THE FOOD AND DRUGS ACT

ARRANGEMENT OF SECTIONS

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Law 46 of 1964. Act 54 of 1974, 7 of 1996.

[*4th August, 1975.*]

PART I. *Preliminary*

1. This Act may be cited as the Food and Drugs Act. Short title.

2.—(1) In this Act— Interpretation.

"advertisement" includes any representation by any means whatever for the purpose of promoting directly or indirectly the sale or disposal of any food, drug, cosmetic or device;

"analyst" means an analyst designated under section 17;

"article to which this Act applies" includes—

(*a*) any food, drug, cosmetic or device;

(*b*) anything used for the manufacture, preparation, preservation, packaging or storing thereof;

(*c*) any labelling or advertising material;

"cosmetic" includes any substance or mixture of substances manufactured, sold or represented for use in cleansing, improving or altering the complexion, skin, lips, hair, fingernails or toenails, teeth, and includes deodorants and perfumes;

"device" means any instrument, apparatus, or contrivance including components, parts and accessories thereof, manufactured or sold or represented for use in the diagnosis, treatment, mitigation or prevention of a disease, disorder, abnormal physical state or the symptoms thereof in man or animal;

"drug" means any substance or mixture of substances manufactured, sold or represented for use in—

(*a*) the diagnosis, treatment, mitigation or prevention of a disease, disorder, abnormal physical state or the symptoms thereof in man or animal;

(*b*) restoring, correcting or modifying organic functions in man or animal;

(*c*) disinfection in premises in which food is manufactured, prepared, preserved, packaged or stored for sale or sold or for the control of vermin or insects in such premises;

"food" includes any article used for food or drink by man, chewing gum and any ingredient that may be mixed with food or drink for any purpose;

"importer" in relation to an imported article, includes any person who, whether as owner, consignee, agent or broker is in possession of the article or any way entitled to the custody or control of it;

"insanitary conditions" means such conditions or circumstances as might contaminate a food, drug or cosmetic as the case may be with dirt or filth or render the same injurious to health or unsafe for use;

"inspector" means an inspector designated under section 17;

"label" includes any legend, word, record or mark attached to, included in, belonging to, or accompanying any food, drug, cosmetic, device or package;

"package" includes anything in which any food, drug, cosmetic or device is wholly or partly contained, placed or packed;

"sell" includes offer for sale, expose for sale, have in possession for purposes of sale (whether by the person in possession or by some other person) and distribute.

(2) Where in this Act the expression "this Act" is used it shall be deemed to include references to regulations made under this Act.

PART II. *Foods, Drugs, Cosmetics and Devices*

GENERAL

No food, drug, etc., to be advertised or sold for the treatment, etc., of certain diseases. First Schedule.

3.—(1) A person shall not advertise any food, drug, cosmetic or device to the general public for the treatment, prevention or cure of any of the diseases, disorders or abnormal physical states mentioned in the First Schedule.

(2) A person shall not sell any food, drug, cosmetic or device—

(*a*) that is represented by label; or

(*b*) that he advertises to the general public,

for the treatment, prevention or cure of any of the diseases, disorders or abnormal physical states mentioned in the First Schedule.

Restrictions on importation.

4.—(1) Except as provided by the regulations, a person shall not import into the Island any food, drug, cosmetic or device unless it wholly conforms to the law of the country in which it was manufactured or produced and is accompanied by a certificate in prescribed form and manner that it does not contravene any known requirement of the law of that country and that its sale therein for consumption or use by or for man or animal, as the case may be, would not constitute a violation of the law thereof.

(2) A person shall not sell any food, drug, cosmetic or device imported into the Island in contravention of subsection (1).

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(3) Except as provided by the regulations a person shall not import into the Island any food, drug, cosmetic or device, the sale of which would be an offence under this Act.

FOOD

Prohibited sales of food.

5. A person shall not sell any food that—

(*a*) has in or upon it any poisonous or harmful substance;

(*b*) is unfit for human consumption;

(*c*) consists in whole or in part of any filthy, putrid, disgusting, rotten, decomposed or diseased animal or vegetable substance;

(*d*) is adulterated; or

(*e*) was manufactured, prepared, preserved, packaged or stored under insanitary conditions.

Food to be correctly labelled, packaged, etc.

6.—(1) A person shall not label, package, treat, process, sell or advertise any food in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character, value, quantity, composition, merit or safety.

(2) Any food that is not labelled or packaged as required by the regulations, or is labelled or packaged contrary to the regulations, shall be deemed to be labelled or packaged contrary to subsection (1).

(3) Where a standard has been prescribed for a food, a person shall not label, package, sell or advertise any article in such a manner that it is likely to be mistaken for such food, unless the article complies with the prescribed standard.

Insanitary conditions.

7. A person shall not manufacture, prepare, preserve, package or store for sale any food under insanitary conditions.

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DRUGS

Prohibited sales of drugs.

8. A person shall not sell any drug that—

(*a*) was manufactured, prepared, preserved, packaged or stored under insanitary conditions;

(*b*) is adulterated; or

(*c*) is stale.

Drugs to be correctly labelled, packaged, etc.

9.—(1) A person shall not label, package, treat, process, sell or advertise any drug in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character, value, quantity, composition, merit or safety.

(2) A drug that is not labelled or packaged as required by the regulations, or is labelled or packaged contrary to the regulations, shall be deemed to be labelled or packaged contrary to subsection (1).

(3) Where a standard has been prescribed for a drug, a person shall not label, package, sell or advertise any substance in such a manner that it is likely to be mistaken for such drug, unless the substance complies with the prescribed standard.

(4) Where a standard has not been prescribed for a drug, but a standard for the drug is contained in any publication mentioned in the Second Schedule, a person shall not label, package, sell or advertise any substance in such a manner that it is likely to be mistaken for such drug, unless the substance complies with such standard.

Second Schedule.

(5) Where a standard for a drug has not been prescribed and no standard for the drug is contained in any publication mentioned in the Second Schedule, a person shall not sell such drug, unless—

(*a*) it is in accordance with the professed standard under which it is sold; and

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(*b*) it does not resemble, in a manner likely to deceive, any drug for which a standard has been prescribed or which is contained in any publication mentioned in the Second Schedule.

Insanitary conditions.

10. A person shall not manufacture, prepare, preserve, package or store for sale any drug under insanitary conditions.

Distribution of samples.

11.—(1) A person shall not distribute or cause to be distributed any drug as a sample.

(2) Subsection (1) shall not apply to the distribution of samples of drugs to registered medical practitioners, registered dentists or veterinary surgeons, or by a manufacturer of drugs to any person acting as a distributor of drugs on behalf of such manufacturer.

COSMETICS

Prohibited sales of cosmetics.

12. A person shall not sell any cosmetic that—

(*a*) has in or upon it any substance that may cause injury to the health of the user when the cosmetic is used—

(i) according to the directions on the label or accompanying such cosmetic; or

(ii) for such purposes and by such methods of use as are customary or usual therefor;

(*b*) consists in whole or in part of any filthy or decomposed substance or of any foreign matter; or

(*c*) was manufactured, prepared, preserved, packaged or stored under insanitary conditions.

Cosmetic to be correctly labelled, packaged, etc.

13. Where a standard has been prescribed for a cosmetic, a person shall not label, package, sell or advertise any article in such a manner that it is likely to be mistaken for such cosmetic, unless the article complies with the prescribed standard.

14. A person shall not manufacture, prepare, preserve, package or store for sale any cosmetic under instanitary conditions. Insanitary conditions.

DEVICES

15. A person shall not sell any device that, when used according to directions or under such conditions as are customary or usual, may cause injury to the health of the purchaser or user thereof. Prohibited sales of devices.

16.—(1) A person shall not label, package, treat, process, sell or advertise any device in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character, value composition, merit or safety. Devices to be correctly labelled, packaged, etc.

(2) A device that is not labelled or packaged as required by the regulations, or is labelled or packaged contrary to the regulations, shall be deemed to be labelled or packaged contrary to subsection (1).

(3) Where a standard has been prescribed for a device, a person shall not, label, package, sell or advertise any article in such a manner that it is likely to be mistaken for such device, unless the article complies with the prescribed standard.

PART III. *Administration and Enforcement*

17. The Minister may from time to time designate any public officer whether by name or by the title of his office to be an inspector or analyst for the purposes of this Act. Designation of officers.

18. There shall be defrayed out of sums provided for the purpose by Parliament all expenses properly incurred in the administration of this Act. Administrative expenses.

19.—(1) An inspector may at any reasonable time— Powers and duties of inspectors and analysts.

(*a*) enter any place where he reasonably believes any food, drug, cosmetic or device is manufactured,

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prepared, preserved, packaged or stored for sale or sold, examine such food, drug, cosmetic or device and take samples thereof free of charge and examine anything that he reasonably believes is used or is capable of being used for the manufacture, preparation, preservation, packaging or storing thereof;

(*b*) open and examine any receptacle or package found in any such place as is mentioned in paragraph (*a*) that he reasonably believes contains any article to which this Act applies;

(*c*) examine any books, document or other records found in any such place as is mentioned in paragraph (*a*) which he reasonably believes contains any information that may assist in the enforcement of this Act and make copies thereof or extracts therefrom;

(*d*) seize and detain for such time as may be prescribed and subject to such conditions as may be prescribed any article by means of or in relation to which he reasonably believes any provision of this Act has been contravened.

(2) An inspector may examine or analyse any article seized by him or any sample therefrom or any sample taken by him or submit such article or sample to an analyst for examination or analysis.

(3) Where an inspector or analyst has made an examination or analysis he may issue a certificate or report setting out the result of his examination or analysis.

(4) An inspector shall be furnished with a certificate of designation and on entering any place pursuant to subsection (1) he shall, if required to do so, produce the certificate to the person in charge of the place.

(5) The owner or person in charge of a place entered by an inspector pursuant to subsection (1) and every person

found therein shall give the inspector all reasonable assistance in their power and shall furnish him with such information as he may reasonably require.

(6) Any article seized under this Act may at the option of an inspector be stored or kept in the building or place where it was seized or may on his direction be removed to any other place which he considers satisfactory for the purpose.

Disposal of article seized.

20.—(1) An inspector shall release any article seized by him under this Act when he is satisfied that all the provisions of this Act with respect thereto have been complied with.

(2) Where a person has been convicted of an offence under this Act, the court may order that any article by means of or in relation to which the offence was committed, belonging to the accused, be forfeited and upon such order being made, such article shall be forfeited and may be destroyed or otherwise disposed of as the Minister may direct.

Power of Minister to make regulations.

21. The Minister may make regulations for carrying the purposes and provisions of this Act into effect and in particular but without prejudice to the generality of the foregoing may make regulations—

(*a*) declaring that any food, drug or class of food or drugs is adulterated if any prescribed substance or class of substances is present therein or has been added thereto or extracted or omitted therefrom;

(*b*) respecting—

(i) the labelling and packaging and the offering, exposing and advertising for sale of food, drugs, cosmetics and devices;

(ii) the size, dimensions, fill and other specifications of packages of food, drugs, cosmetics and devices;

(iii) the sale, the prohibition of sale or the conditions of sale of any food, drug, cosmetic or device; and

(iv) the use, the prohibition of use or the conditions of use of any substance as an ingredient in any food, drug, cosmetic or device,

to prevent the consumer or purchaser thereof from being deceived or misled as to its quantity, character, value, composition, merit or safety or to prevent injury to the health of the consumer or purchaser;

(*c*) prescribing standards of composition, strength potency, purity, quality or other property of any article of food, drug, cosmetic or device;

(*d*) respecting the importation of foods, drugs, cosmetics and devices, in order to ensure compliance with this Act;

(*e*) respecting the method of preparation, manufacture, preserving, packaging, storing and testing of any food, drug, cosmetic or device in the interests of, or for the prevention of injury to, the health of the consumer or purchaser;

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(*f*) providing for the registration of drugs or devices, the granting of licences for the manufacture or importation of any drug or device and the imposition of fees in respect of any such registration or licence;

(*g*) exempting any food, drug, cosmetic or device from all or any of the provisions of this Act and prescribing the conditions of such exemption;

(*h*) prescribing forms for the purposes of this Act;

(*i*) respecting the powers and duties of inspectors and analysts and the taking of samples and the seizure, detention, forfeiture and disposal of articles;

(*j*) providing for the analysis of food, drugs, or cosmetics other than for the purposes of this Act and prescribing a tariff of fees to be paid for such analysis;

(*k*) adding anything to or deleting anything from either of the Schedules, in the interests of, or for the protection of the public health;

(*l*) requiring persons who sell food, drugs, cosmetics or devices to maintain such books and records as the Minister considers necessary for the proper enforcement and administration of this Act and to produce such books and records to any person authorized in that behalf by the Minister;

(*m*) prescribing anything required to be prescribed under this Act.

Procedure with respect to regulations.

22.—(1) A draft of all regulations proposed to be made under section 21 shall be published in the *Gazette* so as to permit representations to be made to the Minister by any person concerning any provision of the regulations to which that person objects.

(2) The Minister shall, when making the regulations, consider every such objection if made in writing within thirty days of the date of publication of the draft regulations.

(3) Where the Minister conciders it necessary in the public interest or in the interest of, or for the protection of the public health, he may make regulations under section 21 without regard to the provisions of subsection (1), so, however, that any regulations so made shall be subject to negative resolution.

Power of Minister to require information.

23.—(1) For the purpose of enabling him to exercise his functions under this Act, the Minister may by order require every person who at the date of the order or at any subsequent time carries on a business which includes the

production, importation or use of substances of any class specified in the order to furnish to the Minister, within such time as may be so specified, such particulars as may be so specified, of the composition and use of any substances which in the course of that business are used, or sold for use, in the preparation of food, drugs or cosmetics.

(2) Without prejudice to the generality of subsection (1), an order made thereunder may require the following particulars to be furnished in respect of any substance, that is to say—

(*a*) particulars of the composition and chemical formula of the substance;

(*b*) particulars of the manner in which the substance is used or proposed to be used in the preparation of food, drug or cosmetic;

(*c*) particulars of any investigations carried out by or to the knowledge of the person carrying on the business in question, for the purpose of determining whether and to what extent the substance, or any product formed when the substance is used as aforesaid, is injurious to, or in any other way affects health;

(*d*) particulars of any investigations or inquiries carried out by or to the knowledge of the person carrying on the business in question for the purpose of determining the cumulative effect on the health of a person consuming the substance in ordinary quantities.

Establishment of Advisory Committees.

24.—(1) The Minister may establish—

(*a*) a Food Advisory Committee to assist and advise him with respect to food standards, labelling and other matters connected with the manufacture and distribution of foods in the interest of, and for the protection of, the public health;

(*b*) a Drug Advisory Committee to assist and advise him with respect to drug standards, conditions of sale of drugs and any other matters connected therewith in the interest of, and for the protection of, the public health.

(2) A committee established under subsection (1) shall be representative of lay and professional interests and shall comprise such person as by reason of their knowledge, interest and experience are considered suitable for appointment thereto.

OFFENCES

25. Every person who— Offences.

(*a*) moves or causes or allows to be moved any article in contravention of this Act;

(*b*) assaults or obstructs any officer designated under this Act acting in the execution of his duty under this Act;

(*c*) bribes or attempts to bribe any inspector or analyst in connection with any matter arising in the exercise or performance of his powers or duties under this Act;

(*d*) being an inspector or analyst accepts any bribe in connection with any matter arising in the exercise or performance of his powers or duties under this Act;

(*e*) knowingly gives false or misleading information to an inspector;

(*f*) contravenes sections 3 to 16 inclusive or subsection (5) of section 19,

shall be guilty of an offence and shall on summary conviction before a Resident Magistrate be liable to a fine not exceeding fifty thousand dollars or to imprisonment with or without hard labour for a term not exceeding twelve months. 7/1996 S. 2.

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Offence by body corporate.

26. Where a person committing an offence against this Act is a body corporate, the chairman, president, the officers and every director thereof concerned in the management of the body corporate, shall be guilty of the same offence unless he proves that the act or omission constituting the offence took place without his knowledge or that he exercised all due diligence to prevent the commission thereof.

Fiat of the Director of Public Prosecutions.

27. A prosecution for an offence under paragraph (*c*) or (*d*) of section 25 shall not be instituted without the sanction of the Director of Public Prosecutions.

Penalties in regulations.

28. Notwithstanding the provisions of section 29 of the Interpretation Act regulations made under section 21 or an order made under section 23 may prescribe greater penalties than those specified in the said section 29, so, however, that the maximum penalty that may be imposed by any such regulations shall be a fine of two thousand dollars or imprisonment with or without hard labour for a term of twelve months.

EVIDENCE

Want of knowledge.

29.—(1) In a prosecution for the sale of any article in contravention of this Act, if the person charged proves to the satisfaction of the Resident Magistrate that—

(*a*) he purchased the article from another person in packaged form and sold it in the same package and in the same condition the article was in at the time he purchased it; and

(*b*) that he could not with reasonable diligence have ascertained that the sale of the article would be in contravention of this Act,

the person charged shall be acquitted.

(2) Subsection (1) shall not apply in any prosecution unless the accused, at least ten days before the day fixed

for the trial, has given to the prosecutor notice in writing that he intends to avail himself of the provisions of subsection (1) and has disclosed to the prosecutor the name and address of the person from whom he purchased the article and the date of purchase.

Presumptions.

30.—(1) For the purpose of this Act—

(*a*) any article commonly used for human consumption shall, if sold, be presumed, until the contrary is proved, to have been sold for human consumption;

(*b*) any article commonly used for human consumption which is found on premises used for the manufacture, preparation, preservation, packaging or storage for sale or sale of that article and any article commonly used in the manufacture or preservation of products for human consumption which is found on premises used for the manufacture, preparation, preservation, packaging or storage for sale or sale of these products, shall be presumed, until the contrary is proved, to be intended for sale, or for manufacturing products for sale, for human consumption;

(*c*) any substance capable of being used in the composition or preparation of any article commonly used for human consumption which is found on premises on which that article is prepared shall, until the contrary is proved, be presumed to be intended for such use.

(2) In a prosecution for an offence under this Act it shall be sufficient proof of the offence to establish that it was committed by an employee or agent of the accused whether or not such employee or agent has been prosecuted for the offence; and for the purposes of this subsection, any person selling or ostensibly employed to sell shall be presumed to be employed to sell.

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Possession of adulterating substances.

31. Where a person is prosecuted under this Act for having manufactured an adulterated food or drug for sale, and it is established that—

(*a*) the food or drug has by regulation been declared to be adulterated if any prescribed substance has been added thereto; and

(*b*) such person had in his possession or on his premises any such prescribed substance,

the onus of proving that the food or drug was not adulterated by the addition of such substance shall be on the person charged.

Name of manufacturer.

32. Proof that a package containing any article to which this Act applies bore a name or address purporting to be the name or address of the person by whom it was manufactured or packaged shall be *prima facie* proof, in a prosecution for a contravention of this Act, that the article was manufactured or packaged, as the case may be, by the person whose name or address appeared on the package.

Certificates of analysis.

33.—(1) Subject to subsection (2), the certificate of an inspector or analyst stating that he has examined or analysed an article or sample for the purposes of this Act and stating the result of his examination or analysis shall be admissible in evidence in a prosecuition for a contravention of this Act and shall be *prima facie* proof of the statements contained in the certificate but the party against whom it is produced may require the attendance of the inspector or analyst for the purpose of cross-examining him.

(2) A certificate under subsection (1) shall be not admissible in evidence unless the party intending to produce it has before the trial given to the party against whom it is intended to produce it reasonable notice of such intention and a copy of the certificate.

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34. In a prosecution for a contravention of this Act a copy of a record or an extract therefrom certified to be a true copy by the inspector who made it pursuant to paragraph (*c*) of subsection (1) of section 19 shall be admissible in evidence and shall be *prima facie* proof of the contents thereof. Copies of records.

FIRST SCHEDULE (Sections 3, 21)

Alcoholism
Appendicitis
Arteriosclerosis
Blood Poisoning
Bright's Disease
Cancers and Sarcomas
Cataract
Diabetes
Disorders of menstrual flow
Disorders of the prostatic gland
Dropsy
Epilepsy
Gallstones, Kidney Stones, Bladder Stones
Glaucoma
Goitre
Heart Diseases
High Blood Pressure
Infantile Paralysis
Influenza
Lockjaw
Locomotor Ataxia
Osteo-arthritis
Paralysis
Pleurisy
Pneumonia
Rheumatoid Arthritis
Ruptures
Sexual Impotence
Tuberculosis
Tumours
Typhoid Fever
Ulcers of the gastro-intestinal tract
Venereal Diseases

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SECOND SCHEDULE (Sections 9, 21)

Pharmacopoeia Internationalis
The British Pharmacopoeia
The Pharmacopoeia of the United States of America
The Canadian Formulary
The British Pharmaceutical Codex
The National Formulary
The Extra Pharmacopoeia-Martindale

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