

FOOD ACT, 2005

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THE GAMBIA

NO. 9 OF 2005.

Assented to by The President,

this 21st day of July, 2005

YAHYA A. J. J. JAMMEH
President

AN ACT to control the production, manufacture, sale, distribution, importation and exportation of foods and make provisions for matters connected therewith.

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ENACTED by the President and the National Assembly.

PART I - PRELIMINARY

Short title 1. This Act may be cited as the Food Act, 2005.

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

"additive" means a substance not normally consumed as food by itself and not normally used as a typical ingredient of food, whether or not it has nutritive value, whose intentional addition to food for a technological purpose, in the manufacture, processing, preparation, treatment, packing, packaging, transport or holding of the food, results, or may reasonably be expected to result, directly or indirectly, in it or its by-products becoming a component of or otherwise affecting the characteristics of the food;

"adulterate" means to-

- (a) make impure, in order to give a false impression, or value; or
- (b) hide defects, by the addition of a foreign, inferior or inert substance, or by the exclusion or removal of a valuable or necessary ingredient;

"advertisement" includes a representation, written, pictorial, visual and otherwise, for the purpose of promoting directly, or indirectly, the sale or disposal of any food or any substance represented as food;

"Advisory Board" means the Food Control Advisory Board established under section 13;

"Agency" means the National Nutrition Agency established under section 4;

"Agency Board" means the Board established for the Agency under section 5;

"analyst" means a person authorized and acting as so authorised in the investigation or testing of food and food substances under this Act;

"appliance" means the whole or a part of an implement, a machine, an instrument, apparatus or any other object used or capable of being used for, in or in connection with, the manufacture, treatment, packaging, labelling, storage, conveyance, preparation, serving or administering of food;

"article" includes -

- (a) any food, labelling and advertising material used in connection with food; and
- (b) anything used in the preparation, preservation, packaging and storage of food;

"authorized officer" means a health officer, standards officer, veterinary officer, meat inspector, nutrition officer, fisheries officer, a police officer, customs officer, pesticides officer, tourism authority officer or any other person authorized by the Agency for purposes of the enforcement of this Act;

"Codex Alimentarius Commission" means the international body responsible for setting international quality and safety standards of food;

"Codex Committee" means a national multi-sectoral body established as a local arm of the international Codex Alimentarius Commission;

"compliance directive" means a notice served under section 23;

"contaminant" means a substance, not intentionally added to food, which is present in the food as a result of production, including operations carried out in crop husbandry, animal husbandry and veterinary medicine, manufacture, processing, preparation, treatment, packing, packaging, transport or holding of the food, or as a result of environmental contamination;

"Court" means a Court of competent jurisdiction;

"food" means-

- (a) an article or a substance, or drink whether processed, semi-processed or raw, intended for human consumption, including a part of the article or substance used, ingredient of the article or substance used or intended or destined to be used as a part or an ingredient of the article or substance;
- (b) an article or a substance of no nutritional value which is used or intended for human consumption; or
- (c) chewing gum and any other product of similar nature and use;

"food business" means a business where production, manufacture, processing, preparation, treatment, packaging, transport, sale or holding in relation to food is carried out, whether or not for profit;

"food fortification" means the addition of a nutrient to food to maintain or improve the quality of the diet of a group, community or population;

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

"food inspector" means a person authorised and qualified to act as a food inspector under section 24 and includes an authorised officer;

"food regulations" means a body of rules, legislation or requirements prescribed pursuant to this Act, defining certain criteria, including composition, appearance, freshness, source, sanitation, maximum concentration of additive, which must be fulfilled in respect of the food to make it suitable for distribution or sale and consumption;

"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;

"import" means to bring into The Gambia by either air, land or sea, and "importation" has a corresponding meaning;

"importer" includes a person who, whether as owner, consignor, consignee, agent or broker, is in possession of or is in any way entitled to the custody or control of any food being imported into The Gambia;

"inspector" means a person authorised and qualified to act as a food inspector under section 24 and includes an authorised officer;

"label" means any tag, brand, mark, pictorial or other descriptive matter written, printed, stencilled, marked, embossed or impressed on, or attached to, a container of food or its package, and when used as a verb, means to brand, mark, attach or provide in any other manner with any written, pictorial or other descriptive matter;

"manufacture" includes production, preparation, processing, preservation, packaging and any other manufacturing process involved in making the food ready for consumption;

"National Nutrition Council" means the inter-Ministerial body established under the Office of the Vice-President to provide policy guidance on nutrition;

"official laboratory" means a laboratory operated by an authorised officer or a laboratory designated or approved as an official laboratory;

"owner" includes the person who, for the relevant period, is in control or possession of a food business;

"package" includes anything in which food is wholly or partly placed or packaged and includes a basket, pail, tray, or receptacle of any kind, whether open or closed;

"pre-package" means packaged or made up in advance in a container, ready for offer to the consumer, or for catering purposes;

"pesticide residue" means any specified substance in food, agricultural commodities, or animal feed, resulting from the use of a pesticide and includes a derivative of a pesticide, such as, conversion product, metabolite, reaction product and any impurity considered to be of toxicological significance;

"premises" includes-

- (a) a building, tent or any other structure, permanent or otherwise, together with the land on which it is situated and any adjoining land used in connection with the building, tent or structure;
- (b) a street, an open space and a place of public resort; and
- (c) a bicycle and any other vehicle used for the sale, packaging, preparation, preservation, transportation or storage of an article;

"preparation" includes the manufacture and any other form of treatment of food, and "prepare" shall be construed accordingly;

"prohibited substance" means a substance so defined by an enactment or regulations made pursuant to this Act;

"sealed package," means an unopened package, which cannot be opened without breaking or damaging the package or seal, adhesive label or other part of or attachment to the package;

"Secretary of State" means the Secretary of State responsible for health or for agriculture, as the case may require;

"sell" includes to offer, advertise, display, transmit, consign, convey or deliver for sale, to exchange, and to dispose of to a person in any manner, whether for a consideration or otherwise, and "sold", "selling" and "sale" have corresponding meanings;

"substance" includes any solid, liquid and gaseous material;

"treated" means coloured, stained, powdered, polished, coated, mixed, preserved, flavoured, diluted or thickened with any substance, or treated in any manner, and "treat" and "treatment" have corresponding meanings;

"unsanitary conditions" means such conditions or circumstances as might cause contamination of food with filth or might render the food injurious or dangerous to health;

"warranty" means a label on food making an express or implied undertaking that the food is fit for human consumption and fulfils all specified conditions contained in the label;

"wholesome", in relation to food, means to be natural, clean and safe for health and without any harmful or harmless adulterants and not misrepresented in any respect.

Administration

3. (1) The Secretaries of State responsible for health and agriculture are jointly responsible for the administration of this Act under the overall direction and control of the Vice-President of the Republic of The Gambia.

(2) The Vice-President may direct either or both Secretaries of State, any other Secretary of State, public officer or any Department or agency of State, to exercise or perform any power, duty or function under this Act.

(3) For the guidance of Departments and State agencies, the Secretary of State concerned may issue codes of recommended practices as regards the execution and enforcement of this Act and of regulations and orders made under it to the extent that they are relevant to his or her responsibilities.

PART II – ESTABLISHMENT OF THE NATIONAL NUTRITION AGENCY

4. (1) There is hereby established a body to be known as the National Nutrition Agency.

(2) The Agency is a body corporate with perpetual succession and a common seal.

(3) The Agency may-

(a) sue and be sued in its corporate name;

(b) enter into contracts and acquire, hold and dispose of property; and

(c) so far as it is possible for a body corporate to do so, exercise the rights, powers and privileges, and incur the liabilities and obligations of a natural person of full age and capacity.

Establishment
of the National
Nutrition
Agency

(4) The application of the common seal of the Agency shall be authenticated by the signature of the Executive Director or such other person as the Agency may authorize to sign on its behalf.

(5) A document bearing the imprint of the seal of the Agency is to be taken to be properly sealed unless the contrary is proved.

Establishment
and compo-
sition of the
Agency Board

5. (1) There is hereby established for the Agency an Agency Board which shall, subject to the provisions of this Act, carry out the functions and manage the affairs of the Agency.

(2) The Agency Board shall comprise-

(a) a Chairperson;

(b) the Permanent Secretary in the Office of the Vice-President or his or her designated representative, not below the rank of a Deputy Permanent Secretary;

(c) the Permanent Secretary of the Department of State responsible for finance and economic affairs or his or her designated representative, not below the rank of a Deputy Permanent Secretary;

(d) the Executive Director of the Agency; and

(e) two other persons from the private sector.

(2) The Chairperson and other members of the Agency Board, other than *ex-officio* members, shall be appointed by the President, after consultation with the Public Service Commission.

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- (a) vacancy in its membership; or
- (b) a defect in the appointment of any of its members.

(11) Subject to this section, the Agency Board may regulate its own procedure.

Disclosure of interest

7. (1) A member of the Agency Board who has an interest in a company or an undertaking with which the Agency proposes to enter into a contract shall –

- (a) disclose the nature of his or her interest to the Agency Board; and
- (b) not participate in any deliberation and voting of the Agency Board in respect of the contract.

(2) A member who contravenes the provisions of subsection (1) may be removed from the Agency Board by the President, on the recommendation of the Vice-President.

Transaction of business without meeting

8. A resolution is a valid resolution of the Agency Board –

- (a) if it is signed or assented to by a majority of the members;
- (b) if proper notice of the proposed resolution was given to each member and to the Executive Director; and
- (c) notwithstanding that it was not passed at a meeting of the Agency Board.

Indemnity of members

9. No action, suit, prosecution or other proceedings shall be brought or instituted against a member of the Agency Board personally in respect of any thing done in pursuance, execution or intended execution of any of the provisions of this Act.

Allowances of the members of the Agency Board

10. Members of the Agency Board shall be paid such sitting allowances as may be approved by the National Nutrition Council.

Functions of the Agency

PART III - FUNCTIONS OF THE AGENCY

11. The functions of the Agency are to-

- (a) co-ordinate all nutrition and related activities in The Gambia;
- (b) co-ordinate public information or educational activities to sensitise the population on food safety issues;
- (c) co-ordinate research and investigation into all matters pertaining to food safety and control;
- (d) co-ordinate inter-sectoral action towards the implementation of the national nutrition policy;
- (e) co-ordinate the review, up-dating, strengthening, harmonising and development of legislation relevant to nutrition;
- (f) undertake policy analysis and review in order to anticipate potentially adverse nutrition outcome of development policies and recommend appropriate protective mechanisms and strategies;

- (g) define and develop standards and norms for effective nutrition programme and service delivery for use by relevant implementing agencies;
- (h) develop and pilot intervention strategies before their adoption for implementation;
- (i) develop and strengthen the capacities of stakeholders to enable them to fulfil their role and mandate in the nutrition policy and programme;
- (j) increase national awareness on nutrition issues in general, and the nutrition policy and plan of action, in particular, and the strategies and activities for its implementation, through an advocacy and Information, Education and Communication strategy;
- (k) be a national resource centre and think-tank for nutrition issues in The Gambia;
- (l) mobilise technical, material and financial resources to support a co-ordinated response to The Gambia's nutrition problems, and co-ordinate donor support for nutrition activities in The Gambia;
- (m) support stakeholders in the integration of nutrition objectives into their development plans;
- (n) monitor and evaluate nutrition policy and programme implementation and advise the National Nutrition Council periodically; and

- (o) perform all other duties assigned to it under or incidental to this Act.

Power of the Agency to appoint committees

12. (1) Subject to the provisions of section 14, the Agency Board may appoint such committees, as it may deem necessary, consisting of specialists and other members, to assist it in the performance of its functions.

(2) The Agency Board shall determine the terms of reference of each committee.

(3) The National Codex Committee shall, on the coming into force of this Act, be deemed to be a Committee of the Agency.

PART IV – FOOD CONTROL ADVISORY BOARD, COMPLIANCE COMMITTEE, AND ROLE OF DEPARTMENTS AND STATE AGENCIES

Establishment, composition and functions of the Food Control Advisory Board

13. (1) There is hereby established a Food Control Advisory Board consisting of-

- (a) the Chairperson of the Agency Board, as chairperson;
- (b) the Permanent Secretary of the Department of State responsible for health or his or her designated representative, not below the rank of a Deputy Permanent Secretary;
- (c) the Permanent Secretary of the Department of State responsible for agriculture or his or her designated representative, not below the rank of a Deputy Permanent Secretary;

(d) the Permanent Secretary of the Department of State responsible for trade, or his or her designated representative, not below the rank of a Deputy Permanent Secretary;

(e) the Executive Director of the Agency;

(f) one representative of food manufacturers; and

(g) one representative of a Consumers' Association.

(2) The members of the Advisory Board, other than *ex-officio* members, shall be appointed by the Secretary of State on the recommendation of the bodies they represent.

(3) Subject to this Act, the Advisory Board may regulate its own procedure.

(4) The functions of the Advisory Board are to-

(a) advise the National Nutrition Council and the Secretary of State on food control matters, including the sale, manufacture, distribution, import, export, and labelling of food;

(b) propose the appointment of technical bodies to assist in all matters concerning food safety and control;

(c) discuss any matter connected with the enhancement of food control in The Gambia, and report to the National Nutrition Council and the Secretary of State on its discussions; and

(d) perform such other functions as the National Nutrition Council or the Secretary of State may, from time to time, assign to it.

(5) The Agency is the Secretariat of the Advisory Board.

14. (1) There is hereby established a Compliance Committee consisting of-

(a) a chairperson to be appointed by the Agency Board on the recommendation of the Advisory Board;

(b) a representative each from-

(i) the Departments of State responsible for health, agriculture, fisheries, education, trade and tourism,

(ii) the Agency,

(iii) the Association of Non-Governmental Organisations,

(iv) the Consumers Association, and

(v) the Gambia Chamber of Commerce and Industry (food sector),

all of whom shall be appointed by the Agency Board on the recommendation of the bodies they represent.

(2) Subject to any directive of the Agency Board, the Compliance Committee may regulate its own procedure.

Establishment,
composition
and functions
of the Com-
pliance
Committee

(3) The functions of the Compliance Committee are to-

- (a) ensure co-ordination of the activities of inspectors and authorized officers in the Departments and State agencies;
- (b) resolve conflicts existing or that may arise in the course of the exercise of food control functions by Departments and State agencies;
- (c) resolve gaps and address overlaps in the regime of food control in the Gambia; and
- (d) such other duties as the Agency Board may assign to it.

Role of other
Departments
and State
agencies

15. (1) For the purposes of control, including inspections and enforcement of this Act, the following Departments and State agencies are responsible for performing the roles assigned to them in this subsection-

- (a) the Departments of State responsible for health and for tourism are jointly responsible for the control of foods in restaurants, hotels, schools and other boarding facilities;
- (b) the Department of State responsible for health, in collaboration with the Department of State responsible for Local Government, is responsible for assuring food hygiene, food safety and sanitation in hospitals and clinics, food establishments and premises, including markets and streets;

- (c) the Department of State responsible for agriculture is responsible for the control, licensing and inspection of poultry establishments and slaughterhouses, ante-mortem and post-mortem inspections of animals, control of poultry products and products of animal origin on farms and other production establishments;
- (d) the Department of State responsible for health is responsible for the control of meat, poultry, milk and other processed or unprocessed foods of plant or animal origin after post-mortem inspections, including those in markets and groceries;
- (e) the Standards and Consumer Protection Bureau is responsible for weights and measures;
- (f) the Department of State responsible for agriculture, in collaboration with the National Environment Agency, is responsible for the control of food production and harvesting on farms, including control of pesticides residues and mycotoxins in foods;
- (g) the Department of Fisheries is responsible for the control of fish and fish processing, including in-port inspections of industrial and artisanal catches and landings;
- (h) the Gambia Revenue Authority is responsible for the control of imported goods at border posts, airport and seaports and labelling on imported goods, but the control

of export and imports of poultry, animals and products of animal origin, including milk, shall be effected in conjunction with authorised officers at the ports of entry; and

- (i) the Department of State responsible for health is responsible for the certification of food businesses.

(2) The Compliance Committee may propose to the Agency, for adoption and implementation, additions, variations or alternatives to the roles set out in subsection (1).

PART V – STAFF OF THE AGENCY

Executive Director and other staff of the Agency

16. (1) There shall be for the Agency, an Executive Director who shall be appointed by the President, after consultation with the Agency Board and Public Service Commission.

(2) The Executive Director shall be the chief executive of the Agency and be appointed on such terms and conditions as may be specified in his or her letter of appointment.

(3) The Agency Board shall appoint for the Agency such staff as it may require for the purposes of this Act.

(4) The Agency Board shall appoint, from among the staff of the Agency, a Secretary to the Agency Board who shall be responsible for-

- (a) arranging the business of the Agency Board's meeting;

(b) keeping a record of the proceedings of the Agency Board; and

(c) such other duties as the Agency Board or the Executive Director may direct.

(5) The staff of the Agency shall be appointed on such terms as to remuneration or otherwise as it may determine.

(6) The Agency Board shall be responsible for the discipline and removal of employees of the Agency.

(7) The Agency Board shall adopt suitable policies in respect of conditions of service of staff, which shall be in accordance with approved Government policy.

PART VI – FINANCIAL PROVISIONS

Fund of the Agency

17. The funds of the Agency include –

- (a) such monies as may be appropriated to it by the National Assembly;
- (b) loans granted to the Agency;
- (c) monies accruing to the Agency as proceeds from investments;
- (d) grants and gifts, provided that the terms and conditions attached to a grant or gift are not inconsistent with the functions of the Agency; and
- (e) such other monies as may accrue to the Agency under this Act.

Accounts and
audit

18. (1) The Agency shall, within three months before the end of each financial year, make and submit to the Vice-President for approval, estimates of the income and expenditure of the Agency for the ensuing year.

(2) The Agency shall keep proper records and accounts of its incomes and expenditure.

(3) The Agency shall prepare a statement of accounts in respect of each financial year.

(4) The Agency shall, within three months of the end of each financial year, submit to the Auditor General for auditing, its statement of accounts for the preceding year.

(5) The audited accounts of the Agency 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

19. (1) The Agency Board shall, not later than three months after the end of each financial year, submit to the Vice-President, in respect of the financial year, an annual report on the activities of the Agency.

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

- (a) information with regard to the proceedings and policy of the Agency;
- (b) a copy of the audited accounts of the Agency in respect of that year, together with the Auditor General's report on the accounts; and
- (c) such other information as the Secretary of State may request in writing.

(3) The Vice-President shall, as soon as possible after receiving the annual report, cause it to be laid before the National Assembly.

(4) The Executive Director shall also, from time to time, provide the Vice-President with such information relating to the affairs of the Agency as the Secretary of State may request in writing.

PART VII - IMPORTATION AND EXPORTATION OF FOODS AND FOOD PRODUCTS

Requirement
for import and
export certi-
ficates

20. (1) A person shall not import into, or export out of The Gambia -

- (a) animal or animal product;
- (b) marine or marine product;
- (c) plant or plant product;
- (d) processed foods of plant or animal origin,

without an import or export certificate issued in accordance with the Guidelines on The Quality Control Requirements of Import and Export of Food Commodities provided by the Codex Alimentarius Commission, or any relevant provision of this Act or any regulation made pursuant to this Act or any other enactment on food or livestock.

(2) A person shall not import or otherwise bring a food item into The Gambia unless-

- (a) it is accompanied by a certificate from the manufacturer to the effect that it was manufactured in accordance with-

- (i) an existing standard or code of practice pertaining to the product, or
- (ii) where a standard or code of practice does not exist for the particular product, any international standard laid down, in the case of food, under the directive of the Codex Alimentarius Commission; or

(b) a certificate issued by or on behalf of the Government of the country where it was manufactured that its sale in that country would not constitute a contravention of the law of that country.

(3) A person shall not import into The Gambia any cereal, pulse or legume, including rice, unless a phyto-sanitary certificate accompanies it issued by the national plant protection service of the State of origin.

(4) Every consignment of imported cereal, pulse or legume shall be accompanied by a fumigation certificate issued by the competent authority of the State of origin, or by an approved company specialized in fumigation.

(5) Notwithstanding anything contained in this section, the Secretary of State responsible for health may by regulations provide that a food item shall not be imported into The Gambia unless it was manufactured in accordance with the standard specified in the regulations.

*Re-labelling
and recondi-
tioning of
imported
articles*

21. (1) Notwithstanding the provisions of section 20, where an article to be imported into The Gambia would, if sold in The Gambia, constitute a contravention of this Act, the article may be imported into the Gambia for the purpose of re-labelling or reconditioning to ensure compliance with the provisions of this Act.

(2) Where an article is not re-labelled or reconditioned within thirty days of its importation, the importer shall, within a further period of thirty days or such other period as the Secretary of State may determine, return the article to the State of exportation.

(3) The importer shall bear the cost incurred in returning an article under subsection (2).

(4) Where an article is not returned as provided under subsection (1), it shall be forfeited to the State and disposed of as the Secretary of State may, on the advice of the Agency Board, direct.

*Powers of
authorized
officers to
examine foods*

22. (1) An authorized officer may examine the customs entry of any food imported for use in The Gambia and for the purposes of the analysis or examination, take samples of the food.

(2) Where the samples are taken pursuant to subsection (1), the food from which they are taken shall not be released to the importer except on the production of an analyst's certificate or report stating that the food complies with the requirements of this Act.

(3) Where samples are taken for purposes of analysis, the authorized officer shall, in the presence of the owner or importer or any person in apparent control of the food, seal the samples in triplicate.

(4) The authorized officer shall retain one copy of the samples sealed under subsection (1), send one copy to the analyst and deliver the third copy to the owner, importer or person in apparent control of the food, as the case may be.

(5) For the purposes of analysis, the following particulars may be required-

- (a) the composition or chemical formula or ingredient of the food;
- (b) the manner in which the ingredients are used in the preparation of the food;
- (c) any investigation or test carried out in respect of the food or ingredient and its effect on or after investigation.

(6) The particulars supplied shall be treated in strict confidence.

(7) The importer shall bear the cost of any examination or analysis.

23. (1) A manufacturer or distributor or dealer in food shall not sell the food unless a warranty is given to the vendor, in the prescribed form, on the nature and quality of the food, specifying that the food may lawfully be sold under the provisions of this Act.

(2) A person who contravenes the provisions of subsection (1), or gives a warranty, which is false, commits an offence.

(3) In any proceedings for an offence under this section it is a defence for the accused to prove or establish that he or she-

(a) purchased the food from another person who furnished a written warranty in compliance with subsection (1), and sold the food in the same condition the food was in at the time he or she purchased it; or

(b) could not, with reasonable diligence, have ascertained that the sale of the food was in contravention of this section.

PART VIII - INSPECTIONS

Power to enter
and inspect
premises

24. (1) An inspector may at any reasonable time enter any premises in which food is being or suspected of being manufactured, treated, graded, packed, marked, labelled, kept, stored, conveyed, sold, handled served or in which any other operation or activity connected with any food is being or suspected of being carried out.

(2) Subject to this Act, an inspector may, on entering any premises under subsection (1)-

- (a) inspect or search the premises, and examine any food, appliance, product, material, object or substance which is being or is suspected of being used, or intended for use in connection with the manufacture, treatment, grading, packing, marking, labelling, storage, conveyance, serving or handling of any food;

- (b) demand any information regarding any food, appliance, product, material, object or substance from the owner or person in charge of the premises or from any person who has possession or charge of the food, appliance, product, material, object or substance;
- (c) take, weigh, count, measure, mark, seal, open and take samples of any package or container of any food, appliance, product, material, object or substance or its package or container, or lock, secure, seal or close any door or opening giving access to the package or container;
- (d) examine or make copies of, or take extracts from, any book, statement or other document found in the premises which refers to or is suspected to refer to the food, appliance, product, material, object or substance;
- (e) demand from the owner or any person in charge of the premises or from a person who has possession or charge of the book, statement or other document, an explanation of any entry;
- (f) inspect any operation or process carried out in the premises;
- (g) demand any information regarding any operation or process from the owner or person in charge of the premises or from a person carrying out or in charge of carrying out the operation or process;

- (h) read any value recorded by any measuring instrument installed for food in the premises;
- (i) seize any food, appliance, product, material, object, substance, book, statement or document which appears to provide proof of a contravention of a provision of this Act, providing a signed receipt which shall be countersigned immediately by the owner or other person in charge of the premises or food, appliance, product, material, object, substance, book, statement or document; and
- (j) take any photographs connected with the purposes of the entry.

(3) An inspector shall, on demand by a person affected by the exercise or performance of any power, duty or function of the inspector under this Act, exhibit the written authorization, which gives him or her authority as a food inspector.

(4) The procedure to be followed by an inspector in obtaining, transmitting for analysis or examining or otherwise dealing with any sample taken under subsection (1)(c) shall be as provided for in section 22.

(5) An inspection carried out under this Act shall focus on any or all of the following-

- (a) the food business and its surrounding and installations, transportation, equipment and materials;
- (b) food ingredients, additives, disinfectants and any other substance or process used in food manufacturing, food handling or food preservation.

- (c) employees of the food business;
- (d) packaging material;
- (e) cleaning, disinfecting and maintenance of equipment and premises at the food business;
- (f) labelling of food; and
- (g) education of food business operators on food safety and hygiene.

25. (1) An inspector carrying out an inspection under this Act may request the presence of such law enforcement officers as he or she may consider necessary.

(2) The owner or a person in charge of or present at a food business-

- (a) may be requested to accompany the food inspector or authorized officer carrying out the inspection for the purpose of providing any information required;
- (b) shall supply any information or document requested by the inspector or authorized officer relating to installations, materials, procedures or other matters relevant to any inspection as set out in section 22;
- (c) shall permit the taking of samples and the gathering of evidence, including photographs.

Presence of law enforcement officers during inspections

Compliance directive

26. (1) Where an inspector has reasonable grounds for believing that the owner or person in charge of a food business has failed to comply with the provisions of this Act, he or she may serve a compliance directive on that owner or person:-

- (a) stating the grounds for believing that the owner or person has failed to comply with this Act;
- (b) specifying the measures which the owner or person must take in order to remedy the failure referred to in paragraph (a); and
- (c) requiring the owner or person to take those measures, or measures which are at least equivalent to them, within such period not exceeding fourteen days as may be specified in the directive.

(2) A person who fails to comply with the compliance directive commits an offence and is liable on conviction to a fine of not less than twenty thousand dalasis or imprisonment for a term not exceeding two years, or to both the fine and imprisonment.

Additional penalties

27. (1) Where a Court, which convicts the owner of a food business of an offence under this Act or any regulations made under it, is satisfied that the continued running of the business will cause an undue risk to human health it may, in addition to the penalty specified for the offence, by order prohibit-

- (a) the use of a particular process or particular equipment;
- (b) the use of the premises for the purposes of carrying out any food business; or

- (c) the proprietor of the food business from participating in the management of the food business with respect to which the offence was committed, or any food business in The Gambia.

Food unfit for human consumption

28. (1) Where it appears that any food is unfit for human consumption or is likely to cause harm or danger to human health, the inspector shall-

- (a) seize, mark and seal the food, and issue a notice to the owner or the person in charge of the food business that the food or any specified portion of the food has been seized;
- (b) issue a written notice temporarily ordering the food to be removed to a specified place; or
- (c) issue a written notice ordering the immediate destruction of the food.

(2) Where an action is taken under subsection (1) because of a threat to human health, the inspector shall immediately notify the Agency Board, of all measures necessary to ensure public safety and the protection of consumers, including public warnings, recall orders, marketing restrictions, marketing bans or other appropriate measures.

(3) An inspector acting under subsection (1) (a) or (b) shall, within fourteen days of notifying the Agency Board, review the situation of the affected food and-

- (a) shall, if satisfied, withdraw the notice, and where appropriate, allow the release of any food or any specified portion of the food from the place where it was stored; or
- (b) may, if not so satisfied, order that the food be destroyed or disposed of by such method as may be specified in the order.

Construction of and restriction on use of premises used for sale and preparation of food

29. (1) Any premises used for the preparation, sale, exposure, or storage of food shall be constructed in a way that renders it safe, free from pests and promotes good sanitary conditions.

(2) A person shall not reside or sleep in premises or room in which food is prepared, stored or exposed for sale.

(3) If an inspector has reasonable cause to believe that the provisions of subsection (2) are not being complied with, he or she may serve on the offender or on the owner or occupier of the house or both, a notice requiring such measures to be taken as to prevent the improper use of the premises within fourteen days of the notice.

(4) A person who fails to comply with a notice served under subsection (3) commits an offence and is liable on conviction to a fine of not less than twenty thousand dalasis or imprisonment for a term not exceeding two years, or to both the fine and imprisonment.

Right of appeal

30. (1) A person who is aggrieved by a decision or action of an inspector or authorized officer under this Act may appeal to the Agency Board within thirty days of the decision or action.

(2) If the aggrieved person is not satisfied with the decision of the Agency Board, he or she may appeal to the appropriate Secretary of State within thirty days of the decision.

(3) The Agency Board or Secretary of State, as the case may be, shall come to a decision on the appeal within sixty days of its receipt.

PART IX - LEGAL PROCEEDINGS

Notice of
action

31. (1) No action shall be brought against the Agency unless at least one month's written notice of the intention to bring the action has been served on the Agency by the intending plaintiff or his or her representative.

(2) The notice shall state the cause of action, the name and place of abode of the intending plaintiff and the relief, which he or she claims.

Service

32. The notice referred to in section 31 and any summons, notice or other document required or authorized to be served on the Agency in connection with a suit by or against the Agency may be served by delivering it to or sending it by registered post addressed to the Executive Director.

Execution of
judgment

33. In an action or a suit against the Agency, no -

- (a) execution or attachment or process in the nature thereof shall be issued against the Agency; or
- (b) sums of money which may by judgment of the court be awarded against the Agency shall be paid by the Agency from its funds,

before the expiration of at least three months from the date of the judgment of the court.

Representa-
tion

34. In a suit pending before the court, the Agency may be represented in court at any stage of the proceedings by any officer or other employee of the Agency duly authorized in writing by the Agency in that behalf.

Indemnity of
officers

35. No officer or employee of the Agency or any person acting on the directive of an officer or employee of the Agency shall be liable in respect of any matter or thing done by him or her in good faith for the purposes of this Act.

PART X - MISCELLANEOUS PROVISIONS

Prohibitions on
sale of food

36. (1) A person who sells or offers for sale any food that-

- (a) has passed its expiry date;
- (b) has in or on it any poisonous or harmful substance;
- (c) is unwholesome or unfit for human consumption;
- (d) consists in whole or in part of any filthy, putrid, rotten, decomposed or diseased substance;
- (e) is adulterated;
- (f) is injurious to health; or
- (g) is not of the nature, substance or quality, prescribed by standards set out in this

commits an offence.

(2) In determining whether any food is injurious to health, regard shall be made, not only to the probable effect of the food on the health of a person consuming the food, but also on the probable cumulative effect of food of substantially similar composition on the health of a person consuming the food in ordinary quantities.

(3) A person who commits an offence under subsection (1) is liable on conviction to a fine of not less than fifty thousand dalasis or imprisonment for a term not exceeding three years, or to both the fine and imprisonment.

37. (1) A person who-

- (a) stores or sells food under unsanitary or unhygienic conditions;
- (b) operates a food business without certification;
- (c) publishes a false or misleading advertisement about any food;
- (d) advertises breast milk substitutes;
- (e) in the case of a food business, fails to ensure that his or her employees follow proper handling procedures;
- (f) gives false information to an inspector about the food, which is being inspected;
- (g) poses as an inspector;

Other prohibitions

- (i) tampers with any food samples taken under this Act;
- (j) seizes food for any reason other than that it is likely to cause harm to human health or does not meet quality standards; or
- (k) while serving as an inspector, discloses any information acquired in the course of his or her official functions under this Act,

commits an offence.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine of not less than fifty thousand dalasis or imprisonment for a term not exceeding three years, or to both the fine and imprisonment.

(3) It is a defence, in the case of an offence relating to the publication of an advertisement, that the person received the advertisement, other than an advertisement for breast milk substitutes, for publication in the ordinary course of business and had no reason to believe that an offence would be committed.

38. Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of-

- (a) any director, manager or other similar officer of the body corporate; or
- (b) any person who was purporting to act in that capacity,

Offences by bodies corporate

he or she, as well as the body corporate, is deemed to have committed the offence and liable on conviction to the penalty specified for the offence.

Indemnity

39. An inspector is not liable to a civil suit in respect of anything done in good faith in the performance of his or her functions under this Act.

Penalties for offences

40. (1) A person who commits an offence under this Act is liable on conviction, except otherwise provided in this Act, in the case of-

- (a) a first offence, to a fine of not exceeding twenty thousand dalasis or imprisonment for a term not exceeding two months, or to both the fine and imprisonment;
- (b) a subsequent offence, to a fine not exceeding fifty thousand dalasis or imprisonment for a term not exceeding three years, or to both the fine and imprisonment; and
- (c) a continuing offence, to an additional fine not exceeding five hundred dalasis or imprisonment for two months for each day on which the offence continues.

(2) On the conviction of a person for an offence under this Act or any regulations made under it, the Court may-

- (a) in addition to any other sentence that may be passed, cancel or suspend a licence or certification issued to a convicted person relevant to the offence committed; and

(b) declare any food, appliance, product, material, substance or other object in respect of which the offence has been committed or which was used in connection with the commission of the offence forfeited to the State and disposed of as the Court may direct.

Admissibility of certificates and presumptions

41. (1) In any proceedings under this Act, a certificate of analysis purporting to be signed by the director or head of an official laboratory is acceptable as *prima facie* evidence of the facts stated in the certificate, provided that-

- (a) the party against whom it is produced may require the attendance of the person who performed the analysis for purpose of cross examination; and
- (b) the certificate shall not be admissible in evidence unless the party intending to produce it has, before the trial, given the party against whom it is intended to be produced, reasonable notice of his or her intention to do so, together with a copy of the certificate.

(2) Evidence that a package containing an article to which this Act applies, bore a name, address, or registered trademark of the person by whom it was manufactured or packed, is *prima facie* evidence that the article was manufactured or packed, as the case may be, by that person.

(3) A substance commonly used for human consumption, if sold or offered, exposed or kept for sale, is presumed, until the contrary is proved, to have been sold or as the case may be, to have been or to be intended for sale for human consumption.

(4) A substance commonly used-

- (a) for human consumption which is found on premises used for the preparation, storage or sale of that substance; or
- (b) in the manufacture of a product for human consumption which is found on premises used for the preparation, storage or sale of the product,

is presumed, until the contrary is proved, to be intended for sale or for manufacturing the product for sale for human consumption.

(5) A substance capable of being used in the composition or preparation of a substance commonly used for human consumption which is found on premises on which that substance is prepared is, until the contrary is proved, presumed to be intended for that use.

Inconsistency
with other
enactments

42. Subject to the Constitution of the Republic of The Gambia, if there is a conflict or inconsistency between a provision of this Act and the provision of any other enactment on food, the provisions of this Act shall prevail and that other provision shall to the extent of the consistency, be null and void.

Regulations

43. (1) The relevant Secretary of State may, on the advice of the Agency, make regulations for purposes of the proper implementation of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Secretary of State may, on the advice of the Agency, by Order published in the Gazette make provisions for any of the following-

- (a) labelling, packaging and the offering for sale of food;
- (b) acceptable levels of food additives, environmental contaminants, pesticides and other residues or other chemical and microbiological contaminants in accordance with international standards;
- (c) food fortification, salt iodisation;
- (d) national code on the marketing of breast milk substitutes;
- (e) inspection and maintenance of hotels, boarding houses, and other places of accommodation;
- (f) prescribing places at which, and conditions under which, animals are slaughtered for human consumption;
- (g) controlling the places at which, and the conditions under which, poultry, dairy products, bread and any other foods are produced, processed or packaged for sale;
- (h) importation and exportation of foods;
- (i) application for and issuance of licences and fees payable under this Act;
- (j) prescribing the fees payable in respect of examination of food and analysis of food;
- (k) forms to be used for the purposes of this Act;

- (l) disposal or destruction of unsafe food;
and
- (m) any other matter deemed necessary for
the implementation of this Act.

Amendment to
the Public
Health Act
Cap. 40:03

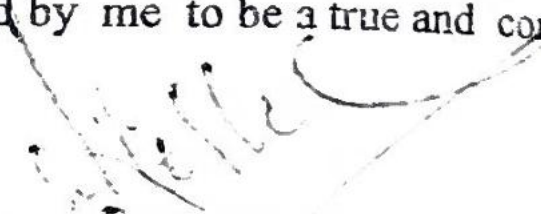
44 The Public Health Act is amended by deleting
section 12.

PASSED in the National Assembly this Twenty-Nineth day of June
in the year of Our Lord Two Thousand and Five


D. C. M. Kebbeh

Acting 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

Acting Clerk of the National Assembly.