scientific issue to be addressed.

(3) The Scientific Committee will issue scientific opinions within the time limit specified in the request for an opinion, except in duly justified circumstances.

(4) Where-

(a) different requests are made on the same issues;

(b) the request is not in accordance with sub-section (2) or is unclear; or

- (c) it has already delivered an opinion on a specific topic and it concludes that there is no new information to be considered,

the Scientific Committee may either refuse or propose amendments to a request for an opinion in consultation with the Director General.

(5) In case of a refusal of a request for an opinion, the Scientific Committee shall provide the Board of Directors with a justification for the refusal.

(6) A member of the Scientific Committee who has an interest in a company or an undertaking with which the Committee proposes to enter into a contract shall-

(a) disclose to the Committee the nature of his or her interest; and

(b) not participate in any deliberation and voting of the Committee in respect of the contract.

Diverging scientific opinions

12. (1) The Scientific Committee shall endeavour to identify at an early stage any potential source of divergence between its scientific opinions and the scientific opinions issued by other bodies carrying out similar tasks whether in The Gambia or elsewhere.

(2) Where the Scientific Committee identifies a potential source of divergence, it shall contact the body in question to ensure that all relevant scientific information is shared and in order to identify potentially contentious scientific issues.

Stakeholder Consultative Forum

13. (1) The Stakeholder Consultative Forum shall be composed of between twelve and twenty four representatives of organisations and groups holding a valid interest in food and feed safety.

(2) The members of the Stakeholder Consultative Forum shall be appointed by the Board of Directors from stakeholders along the food chain who have a vested interest in food safety and quality.

(3) The Stakeholder Consultative Forum shall put in place mechanisms to ensure-

- (a) that stakeholders' views and concerns are taken into account;
- (b) ensure close cooperation between the Authority and stakeholders in the areas of food safety and quality; and
- (c) risk communication where the Authority identifies or otherwise obtains information of an emerging risk

(4) The Stakeholder Consultative Forum shall nominate a Chairperson and Vice Chairperson from amongst their membership.

(5) The Stakeholder Consultative Forum shall meet at least four times a year at the times determined by the Chairperson or at the request of at least a third of its members.

(6) The operational procedures of the Stakeholder Consultative Forum shall be specified in the Authority's internal rules and shall be made public.

(7) The Authority shall provide the technical and logistic support necessary for the Stakeholder Consultative Forum and provide the Secretariat for its meetings.

(8) The Stakeholder Consultative Forum may invite representatives from other relevant bodies to participate in the work of the Forum, without voting rights.

Allowances and
Fees

14. (1) Members of the Board shall be paid the allowances approved by the Vice President.

(2) Members of the Stakeholder Consultative Forum shall be reimbursed by the Authority for their justifiable expenses in undertaking responsibilities on behalf of the Authority, but will not otherwise receive any payment for their services.

(3) Members of the Scientific Committee shall receive a fee for their services and shall also be reimbursed for their expenses in undertaking responsibilities on behalf of the Authority.

(4) The allowances and fees paid by the Authority to members of the Board, Stakeholder Consultative Forum and the Scientific Committee shall be included in the annual accounts of the Authority.

PART III- THE FOOD CONTROL ADVISORY COMMITTEE

Food Control
Advisory Committee

Cap 40.07

15. (1) As from the commencement of this Act, the National Codex Alimentarius and Sanitary and Phytosanitary Committee nominated under Section 12 of the Food Act shall perform the functions of the Food Control Advisory Committee under this Act.

(2) The Food Control Advisory Committee shall be responsible for providing advice-

(a) on the preparation of primary and secondary legislation relating to food and feed;

(b) on monitoring the implementation of food and feed laws and regulations with a view to ensuring that they meet national objectives and comply with international commitments;

- (c) to the Government on the performance of the Authority and its structures, including the delegation of responsibility to other bodies; and
- (d) to the Government on policy with regard to food safety and quality matters.

PART IV- FINANCIAL PROVISIONS

Funds of the Authority

16. The Authority shall maintain a fund into which shall be paid –

- (a) moneys appropriated to it by the National Assembly;
- (b) grants and gifts, provided that the terms and conditions attached to the grant or gift are not inconsistent with its functions;
- (c) moneys derived from the sale of property held by or on behalf of the Authority;
- (d) fees from licences and the issue of certificates; and
- (e) any other money and property lawfully received by the Authority

Estimates, accounts and audit

17. (1) The Authority shall, not later than three months before the end of each financial year, prepare and submit to the Vice President for approval, estimates of the income and expenditure of the Authority for the ensuing year.

(2) The estimates referred to in subsection (1) shall make special provisions for the Food Control Advisory Committee.

(3) The Authority shall keep proper records and books of accounts of its income, expenditure and transfers.

(4) The Authority shall prepare, in respect of each financial year, a statement of accounts.

(5) The Authority shall, within three months after the end of each financial year, submit its statement of accounts to the Auditor General for audit.

(6) The audited accounts of the Authority and the Auditor General's report on those accounts shall form part of the Auditor General's overall annual report to the National Assembly.

Annual report

18. (1) The Board shall, within two months after the end of each financial year, submit to the Vice President, an annual report dealing generally with the activities and operations of the Authority within that financial year.

(2) The report under subsection (1) shall include-

- (a) a statement on the income, source of income and application of the moneys of the Authority;
- (b) information with regard to the operation of the Authority; and
- (c) such other information as the Vice President may request.

(3) The Vice President shall, not later than three months after the end of the financial year, cause the report to be laid before the National Assembly.

**PART V - POWERS AND RESPONSIBILITIES
OF COMPETENT PERSONS**

Competent Persons

19. (1) The Authority may authorise any public officer or private person to act as a Competent Person for the purposes of implementing its responsibility under this Act.

(2) The Authority shall issue to every person authorised to act as a Competent Person a certificate of his or her authority.

Powers of
Competent Persons

20. (1) A Competent Person may-

- (a) at any reasonable time or whenever work is in progress in any establishment in which food or feed is believed to be stored, processed or packaged, enter and search that establishment for the purposes of determining the existence, nature and extent of any trade or business in food or feed;
- (b) examine any food or feed product in any establishment to which he or she believes this Act applies, take samples thereof and examine anything which he or she believes is used or capable of being used for the preparation of any food or feed;
- (c) stop, search or detain any vehicle, vessel or aircraft in which he or she believes that any food or feed to which this Act applies is conveyed, examine the food or feed and take samples thereof;
- (d) open and examine any receptacle or package which he or she believes contains any food or feed to which this Act applies, examine it and take samples thereof;

- (e) call for any book, document or other record in any medium which he or she believes contain any information relevant to the enforcement of this Act with respect to any food or feed, make copies thereof and take extracts therefrom;
- (f) seize and detain for such time as may be necessary any food or feed by means of, or in relation to, which he or she believes this Act or the conditions of an approval issued under this Act, have been contravened; and
- (g) exercise any other lawful functions assigned to him or her by the Authority.

(2) A Competent Person shall in the exercise of his or her powers under sub-section (1) if required by any person affected thereby, produce his or her certificate of authority issued to him or her.

(3) A Competent Person shall release any food or feed seized by him or her under sub-section (1) where he or she is satisfied that the provisions of this Act in relation to the food or feed have been complied with.

(4) Where a Competent Person has seized any food or feed under this Act and the owner or the person in whose possession it was at the time of the seizure consents to its destruction or disposal, the food or feed shall be destroyed or otherwise disposed of as the Competent Person may direct.

(5) Where a Competent Person is unable to obtain the consent required under sub-section (4) for the destruction or disposal of the food or feed, he or she may after the issue of written notice to the owner or the person in whose possession the food or feed was at the time of seizure, arrange for the destruction or disposal of the food or feed.

(6) The owner, occupier, person in charge of any establishment entered into by a Competent Person pursuant to sub-section (1) or any person who when requested to give information or assistance to a Competent Person-

- (a) fails to give the information or assistance requested ; or
- (b) knowingly makes a statement which he or she knows or believes to be false or does not believe to be true,

commits an offence and he or she is liable on conviction to a fine of one hundred thousand dalasis or to three years imprisonment or to both.

(7) A person who wilfully obstructs a Competent Person in the execution of his or her functions under this Act commits an offence and he or she is liable on conviction to a fine of two hundred thousand dalasis or to three years imprisonment or to both.

(8) A person who without the written permission of a Competent Person, removes, alters or interferes in any way with any food or feed seized under this Act commits an offence and he or she is liable on conviction to a fine of two hundred thousand dalasis or to three years imprisonment or to both.

Duties and responsibilities of Competent Persons and members of the Authority

21. (1) Information relating to any individual business which is obtained by the Authority during the course of official controls or risk analysis shall not, without the previous consent in writing of the person carrying on the business, be disclosed except-

- (a) in accordance with directions of the Vice President, so far as may be necessary for the purposes of this Act; or
- (b) for the purposes of any proceedings for an offence against the order or any report of those proceedings.

(2) A person who discloses any information in contravention of sub-section (1) commits an offence and he or she is liable on conviction to a fine of one hundred thousand dalasis or to three years imprisonment or to both.

(3) A Competent Person or member of the Authority who is aware of a conflict between his or her personal and professional interests shall declare that interest in writing to the Director General of the Authority, and shall limit his or her professional duties so as to reduce or eliminate such conflict.

(4) In the case of a conflict of interests involving the Director General of the Authority, the declaration shall be made to the Vice President.

PART VI – PRINCIPLES OF FOOD LAW

Risk assessment

22. (1) In order to achieve the general objective of a high level of protection of human health and life, measures applied under this Act shall be based on risk assessment except where this is not appropriate to the circumstances or the nature of the measure.

(2) Risk assessment shall be based on the available scientific evidence and undertaken in an independent, objective and transparent manner.

Risk communication

23. The Authority shall carry out risk communication in a way that ensures that-

- (a) the Government;
- (b) persons responsible for risk management;
- (c) Competent Persons responsible for official control of food and feed safety;
- (d) food and feed business operators; and
- (e) consumers,

receive timely, reliable, independent, objective and comprehensible information about food hazards and associated risks;

Risk management

24. (1) The Authority shall carry out risk management in a way that ensures that prevention and control measures -

- (a) taken to reduce, eliminate or avoid a risk to health from the consumption of food shall take into account the results of risk assessment; and
- (b) shall be effective, equitable and proportionate.

(2) The Authority shall carry out risk management in a way that ensures that the appropriate prevention and control measures are applied at the point in the feed and food supply chain where they can be most effective in reducing or eliminating the risk.

Additional activities included in risk analysis

25. In addition to risk assessment, risk communication and risk management, risk analysis shall include the following activities-

- (a) providing the Government, the agricultural and food Industries and consumers with the best possible consumers with the best possible scientific opinions in relation to food hazards;
- (b) promoting and coordinating the development of uniform risk assessment and official control methodologies in the fields related to safety of food and feeds;
- (c) commissioning scientific studies necessary for the accomplishment of risk assessment in fields related to safety of food and feeds;
- (e) searching for, collecting, collating, analysing and summarising scientific and technical data in the fields related to safety of food and feeds;

- (f) undertaking action to identify and characterise emerging risks in the fields related to safety of food and feed;
- (g) establishing a system of networks of organisations operating in the fields related to safety of food and feeds and being responsible for their operation; and
- (h) provision of scientific and technical assistance, when requested to do so by the Government, in relation to emergency procedures referred to under sections 56 and 57.

Use of Precaution

26. (1) Where an assessment of available information identifies possible harmful effects on health without scientific certainty, provisional risk management measures necessary to ensure a high level of health protection may be adopted, pending further scientific information for a more comprehensive risk assessment.

(2) The measures adopted on the basis of sub section (1) shall be –

- (a) proportionate and no more restrictive of trade than is required to achieve an appropriate level of health protection, regard being had to technical and economic feasibility and other factors regarded as legitimate in the matter under consideration;
- (b) reviewed within a reasonable period of time, depending on the nature of the risk to life or health identified and the type of scientific information needed to clarify the scientific uncertainty and to conduct a more comprehensive risk assessment.

(3) The Authority shall not be held liable for any losses incurred as a result of the measures adopted pursuant to sub-section (1) in good faith, where subsequent removal of scientific uncertainty indicates that they were not required to ensure health protection .

Transparency

27. (1) The Authority shall carry out an open and transparent public consultation during the preparation, evaluation and revision of risk management measures, except where the urgency of the matter does not allow for it.

(2) Without prejudice to the applicable legislation on access to documents, where there are reasonable grounds to suspect that a food or feed may present a risk for human or animal health, then, depending on the nature, seriousness and extent of that risk, the Authority shall –

- (a) take appropriate steps to inform the general public of the nature of the risk to health; and
- (b) identify to the fullest extent possible, the food or feed or type of food or feed, the risk that it may present and the measures which are taken or about to be taken to prevent, reduce or eliminate that risk.

PART VII- GENERAL REQUIREMENTS FOR FOOD AND FEED SAFETY

Food safety requirements

28. (1) A person shall not place unsafe food on the market and a person who contravenes this section commits an offence and is liable on conviction to a fine of one hundred thousand dalasis or three years imprisonment or both.

(2) Food shall be deemed to be unsafe if it is-

- (a) injurious to health; or
- (b) unfit for human consumption.

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

- (a) to the normal conditions of use of the food by the final consumer and at each stage of production, processing and distribution; and
 - (b) to the information provided to the final consumer, including information on the label, or other information generally available to the final 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 and long-term effects of that food on the health of both the consumer and subsequent generations;
 - (b) the probable cumulative toxic effects; and
 - (c) the particular health sensitivities of a specific category of consumers where 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 due to contamination, whether by extraneous matter or otherwise, or through putrefaction, deterioration or decay.
- (6) Where any unsafe food is part of a batch, lot or consignment of food of the same class or description, it shall be presumed that all the food in that batch, lot or consignment is also unsafe, unless following a detailed assessment there is no evidence that the rest of the batch, lot or consignment is unsafe.
- (7) Any food which complies with specific regulations governing food safety shall be deemed to be safe insofar as the aspects covered by the specific regulations are concerned.

Feed safety
requirements

(8) Notwithstanding the conformity of a food with specific provisions applicable to it, the Authority may take appropriate measures to impose restrictions on the food being placed on the market or to require its withdrawal from the market where there are reasons to suspect that the food is unsafe.

29. (1) A person shall not place unsafe feed on the market or feed it to any food-producing animal and a person who contravenes this section commits an offence and is liable on conviction to a fine of one hundred thousand dalasis or three years imprisonment or both.

(2) A feed shall be deemed to be unsafe for its intended use if it -

- (a) has an adverse effect on human or animal health;
- (b) makes the food derived from food-producing animals unsafe for human consumption.

(3) Where a feed which has been identified as not satisfying feed safety requirements is part of a batch, lot or consignment of feed of the same class or description, it shall be presumed that all of the feed in that batch, lot or consignment is so affected, unless following a detailed assessment there is no evidence that the rest of the batch, lot or consignment fails to satisfy the feed safety requirement.

(4) A feed which complies with specific regulations governing feed safety shall be deemed to be safe insofar as the aspects covered by the specific regulations are concerned.

(5) Notwithstanding the conformity of a feed with specific regulations applicable to it, the Authority may take appropriate measures to impose restrictions on it being placed on the market or to require its withdrawal from the market where there are reasons to suspect that, despite such conformity, the feed is unsafe.

PART VIII- IMPORT AND EXPORT OF FOOD AND FEED

Imported food and feeds

30. A person who imports food or feed into The Gambia for placing on the market shall ensure that it complies with-

- (a) the relevant requirements of this Act;
- (b) the conditions recognised by the Authority to be at least equivalent to the requirements of the Act; or
- (c) the requirements of any agreement existing between The Gambia and the exporting country, if any.

Food and feed exported from The Gambia

31. A person who exports food or feed from The Gambia for placing on the market of another country shall ensure that it complies with the relevant food safety requirements of this Act, unless otherwise decided by the authorities of the importing country or the laws in force in the importing country.

PART IX – REGISTRATION AND LICENSING OF FOOD OR FEED BUSINESSES

Registration of food or feed businesses

32. (1) A person shall not operate a business dealing in food or feed unless he or she is registered with the Authority.

(2) The application for the registration of a food or feed business shall be accompanied with the prescribed fee.

(3) The Vice President may by order published in the Gazette exempt any class of food or feed business from the registration requirement.

Licensing of food or feed establishments, vehicles and vessels

33. (1) A person shall not operate an establishment, vehicle or vessel dealing in food

or feed unless he or she applies for and is issued a licence by the Authority.

(2) An establishment, vehicle or vessel that is licenced in accordance with sub section (1) may store, process, package or place food on the market for a defined period and for such products and processes as may be specified in the licence.

(3) The Vice President shall by Order published in the Gazette determine the classes of establishment, vehicle or vessel to which this section applies.

Licence conditions

34. (1) In order to obtain an establishment licence, the Authority may impose conditions relating to-

- (a) the design, layout and construction of premises;
- (b) the design and construction of any equipment used, including means of transport;
- (c) the conduct of any person entering the area in which food or feed is handled; and
- (d) the design and application of internal systems for ensuring the safety of food or feed placed on the market.

(2) In specifying any conditions applied to the issuing of a licence, the Authority may make reference to existing legislation.

(3) Where it is considered to be expedient for ensuring the safety of food or feed, the conditions of any licence issued in accordance with section 33 may be varied at any time and without notice by the written order of the Authority.

Licence or
registration renewal
fees

35. (1) An application for or renewal of a licence or registration shall be accompanied with such fee as may be prescribed.

(2) The schedule of fees shall be prescribed by the Vice President and published annually by the Authority.

(3) The licence fees received by the Authority shall be used to cover part of the costs of the official control of safety of food and feed.

Suspension and
cancellation of
licence

36. The Authority may by a written order and without notice, suspend or cancel an establishment licence at any time -

(a) where an establishment has been used in contravention of this Act, any regulations made under it or any of the conditions of the licence; or

(b) where such action is deemed necessary or expedient for the purpose of protecting public health

PART X - FOOD SAFETY RESPONSIBILITIES OF FOOD AND FEED BUSINESS OPERATORS

General
responsibility for
safety of food and
feed

37. (1) A food or feed business operator shall at all stages of production, processing and distribution within the businesses under his or her control ensure that foods or feeds to be placed on the market satisfy the requirements of this Act and regulations made under it.

(2) A person who contravenes the provisions of this section commits an offence and is liable on conviction to a fine of one hundred thousand dalasis or imprisonment for three years or both.

Responsibilities with
respect to food or
feed not in
compliance

38. (1) If a food or feed business operator considers or has reason to believe that a food or feed which he or she has imported, produced, processed, manufactured or distributed is not in compliance with the food safety requirements, he or she shall -

(a) immediately initiate procedures to prevent the product reaching the market; or

- (b) where the food or feed has left his or her immediate control, withdraw the food or feed in question from the market and inform the Authority thereof.

(2) Where the product may have reached the final consumer, the operator shall effectively and accurately inform the final consumers of the reason for its withdrawal, and if necessary, recall products already supplied to customers when other measures are not sufficient to achieve a high level of health protection.

(3) A food or feed business operator responsible for retail or distribution activities which do not affect the packaging, labelling, safety or integrity of the food or feed shall, within the limits of his or her respective activities –

- (a) initiate procedures to withdraw from the market, products not in compliance with the food or feed safety requirements; and
- (b) participate in contributing to the safety of the food or feed by passing on relevant information necessary to trace a food or feed, and cooperating in the action taken by producers, processors, manufacturers and the Authority.

(4) Where a food or feed business operator considers or has reason to believe that a food or feed which he or she has placed on the market may be injurious to human health, he or she shall-

- (a) immediately inform the Authority;
- (b) inform the Authority on the steps taken to prevent any risk to the final consumer; and
- (c) not prevent or discourage any person from cooperating with the Authority, where this may prevent, reduce or eliminate a risk arising from the food or feed.

(5) A food or feed business operator shall collaborate with the Authority on any action taken to avoid or reduce risks posed by a food or feed which he or she supplies.

(6) A person who contravenes the provisions of this section commits an offence and is liable on conviction to a fine of one hundred thousand dalasis or imprisonment for three years or both.

Requirement for
traceability of Food
and Feeds

39. (1) A food or feed business operator shall establish the traceability of food, feed, food-producing animals and any other substance intended to be incorporated into a food or feed at all stages of production, processing and distribution.

(2) A food or feed business operator shall put in place systems and procedures to enable him or her identify any person who has supplied him or her with a food, feed, food-producing animal, or any substance intended to be incorporated into a food or feed.

(3) The information referred to in sub-section (2) shall be recorded by food and feed business operators and made available to the Authority on demand.

(4) A food or feed business operator shall put in place systems and procedures to identify any person to whom he or she has supplied his or her products and this information shall be made available to the Authority on demand.

(5) A person shall label or identify through relevant documentation food or feed which is placed on the market or is likely to be placed on the market to ensure its traceability.

(6) A person who contravenes the provisions of this section commits an offence and is liable on conviction to a fine of one hundred thousand dalasis or imprisonment for three years or both.

Requirement for
control of food safety
hazards

40. (1) A food business operator shall implement a system of controls within his or her operations based on the following principles-

- (a) identification of food safety hazards associated with their products and processes, and identification of critical points in their establishment on the basis of the manufacturing processes used;
- (b) establishment and implementation of methods for monitoring and checking such critical points, and for taking corrective actions to prevent or minimize the risk of hazards arising;
- (c) taking samples for analysis, for the purpose of checking, cleaning and disinfection methods and for the purpose of checking compliance with the food safety requirements established by this Act and regulations made under it;
- (d) keeping a written record of actions taken under paragraphs (a) to (c) with a view to making them available to the Competent Authority.

(2) The results of the checks and tests referred to in sub-section (1) shall be kept for a minimum period of two years.

(3) If the results of the controls referred to in sub-section (1) reveal the existence of a significantly elevated risk to the health of consumers, the food shall be considered as not being in compliance with the food safety requirements of this Act.

(4) A person who contravenes the provisions of this section commits an offence and is liable on conviction to a fine of one hundred thousand dalasis or imprisonment for three years or both.

PART XI - REGULATION OF FOOD AND FEED QUALITY

Scope of regulation
of food quality

41. (1) The Authority may regulate the quality of food and feed where such regulation is necessary to -

- (a) prevent fraudulent or deceptive practices;
- (b) prevent the adulteration of food and feed;
- (c) protect the economic interests of consumers;
- (d) allow consumers to make informed choices in relation to the foods they consume;
- (e) introduce order in the marketing of food without prejudice to the economic interests of the final consumer; and
- (f) prevent any other practices which may mislead the final consumer.

(2) The regulations introduced under sub-section (1) may establish detailed requirements relating to the-

- (a) classification, grading and denomination of food and feed;
- (b) organoleptic properties and composition of food and feed;
- (c) types and quantities of raw materials, additives and other materials used in the primary production and processing of food and feed;
- (d) nature of the technological procedures which are applied in primary production and processing;
- (e) origin of the food or ingredients used in food and feed; and
- (f) any additional data or specific indications which should be specified in product declarations or labels

PART XII- DECLARATIONS AND LABELLING

False and misleading descriptions

42. (1) A food business operator shall not use labels and methods for labelling food that -

- (a) has a tendency to mislead the purchaser to a material degree particularly-
 - (i) with regard to the characteristics of the foodstuff, its nature, identity, properties, composition, quantity, durability, origin or provenance, method of manufacture or production,
 - (ii) by attributing to the foodstuff effects or properties which it does not possess,
 - (iii) by suggesting that the foodstuff possesses special characteristics when in fact all similar foodstuffs possess such characteristics;
- (b) attributes to any foodstuff the property of preventing, treating or curing a human disease, or refer to such properties, subject to specific regulations that may be introduced regarding foodstuffs for particular nutritional uses.

(2) The labels shall be in English language although additional labels in any other language may be used.

(3) The prohibitions or restrictions referred to in sub-section (1) shall also apply to-

- (a) the presentation of foodstuffs with regard to their shape, appearance, packaging, packaging materials used, the way in which they are arranged and the setting in which they are displayed; and

(b) advertisements.

(4) A person who contravenes the provisions of this section commits an offence and is liable on conviction to a fine of five hundred thousand dalasis or imprisonment for five years or both.

PART XIII - OFFICIAL CONTROL OF FOOD AND FEED SAFETY

Official control of food and feed safety

43. (1) The official control of food and feed safety shall comprise one or more of the following operations followed by any consequential actions under section 51-

- (a) inspection;
- (b) sampling and analysis;
- (c) medical examination and inspection of staff health and hygiene;
- (d) examination of documentary materials;
- (e) examination of records; and
- (f) licensing of establishments.

Responsibility for official controls

44. The Authority is responsible for the implementation of official controls under this Part.

Delegation by the Authority

45. Notwithstanding section 44, the Authority may delegate some or all of its responsibilities to any public or private body or person subject to-

- (a) authorisation of the Vice President, and the advice of the Food Control Advisory Committee;
- (b) clear definition of the scope of delegation; and
- (c) adequate arrangements being made for the monitoring of the implementation of the delegated responsibilities, including the preparation of annual inspection plans and reports, which are subject to the approval of the Authority.

General principles of inspection

46. (1) The Authority shall carry out inspections for official control of food safety-

- (a) according to priorities determined by risk assessment; or
- (b) in cases where non-compliance is suspected.

(2) Inspections shall be carried out using the means that best serve the expected end results.

(3) The inspection shall cover all stages of production, manufacture, import, export, processing, storage, transport, distribution and retail trade.

(4) Whenever practicable, inspections shall be carried out without prior warning.

Content of inspections

47. (1) Inspections for official control of food and feed safety shall include an investigation by a Competent Person of-

- (a) the state and use which is made of the site, establishment, offices, plant surroundings, means of transport, machinery and equipment of food and feed business operators, particularly in relation to licence conditions;
- (b) raw materials, ingredients, technological aids and other products used for the preparation and production of food and feed;
- (c) semi-finished food;
- (d) finished food and feed products;
- (e) materials and sections intended to come into contact with food;

- (f) cleaning and maintenance of products and processes and pesticides used by food business operators in the course of their business;
 - (g) processes used for the manufacture or processing of food and feed;
 - (h) labelling and presentation of food; and
 - (i) preserving methods;
- (2) The operations referred to in sub-section (1) may, where necessary be supplemented by-
- (a) interviews with the food business operator and persons working for him or her;
 - (b) the reading of values recorded by measuring instruments installed by the food business operator;
 - (c) measurements carried out by the Authority with its own instruments or with instruments installed by the food business operator;
 - (d) information contained in written and documentary material held by food and feed business operators.

Health and hygiene inspection of persons in contact with food or feed

48. (1) A person who handles feed and food products or materials which come into contact with them shall be subject to a hygiene inspection, including a periodic medical examination.

(2) The inspection referred to in sub-section (1) shall establish whether such persons comply with regulations concerning health status, personal cleanliness and clothing.

Sampling for
laboratory analysis

49. Samples of food and feed and other substances and materials used in the production, processing, packaging and placing on the market of food and feed may be taken by the Authority for analysis to provide information for the purposes of official control of food and feed safety.

PART XIV - GENERAL PROVISIONS FOR OFFICIAL CONTROL OF FOOD

Action in case of
contraventions

50. Where a Competent Person discovers or suspects a contravention of this Act, he or she shall, without prejudice to proceedings taken under section 58, take the necessary measures, on behalf of the Authority to ensure that the contravention is corrected by the food business operator.

Annual inspection
programme and
report

51. (1) The management of the Authority shall prepare an annual programme of official control activities, specifying-

- (a) the number and type of inspections to be carried out; and
- (b) the criteria applied in drawing up the programme

(2) The management of the Authority shall prepare an annual report on official control activities, specifying-

- (a) the number and type of inspections carried out in relation to the programme;
- (b) the number and type of infringements identified; and
- (c) actions taken in the case of non-compliance.

(3) Where the Authority delegates responsibility to other bodies, the annual programme and report shall specify the information set out in sub sections (1) and (2) in relation to each body to which responsibility is delegated.

(4) The annual programme and report of the Authority shall be subject to the approval of the Board.

(5) The annual programme and report approved under this section shall be published by the Authority.

Laboratory analysis
of samples

52. (1) Samples collected for analysis for the purpose of official control shall be analysed by an official testing laboratory nominated by the Authority.

(2) Official testing laboratories may be either private or public sector bodies.

(3) Samples collected for the purpose of official control shall be selected and transmitted to the official laboratory by a Competent Person, the Authority or the body to which responsibility has been delegated.

(4) The cost of the analysis shall be borne by the Authority or the body to which responsibility has been delegated and shall be recovered from the fees charged for inspection and certification.

Accreditation of
official testing
laboratories

53. (1) The official testing laboratories nominated by the Authority for the purposes of analysis in support of official control shall comply with the general requirements for the competence of Calibration and Testing Laboratories laid down in ISO Standard 17025.

(2) The accreditation and assessment of testing laboratories referred to in this section may relate to individual tests or groups of tests.

(3) The testing laboratories nominated by the Authority shall participate in appropriate proficiency testing schemes.

(4) Any deviation from the way in which the standard referred to in sub-section (1) is applied shall be adopted only with the specific approval of the Authority.

PART XV- EMERGENCIES AND CRISIS MANAGEMENT

Emergency measures for ensuring safety of food and feed

54. Where it is evident to the Authority that food or feed is likely to constitute a serious risk to human or animal health or the environment, and that such risk cannot be contained satisfactorily through measures taken under this Act, the Authority shall immediately adopt one or more of the following measures, depending on the gravity of the situation-

(a) in the case of food or feed of national origin-

- (i) suspension of the placing on the national or international market or use of the food or feed in question,
- (ii) laying down special conditions for the food or feed in question,
- (iii) any other appropriate interim measure,

(b) in the case of imported food or feed-

- (i) suspension of imports of the food or feed in question from all or part of country concerned and, where applicable, from the country of transit,

- (iii) laying down special conditions for the food or feed in question from all or part of the country concerned,
- (iii) any other appropriate interim measure.

General plan for crisis management and emergency

55. (1) The Authority shall draw up, in close cooperation with the Ministries responsible for Natural Resources, Health and Environment sectors and the National Disaster Management Agency, a general plan for crisis management in the field of food and feed safety.

(2) The crisis management plan shall specify the types of situation involving risks to human health deriving from food and feed which are not likely to be prevented, eliminated or reduced to an acceptable level by provisions in place or cannot be adequately managed solely by way of the application of Sections 43 to 49.

(3) The crisis management plan shall also specify the practical procedures necessary to manage a crisis, including –

- (a) the organisation and establishment of a task force;
- (b) the principles of transparency to be applied; and
- (c) a communication strategy.

PART XVI - OFFENCES AND DEFENCES

Non compliance procedures

56. (1) If a Competent Person nominated under section 19 has reason to believe that a food or feed business operator has failed to comply with any provision of this Act or regulations made under it, he or she shall serve an improvement notice on that food or feed business operator-

-
- (a) stating the grounds of his or her belief;
 - (b) specifying the matters which constitute the operator's failure to comply; and
 - (c) specifying the measures which the operator shall take to comply with the relevant provisions of the law.

(2) A person who fails to comply with an improvement notice commits an offence and is liable to be charged under the applicable provisions of this Act.

Offences

57. A person who contravenes the provisions of sections 33 or 42 of this Act commits an offence and is liable on conviction to a fine not exceeding five hundred thousand dalasis or imprisonment not exceeding five years or both the fine and imprisonment.

Due diligence
defence

58. (1) In any proceedings for an offence under this Act, it shall be a defence for the person charged to prove that he or she took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or herself or by a person under his or her control.

(2) A person charged with an offence under this Act, who did not prepare the food in respect of which the offence is alleged to have been committed or import it into The Gambia, he or she shall be taken to have established the defence under sub-section (1) if he or she proves that-

- (a) the commission of the offence was due to an act or default of another person who was not under his or her control, or reliance on information supplied by such a person, and
- (b) he or she carried out all such checks of the food in question as were reasonable in all the circumstances, or that it was reasonable in all the circumstances for him to rely on checks carried out by the person who supplied the food or feed to him or her.

PART XVII – MISCELLANEOUS PROVISIONS

Regulations

59. The Vice President may make Regulations-

- (a) requiring certain information regarding food and feed to be declared on the label where the food is repackaged or by another means in the case of other food;
- (b) requiring certain information regarding other foods to be declared in any other manner;
- (c) prohibiting specific claims or types of claims regarding food;
- (d) requiring, prohibiting or regulating the presence in food or feed of any specified substance, or any substance of any specified class and generally for regulating the composition of food or feed;
- (e) specifying the classes of establishment which shall be subject to a licence granted under this Act; and
- (f) for the assessment and accreditation of official testing laboratories.

Inconsistency with other enactments

60. (1) Subject to the Constitution of the Republic of The Gambia, in case of a conflict or inconsistency between a provision of this Act and that of any other enactment relating to food and feed safety and quality, the provision of this Act shall prevail and that other provision shall, to the extent of the inconsistency be void.

(2) As from the commencement of this Act any licence relating to food and feed safety and quality issued under any enactment is void.

Appeals

61. (1) Where the Authority has taken action to ensure that an alleged contravention is corrected by a food or feed business operator, the food or feed business operator may appeal to the Authority on the basis that-

- (a) the act or omission in question does not contravene the provisions of this Act;
- (b) the measures taken by the Authority are not proportionate to the contravention;
- (c) where the food was destroyed or disposed of, that the food was not unfit for human consumption.

(2) The onus of proof in the case of an appeal is on the food or feed business operator.

Repeals and amendments

62. The following enactments are hereby repealed-

Cap 40.07

- (a) Parts IV, VII, VIII, and sections 36, 37, 42, 41 and 43 (2) of Part X of the Food Act 2005;

Cap 40.03

- (b) Section 11 of the Public Health Act;

- (c) Sections 13 to 20 inclusive and Section 28 of the Public Health Regulations;
- (d) Sections 26, 27 and 28 of the Banjul Market and Slaughterhouse Regulations; and
- (e) Public Health (Aerated water) Regulations.

PASSED in the National Assembly this 22nd day of June
in the year of Our Lord Two Thousand and Eleven

D. C. M. Kebbeh
Clerk of the National Assembly.

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed in the National Assembly, and found by me to be a true and correct copy of the said Bill.

D. C. M. Kebbeh
Clerk of the National Assembly.