

CHAPTER 231**FOOD, DRUGS AND DRINKING WATER ACT**

To provide for the hygienic and other control of food, drugs and drinking water.

(29th September, 1972)*

(1st May, 1978)†

Enacted by ACT XL of 1972, as amended by Acts: XI of 1977, XIII of 1978, I of 1979, XIII of 1983, X of 1986, VIII of 1990 and XIX of 1996.

ARRANGEMENT OF ACT

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*See subsection (2) of section 1 of the Act as originally enacted, which has been omitted under the Statute Law Revision Act, 1980, and Government Notice No. 697 of 29th September, 1972.

†See subsection (3) of section 1 of the Act as originally enacted, which has been omitted under the Statute Law Revision Act, 1980, and Legal Notice 55 of 1978.

Short title.

1. This Act may be cited as the Food, Drugs and Drinking Water Act.

Interpretation.
Amended by:
XI. 1977.2;
XIII. 1978.2;
I. 1979.2;
X. 1986.2;
XIX. 1996.10.

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

*"advertisement" includes any notice, circular, label, wrapper, invoice or other document, and any broadcast whether by visual or acoustic presentation or by both, and "to advertise" shall be construed accordingly;

"analyst" means any analyst attached to the department of health and, for the purposes of the analysis and examination of -

(a) any article of food for which a standard has been prescribed under this Act, includes any analyst engaged in the analysis of food at the department of industry;

(b) raw milk, includes any analyst engaged in the analysis of raw milk at a milk marketing undertaking;

"animal" means bovines, ovines, caprines, swine and equines;

"article" does not include a live animal or bird;

*"authorised officer" means any medical officer of health or other medical officer attached to the department of health and deputed by the Superintendent of Public Health, or any health inspector, and for the purposes of sampling and testing of milk, as well as inspections of dairy farms, any other public officer in government service duly authorised in writing for the purpose by the Superintendent of Public Health;

Cap. 419.

*"Authority" means the Malta Standards Authority established by section 3 of the Malta Standards Authority Act;

*"business" means any undertaking or activity in connection with food, drugs, or their production or manufacture, whether carried on for profit or not;

"catering premises", in relation to milk, means any canteen, club, school, hospital, restaurant, hotel, eating house or other premises where, in the course of a business, the sale of milk is carried on for the purpose of immediate consumption thereon and where such sale is only incidental to that business;

*"coastal ship" means any ship or other craft plying exclusively between one part of Malta and another;

*"container" includes any basket, pail, tray, package or receptacle of any kind, whether open or closed;

Cap. 94.

*"Council of Health" means the Council of Health constituted under the Department of Health (Constitution) Ordinance or under any other law substituting it;

"cream" means that part of milk rich in fat which has been separated by skimming or otherwise;

"dairy" includes any milk depot, milk store, milk shop, milk marketing undertaking or other premises from which milk is

*No longer in force - *vide* Legal Notice 263 of 2002.

supplied on or for sale, or in which milk is kept or used for purposes of sale or for the purpose of processing or of any other treatment whatsoever for sale or for the purpose of manufacture into milk products for sale, or in which vessels used for the sale of milk are kept, but does not include any dairy farm or catering premises;

"dairy farm" means any farm, cowshed, sheep-pen, goat-pen or any other premises in or on which raw milk is produced, and includes any milk room or milking room;

"dairy farmer" means the keeper of a dairy farm;

"dairyman" means the keeper of a dairy;

"drug" includes any medicine for internal or external use, and any antiseptics, disinfectants and cosmetics;

*"food" includes drink, chewing gum or other products of a like nature and use, and articles and substances used as ingredients in the preparation of food or drink or of such products, but does not include -

- (a) water, live animals or birds,
- (b) fodder or feeding stuffs for animals, birds or fish, or
- (c) articles or substances used only as drugs;

"imitation cream" means a substance which, not being cream or reconstituted cream, resembles cream in appearance and is produced by emulsifying edible oils or fats with water, either by themselves or with other substances which are neither prohibited by regulations made under this Act nor added in quantities so prohibited;

"inspector" means any government veterinary surgeon or other suitably qualified person authorised in writing by the Superintendent of Public Health to act in relation to the examination and condemnation of meat;

*"Malta" has the same meaning as is assigned to it by section 124 of the Constitution of Malta;

"milk" includes cream and separated milk, but does not include dried milk or condensed milk;

"milk depot" means a room, centre, depot or other premises, not being a milk room, used for the collection and/or keeping or storage of raw milk in or about, or in connection with, a dairy;

"milking room" means any room, shed, parlour or other premises in or about a dairy farm in which milch animals are milked;

"milk room" means a room or other premises in or about a dairy farm in which raw milk is strained, cooled, kept or stored prior to disposal by way of sale or otherwise, and includes any room or other premises in which any equipment or utensil used for milk is cleansed or stored;

"milk shop" means -

*No longer in force - *vide* Legal Notice 263 of 2002.

- (a) any shop, room or other premises at or from which milk is kept, supplied, sold, offered or exposed for sale in properly closed and unopened vessels in which it is delivered to those premises;
- (b) any shop, room or other premises at or from which milk is sold for immediate consumption thereon but where, in the course of a business, the sale of milk, alone or together with any milk products, forms, in the opinion of the Superintendent of Public Health, a substantial part of that business; and
- (c) any stall at or from which milk is sold or is kept, offered or exposed for sale;

"milk store" means a room or other premises in which milk, other than raw milk, is kept or stored in or about, or in connection with, a dairy;

*"Minister" means the Minister responsible for public health and includes, to the extent of any authority given, any person authorised in that behalf for any purpose of this Act;

*"packaging" means containing in any vessel, and includes bottling;

*"person" includes any company or other association or body of persons, whether vested with legal personality or not;

"poultry" includes fowls, turkeys, ducks, geese, guinea-fowls, turtle-doves, pheasants, partridges, pigeons and quails;

"premises", except in section 26 of this Act, means a building or part of a building, and any forecourt, yard or place of storage used in connection with a building or part of a building, and includes, in relation to dairies and dairy farms, and the trade of dairyman or dairy farmer, any land other than buildings;

"preparation", in relation to food, includes manufacture and any form of treatment, and "preparation for sale" includes packaging; and "to prepare" and "to prepare for sale" shall be construed accordingly;

"public slaughterhouse" means a slaughterhouse under government control;

"raw milk" means milk which has not been pasteurised or otherwise heat treated in accordance with the provisions of this Act or any regulations made thereunder;

"reconstituted cream" means a substance which, not being cream, resembles cream in appearance and contains no ingredient not derived from milk, except ingredients (not added fraudulently to increase bulk, weight or measure, or to conceal inferior quality) which may lawfully be contained in a substance sold for human consumption as cream, or except water;

*"sanitary authority" includes the Superintendent of Public Health, the Principal Medical Officer, the Senior Medical Officer,

*No longer in force - *vide* Legal Notice 263 of 2002.

the Medical Officer of Health, any health inspector, and any other officer attached to the department of health duly authorised in writing by the Superintendent of Public Health to ensure the observance of the provisions of this Act and of any regulations made thereunder;

*"to sell" includes to offer, expose, advertise or keep for sale, and to supply by way of compensation or otherwise;

"separated", in relation to milk, includes skimmed;

*"ship" includes any sea-going craft;

"slaughterhouse" means a place for slaughtering animals, the flesh of which is intended for sale for human consumption, and includes any place available in connection therewith for the confinement of animals while awaiting slaughter there or for keeping, or for subjecting to any treatment or process, products of the slaughtering of animals there;

"slaughterhouse facilities" means facilities for carrying on the activities of a slaughterhouse including plant and apparatus and the services of persons as slaughtermen or otherwise;

*"stall" includes any stand, marquee, tent or mobile canteen, and any vehicle, whether movable or not;

"vessel" includes a receptacle of any kind, whether open or closed.

PART I

GENERAL PROVISIONS

3. *Repealed by Act XIX.1996.10.*

Constitution of
Food Standards
Board.
Amended by:
X. 1986.3.

4. *Repealed by Act XIV.2002.52.*

Regulations and
orders by Minister.
Amended by:
XIX.1996.10.

5. (1) *Repealed by Act XIV.2002.52.*

Adding of
substances to food
or drugs, etc.

(2) No person shall add any substance to, or abstract any constituent from, any drug as to affect injuriously the quality, constitution or potency of the drug, with intent that the drug may be sold in that state.

6. (1) *Repealed by Act XIV.2002.52.*

Prohibition of sale,
etc., of certain food
or drugs.

(2) No person shall sell, or offer, expose or advertise for sale, or have in his possession for the purpose of sale, or supply by way of compensation or otherwise any drug injuriously affected in its quality, constitution or potency.

*No longer in force - *vide* Legal Notice 263 of 2002.

(3) *Repealed by Act XIV.2002.52.*

(4) If a person licensed under section 26 to keep a slaughterhouse is found guilty of an offence against the provisions of subsection (1) of this section, the court may, and, in the case of a second or subsequent conviction the court shall, besides awarding punishment according to law, suspend the relative licence from one month to six months.

Food offered as prize, etc.

7. *Repealed by Act XIV.2002.52.*

Sale of food or drugs to the prejudice of the purchaser.

*8. (1) No person shall sell, to the prejudice of the purchaser, any food intended for human consumption or any drug which is not of the nature, substance or quality of the food or drug demanded by such purchaser.

(2) In any proceedings for an offence under this section, it shall not be a defence to allege that the purchaser bought only for analysis of examination and therefore was not prejudiced.

Defence in certain proceedings.
Amended by:
XIII. 1978.3.

9. (1) *Repealed by Act XIV.2002.52.*

(2) The provisions of the preceding subsection shall apply in relation to proceedings for an offence consisting of the sale of any drug to which any substance has been added, or from which any constituent has been abstracted, other than a drug thereby injuriously affected in its quality, constitution or potency, as they apply in relation to any such offence as is mentioned in the said subsection.

†(3) In any proceedings under section 8 in respect of any food or drug containing some extraneous matter, it shall be a defence for the defendant to prove that the presence of that matter was an unavoidable consequence of the process of collection or preparation.

(4) Saving any other specific provision of law to the contrary, in any proceedings under section 8 in respect of any adulterated spirits it shall be a defence for the defendant to prove that such adulteration consisted solely in the admixture of water and that the diluted spirit was of a strength not below -

- (a) 40 per cent absolute alcohol, volume in volume, in the case of whisky, brandy, rum or gin; or
- (b) 20 per cent absolute alcohol, volume in volume, in the case of other alcoholic drinks, except wine and beer.

Preparation, etc., of food under insanitary conditions.

10. *Repealed by Act XIV.2002.52.*

Articles of food equal or similar in appearance to other articles of common use.

11. *Repealed by Act XIV.2002.52.*

*In force only in so far as it relates to drugs - *vide* Legal Notice 263 of 2002.

†In force only in so far as it relates to drugs - *vide* Legal Notice 263 of 2002.

12. *Repealed by Act XIV.2002.52.*

Power of Minister to make regulations in respect of composition, etc., of food.

13. The Minister may make regulations regarding the importation, preparation, manufacture, composition, advertisement and sale of drugs.

Power of Minister to make regulations in respect of composition, etc., of drugs.

14. *Repealed by Act XIV.2002.52.*

Labelling of food.

***15.** (1) It shall not be lawful for any person to display with any food or drug exposed or kept for sale, or to give with any food or drug sold, any label, whether attached or affixed to or printed on, the container or wrapper thereof or not, which falsely describes such food or drug or which is calculated to mislead as to its nature, substance or quality.

False labelling or advertisement of food or drugs.

(2) It shall likewise be unlawful for any person to publish, or to be a party to the publication of, an advertisement (other than a label referred to in subsection (1) of this section) which falsely describes any food or drug or which is calculated to mislead as to its nature, substance or quality:

Provided that, in any proceedings under this subsection, it shall be a defence for the defendant to prove that he did not know, and could not with reasonable diligence have ascertained, that the advertisement was of such a character as is described in this subsection.

(3) For the purposes of this section, a label or advertisement which is calculated to mislead only as to the nutritional or dietary value of any food shall be deemed to be calculated to mislead as to the quality of the food.

(4) In any proceedings for an offence under this section, it shall not be a defence to prove that the label or advertisement contained an accurate statement of the composition of the food or drug if such label or advertisement contravened in some other respect the provisions of this section.

(5) In this section, "food" means food intended for human consumption.

16. *Repealed by Act XIV.2002.52.*

Power of Minister to make regulations in respect of food hygiene.

17. The Minister may make regulations regarding sanitary and cleanly conditions and practices in connection with the sale, importation, manufacture, preparation, transport, storage, packaging, wrapping, keeping or exposing for sale of any drug.

Power of Minister to make regulations in respect of drugs.

*In force only in so far as it relates to drugs - *vide* Legal Notice 263 of 2002.

Employees, etc., suffering from certain diseases.	18. <i>Repealed by Act XIV.2002.52.</i>
Control of suspected food.	19. <i>Repealed by Act XIV.2002.52.</i>
Licensed premises, etc., to be used in accordance with licence.	20. <i>Repealed by Act XIV.2002.52.</i>
Power of Minister to make regulations in respect of licensing of premises, etc.	21. <i>Repealed by Act XIV.2002.52.</i>
Prohibition on importation of certain food.	22. <i>Repealed by Act XIV.2002.52.</i>
Presumptions.	23. For the purposes of this Act and of any regulations made thereunder - <ul style="list-style-type: none"> (a) <i>Repealed by Act XIV.2002.52.</i> (b) <i>Repealed by Act XIV.2002.52.</i> (c) <i>Repealed by Act XIV.2002.52.</i> (d) any drug which is found on premises used for the preparation, packaging, keeping, storage, sale or other disposal of drugs, or which is exposed for sale or advertised, shall be presumed, until the contrary is proved, to be intended for sale.

PART II

WATER

Contamination of water.	24. <i>Repealed by Act XIV.2002.52.</i>
Polluted water. <i>Amended by: VIII. 1990.3.</i>	25. <i>Repealed by Act XIV.2002.52.</i>

PART III

MEAT

Licensing of slaughterhouses. <i>Amended by: XIII. 1978.4.</i>	<p>26. (1) No person shall, without the permission of the government veterinary surgeon, slaughter any animal, the flesh of which is intended for sale for human consumption, except in a slaughterhouse.</p> <p>(2) No person shall use any premises as a slaughterhouse, or permit them to be so used, unless he holds a licence by the Superintendent of Public Health authorising him to keep those premises as a slaughterhouse:</p>
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Provided that nothing in this subsection shall apply in

relation to any premises used as a public slaughterhouse.

(3) The Superintendent of Public Health may refuse any application for the grant or renewal of a licence under this section if he is satisfied that -

- (a) existing alternative slaughterhouse facilities available in public slaughterhouses are adequate having regard to the reasonable requirements of the person applying for the grant or renewal of such licence and no additional facilities are required; or
- (b) the requirements of any regulations made under paragraph (a) or (b) of subsection (2) of section 16 or under section 28 are not complied with in respect of those premises.

27. The government veterinary surgeons shall be responsible for seeing that any public slaughterhouse is kept in a sanitary and hygienic condition, is properly managed and is provided with suitable plant or apparatus for disposing of, treating or processing waste matters, refuse or by-products, resulting from the slaughter of animals in such slaughterhouse.

Responsibility for public slaughterhouses.

28. *Repealed by Act XIV.2002.52.*

Power of Minister to make regulations in connection with slaughterhouses.

29. Every animal intended for sale for human consumption shall be subjected alive, before slaughtering, to inspection for the purpose of ascertaining its age, state of nutrition and condition of health:

Inspection of animals prior to slaughtering.

Provided that -

- (i) where an animal is killed by meteoric phenomena or dies of internal haemorrhage or of traumatic or accidental lesions, or
- (ii) where by reason of accidental injury, illness, exposure to infection or other emergency affecting that animal it is necessary that an animal should be slaughtered without delay,

the above provision of this section shall not apply but no portion of its carcass or of its offal shall be sold or offered for sale or otherwise disposed of for human consumption without the previous inspection and approval of the inspector.

30. (1) Any animal affected, or suspected of being affected, with any disease communicable to man, or with any other disease as may be prescribed by regulations made by the Minister under this subsection, shall be slaughtered separately from other animals.

Control of slaughter of certain diseased animals.

(2) No animal affected, or suspected of being affected, with rabies, glanders or anthrax shall be slaughtered in any slaughterhouse.

31. *Repealed by Act XIV.2002.52.*

Power to condemn carcasses, etc.

Inspection and stamping of meat before removal from slaughterhouse.

32. No portion of any slaughtered animal shall be removed from the slaughterhouse until it has been subjected to an inspection and stamped.

Sale of horseflesh.

33. No person shall -

- (a) sell, or offer, expose or keep for sale the flesh of equines in the same shop used for the sale for human consumption of any meat of bovines, ovines, caprines or swine; or
- (b) sell, or offer, or expose for sale, for human consumption the flesh of equines elsewhere than in premises, or in a stall, licensed for that purpose and over or on which a notice bearing the words "HORSE FLESH/LAHAM TAŻ-ŻIEMEL" is displayed in a conspicuous position and is easily legible.

Prohibition of sale of unstamped meat.
Amended by:
XIII. 1978.5.

34. No person shall sell, or offer or expose for sale, or have in his possession for the purpose of sale or of preparation for sale, for human consumption any meat or offal of any animal slaughtered in Malta unless such meat or offal is duly stamped as provided by regulations made under section 28:

Provided that any such stamp shall not exculpate any person who sells any meat or offal or any meat product which is deteriorated or in any way unfit for human consumption:

Provided further that, subject to the other provisions of this Act, meat sold in a sealed pre-packed container and prepared and packed in premises licensed for the purpose, need not bear such stamp.

Prohibition of sale, etc., of certain meat.

35. No person shall -

- (a) sell, or offer, expose or advertise for sale,
- (b) deposit with, or consign to, any person, or have in his possession for the purpose of sale or of preparation for sale, or
- (c) supply by way of compensation or otherwise,

for human consumption, any part of, or product derived wholly or partly from, any animal the slaughter whereof is forbidden, or any carcass or any part thereof, or any offal, as the case may be, which on inspection has been found to be unfit for human consumption, or any meat or offal which is or is rendered injurious to health or is deteriorated, unsound, unwholesome or otherwise unfit for human consumption.

Cold-air stores to be licensed.

36. No person shall use any premises, or part of a premises, as a cold-air store for the storage and preservation therein of any meat or other article of food intended for human consumption, or to permit them to be so used, unless such premises, or such part thereof, are covered by a licence issued for the purpose.

Prohibition of cold-storing of certain meat, etc.

37. No person shall deposit or keep in any cold-air store or refrigerator, for the purpose of sale or of preparation for sale, any meat or meat product which has been imported in contravention of

the provisions of section 22 or 38, or any carcass or part of a carcass or any meat or offal which, in the opinion of any authorised officer or of any inspector, is of the kind, or in the state or condition, specified in section 35.

38. Saving the provisions of section 22, no person shall import into Malta for sale, or for preparation for sale, for human consumption any meat or offal of the kind, or in the state or condition, specified in section 35:

Prohibition of importation of certain meat.

Provided that in any proceedings for an offence against this section, it shall be a defence for the defendant to prove that at the time when he imported such meat or offal he did not know, and could not with reasonable diligence have ascertained, that such meat or offal was deteriorated, unsound or unwholesome, or unfit for human consumption.

39. (1) No person shall inflate any poultry or rabbit for the purpose of making it appear fatter, or keep it in water for purposes of preservation, or subject it to any treatment to conceal its deterioration or incipient putrefaction.

Inflation of poultry, etc.

(2) Any powers conferred by or under the provisions of this Act on any authorised officer in relation to food or meat may be exercised by him in relation to poultry or rabbits.

PART IV

MILK AND MILK PRODUCTS

40. (1) It shall not be lawful for any person to keep any dairy or dairy farm unless such dairy or dairy farm is covered by a licence issued by the Superintendent of Public Health:

Dairy and dairy farm to be licensed.

Provided that any milk shop needs only to be registered with the Superintendent of Public Health.

(2) No dairy or dairy farm which is licensed under subsection (1) of this section may be used otherwise than for the purpose of such licence; no such dairy or dairy farm, and no milk shop which is registered under the said subsection (1) may be used otherwise than in accordance with any terms or conditions as may be attached to, or imposed by, the relevant licence or registration.

41. (1) No person may carry on the trade of dairyman or of dairy farmer unless he is registered as such with the Superintendent of Public Health.

Dairyman and dairy farmer to be registered.

(2) The Superintendent of Public Health shall not register any person as dairyman or as dairy farmer unless the premises or stall to be used by such person for the purposes of his trade is covered by a licence or is registered, as the case may be, in accordance with the provisions of subsection (1) of section 40.

(3) Where any licence in respect of any dairy farm or any licence or registration in respect of any dairy is cancelled or is not

renewed, any person registered under this section in virtue of such farm or dairy shall cease to be so registered.

Power to make regulations regarding dairies and dairy farms.

42. *Repealed by Act XIV.2002.52.*

Power to make regulations regarding milk.

43. *Repealed by Act XIV.2002.52.*

Application of regulations.

44. *Repealed by Act XIV.2002.52.*

Adulteration of milk.

45. (1) No person shall add any water, or any dried or condensed milk or liquid reconstituted therefrom, or any other substance whatsoever, to milk intended for sale for human consumption.

(2) No person shall add any colouring or flavouring substance to milk intended for sale for human consumption under the designation of milk.

(3) No person shall add any separated milk, or mixture of cream and separated milk, to unseparated milk intended for sale for human consumption.

(4) Nothing in subsection (2) of this section shall be deemed to imply that any colouring or flavouring substance can be added to milk or to things made from milk or of which milk is an ingredient unless such substance is of the highest standard of purity and is neither prohibited by regulations made under section 12 or 43 nor added in quantities so prohibited.

Prohibition of sale of certain milk.

46. (1) No person shall sell, or offer, expose or advertise for sale, or have in his possession for sale, or supply by way of compensation or otherwise, for human consumption -

- (a) any milk produced by animals within fifteen days before, or during the five days immediately after, parturition;
- (b) the milk of any animal suffering from any disease of the udder or teats or from mastitis, tuberculosis, foot-and-mouth disease, anthrax or any other disease named in an order made by the Minister under this paragraph;
- (c) any milk being in contravention of the provisions of any regulations made under section 12 or 43 or of the provisions of section 45; or
- (d) any milk produced, or processed, treated, packaged, kept or conveyed in premises or stalls, as the case may be, or under conditions which would constitute a violation of the provisions of any regulations made under section 16 or 42.

(2) No person shall sell, or offer or expose for sale, under the designation of milk any liquid in the making of which any separated milk, or any dried or condensed milk, has been used.

(3) No person shall use in the manufacture of products for sale

for human consumption any such milk as is described under subsection (1) of this section.

(4) When any proceedings are taken in respect of an offence against the provisions of paragraph (b) of subsection (1) of this section, it shall be presumed that the defendant was cognisant of the fact that the animal was suffering from the disease referred to in the said paragraph if he could, with ordinary care, have ascertained such fact.

47. (1) No person shall for the purpose of the sale or advertisement of any milk use a special designation in respect of that milk or of the milk to which it refers unless such sale or advertisement conforms with the requirements and conditions as may be prescribed by regulations made under section 43 in respect of the use of such special designation.

Restrictions on use of special designations.

(2) No person shall for the purpose of the sale or advertisement of any milk refer to that milk by any such description as might be calculated falsely to suggest -

- (a) that a special designation has been prescribed in connection with that milk,
- (b) that the milk is tested, approved or graded by any competent person, or
- (c) that the animals from which the milk is derived are free from the infection of any disease.

48. *Repealed by Act XIV.2002.52.*

Power to make regulations in respect of certain areas.

49. *Repealed by Act XIV.2002.52.*

Use of designation "cream" in relation to cream substitutes.

PART V

PENAL AND OTHER PROVISIONS

***50.** (1) Subject to the provisions of this section, any authorised officer shall, on producing, if so required, some duly authenticated document showing his authority, have a right to-

Powers of authorised officer.

- (a) enter any premises, or any vehicle, stall or place other than premises, or any aircraft, coastal ship or other ship for ensuring compliance with the provisions of this Act and of any regulations made thereunder, as well as for the purpose of ascertaining whether there is or has been on, or in connection with, such premises, vehicle, stall, place, aircraft, coastal ship or other ship any contravention of the provisions of this Act or of any regulations made thereunder;
- (b) examine any article to which this Act or any

*In force only in so far as it relates to drugs - *vide* Legal Notice 263 of 2002.

regulations made thereunder apply and take, on payment of the current market value, samples thereof for analysis, or for bacteriological or other examination; and

- (c) seize and remove any such article in relation to which reasonable ground for suspicion exists that any provision of this Act or of any regulations made thereunder is being or has been contravened.

(2) The powers conferred upon any authorised officer under paragraph (a) of subsection (1) of this section and under paragraph (b), in so far as they relate to the examination of any article, of the said subsection may, when any authorised officer so requires, be exercised by any police officer.

(3) Any authorised officer may, when acting under the provisions of subsection (1) of this section, be assisted by a police officer.

(4) Nothing contained in subsection (1) of this section shall be deemed to exonerate any authorised officer from non-compliance with the provisions of the Medical and Kindred Professions Ordinance or of the Dangerous Drugs Ordinance or of any regulations or rules made thereunder, in connection with the taking of any drug or any sample thereof.

(5) The taking of any article under paragraph (b) of subsection (1) of this section shall, for the purposes of this Act or of any regulations made thereunder, be deemed to be a sale of that article.

(6) In subsection (1) of this section, the expression "any article" includes -

- (a) any food or drug, or any substance capable of being used in the composition or preparation of any food or drug;
- (b) any thing used or capable of being used for the manufacture, preparation, preservation, packaging or storage thereof; and
- (c) any labelling or advertising material.

Cap. 31.
Cap. 101.

Power to examine
food in course of
delivery.

Removal, etc., of
articles seized.

51. *Repealed by Act XIV.2002.52.*

***52.** (1) No person, without the written permission of the sanitary authority or of an authorised officer, shall remove, alter, tamper or otherwise interfere in any way with any article seized under the provisions of this Act.

(2) Any article so seized may, at the option of the said authority or officer, either be kept or stored at the place or premises where it was seized or be removed to such other place or premises as the said authority or officer may direct.

*In force only in so far as it relates to drugs - *vide* Legal Notice 263 of 2002.

53.* (1) When any sample of any article is taken in accordance with the provisions of section 50 of this Act, the authorised officer shall take a suitable quantity of such article and shall inform the person having the charge for the time being of such article (in this section referred to as "the seller") that he intends to submit the sample for analysis or examination.

Taking of samples.
Amended by:
XIII. 1978.6.

(2) When any sample is taken as aforesaid, the quantity so taken, if so requested by the seller at the moment of the taking of the sample and unless in the opinion of the authorised officer division of the quantity taken is not reasonably practicable or would interfere with analysis or examination, shall be divided into three approximately equal parts, one part thereof to be handed over to the seller and the other two parts to be retained by the authorized officer for analysis or examination.

(3) Each sample taken, or any part thereof as the case may be, shall -

- (a) be sealed in such manner that it cannot be opened without breaking the seal, and
- (b) be signed, or bear affixed to it a tag signed, by both the seller and the authorised officer:

Provided that, if the seller is unable or refuses to sign the sample, or any part thereof, or the tag, as the case may be, the signature thereon of the authorised officer shall be sufficient:

Provided further that, if the seller is unable or refuses to be present during the taking of the sample, the authorised officer may take the sample notwithstanding the absence of such seller and, in that case, the provisions of this section referring to the signature of the seller shall not apply.

(4) Where an authorised officer takes a sample from an automatic vending machine, the provisions of the preceding subsections of this section shall apply as if for the reference to the seller there were substituted a reference to the person whose name appears on the machine as being the owner thereof or person responsible therefor.

(5) Where an authorised officer takes a sample of any imported article before such article is withdrawn by the importer or his agent or representative, the provisions of subsections (1), (2) and (3) of this section shall apply as if for the reference to the seller there were substituted a reference to the importer thereof.

54.* Any person, other than an authorised officer, who has purchased any food intended for human consumption or any drug, or any substance capable of being used in the composition or preparation of any such food or drug, may submit a sample thereof to the analyst for analysis or other examination:

Any person may
have food, etc.,
analysed.

Provided that, where such person notifies the seller of the food, drug or substance, as the case may be, of his intention to submit a sample thereof to be analysed or examined, the procedure

*In force only in so far as it relates to drugs - *vide* Legal Notice 285 of 2002.

set out in section 53 for the taking of a sample shall be followed as if the references to the authorised officer were references to the purchaser.

Institution of criminal proceedings.

55. Where there is reasonable cause to believe that any person has contravened any of the provisions of this Act or of any regulations made thereunder, the Police shall, on the report of the sanitary authority, institute criminal proceedings against the offender before the competent court.

Power of court to appoint experts.
Amended by:
X. 1986.4.

56. (1) Where any proceedings as are referred to in section 55 of this Act are instituted, the court may direct that any articles seized or any sample taken in accordance with the provisions of this Act be examined by experts appointed by the court.

(2) If the article seized or the sample taken has to be analysed, the court shall appoint, for carrying out the analysis, one or more of the analysts attached to the department of health:

Provided that -

- (a) where the proceedings before the court are in respect of any article of food for which a standard has been prescribed under this Act, the analyst or analysts to be appointed by the court may be one or more of the analysts engaged in the analysis of food at the department of industry; and
- (b) where the proceedings before the court are in respect of an offence against any of the provisions under Part IV of this Act or any regulations made under that Part, in either case relating to raw milk, or include any such offence, the analyst or analysts to be appointed by the court may be one or more of the analysts engaged in the analysis of milk at a milk marketing undertaking:

Provided further that, if any one of the said analysts shall have already made such analysis before the proceedings were instituted, the court shall require him to confirm his report on oath but it may also require such analyst to make further inquiries and it may also appoint other experts to give an opinion based on the result obtained from the analysis so made.

(3) The examination or analysis shall be made on all the articles seized or on only a part thereof as the court, with the advice, if necessary, of the experts, shall direct.

(4) The person or persons appointed as aforesaid shall make to the court a report in writing which report shall be confirmed on oath and read out in open court.

Offences and penalties.
Amended by:
XIII 1978.7;
XIII. 1983.5.

57. (1) Whosoever obstructs in any manner any person in the execution of his duties under this Act or under any regulations made thereunder, or who refuses to give a sample to any authorised officer under the provisions of this Act, or otherwise hinders the taking of any such sample by an authorised officer, or who fails to give any information which he may be required to give under or for the purposes of the provisions of this Act or of any regulations

made thereunder, or who, in giving such information, knowingly makes any false or misleading statement in respect thereof, shall be guilty of an offence against this Act.

(2) Any person who contravenes or fails to comply with any provision of this Act or of any regulations made thereunder shall be guilty of an offence against this Act.

(3) Any person who is found guilty of an offence against this Act shall, on a first conviction, be liable to a fine (*multa*) of not less than fifty liri and not exceeding two hundred liri or to imprisonment for a term from one to three months or to both such fine and such imprisonment, and, on a second or subsequent conviction, to a fine (*multa*) of not less than one hundred liri and not exceeding four hundred liri or to imprisonment for a term from two to six months or to both such fine and such imprisonment:

Provided that, where the offence is, in the opinion of the court, of a slight nature, the punishment awardable shall be of a fine (*ammenda*) of from five to ten liri in the case of a first offence and of from ten to twenty liri in the case of a second or subsequent offence:

Provided further that, in the case of a continuing offence, the offender shall moreover be liable to a further fine (*multa*) not exceeding five liri for each day during which the offence continues after conviction:

Provided finally that, where the offender is liable to a heavier punishment under the Criminal Code or under some other law, the provisions of that Code or that other law shall apply.

Cap. 9.

58. (1) Where a person is found guilty of an offence against this Act, the court shall, where necessary, besides awarding punishment, order the offender to abate any nuisance arising from the offence or, if the circumstances so require, to comply with the law, in either case within such time as shall be fixed by the court for the purpose, and, in case of non-compliance with any such order, he shall be liable to a further fine (*multa*) not exceeding five liri for every day of non-compliance after the expiration of the said time fixed as aforesaid.

Abatement of
nuisance, etc.
Amended by:
XIII. 1983.5.

(2) The court shall upon an application to that effect by the Police at any time after that a person has been found guilty of an offence in the event of a supervening cause or, in any other case, after the expiry of the time limit granted by the court under subsection (1) or extended under subsection (6) of this section, authorise the Police to abate the nuisance or to enforce otherwise the law at the expense of the offender, who, in either case, may be made to refund such expense under a warrant issued by the said court.

(3) If the offender is absent from Malta or has absconded or is, on account of mental disorder or other physical incapacity, unable to appear in court and the sanitary authority certifies on oath that it is urgently required that the nuisance be abated or that the law be otherwise enforced, the court shall order the summons to be served on the lawful representative of the offender or on the person having

the custody of the offender or on the person having the management of his property or, in default of any known representative or person as aforesaid, on the offender's husband or wife or son or daughter. In any such case, if the nuisance or non-compliance with the law is proved, the court shall apply the provisions of subsection (2) of this section or, in appropriate cases, the provisions of subsection (1).

(4) Where for any reason service of the summons as provided in subsection (3) of this section cannot be effected or where the offender is not known or it is not known who is the person responsible for the nuisance or non-compliance with the law, the court shall apply the provisions of subsection (2) of this section on the sole application of the sanitary authority confirming on oath the existence of such nuisance or non-compliance and the urgency that the nuisance be abated or the law enforced.

(5) In any of the cases dealt with in subsections (3) and (4) of this section, the court shall, so far as regards the award of any punishment for the offence, adjourn the proceedings until the offender is fit to stand trial or return to Malta or becomes known and can appear before it.

(6) No time fixed by the court under subsection (1) of this section may be extended more than once except with the consent of the sanitary authority.

Forfeiture of food,
etc., and revocation
of licences.

59. (1) Where an offence against any of the provisions of this Act or of any regulations made thereunder is proved to have been committed, the court shall order the forfeiture of the food or drug, as the case may be, to which the offence relates, even though the person charged may have been acquitted by the court:

Provided that the court may, in its discretion, and on the demand of the person convicted of any such offence, permit such person to use such food for some industrial purpose, or, in case it had been imported, to re-export it, after the said food has been so dealt with as the court shall have directed in order to prevent it from being used for human consumption:

Provided further that, before granting the said permission, the court shall hear on oath the sanitary authority and shall direct a stay of the order for the forfeiture of the said food until the expiration of the time fixed by the court for the food in question to be re-exported or dealt with as aforesaid under the direction of the said authority.

(2) Saving the provisions of subsection (3) of section 21 of this Act, where any person is convicted of an offence against any of the provisions of this Act or of any regulations made thereunder, the court so convicting him shall, at the request of the Superintendent of Public Health, suspend for a period from one month to six months as the court may deem proper any licences in the name of such person.

Offences by a
company, etc.

60. When the person guilty of an offence against any of the provisions of this Act or of any regulations made thereunder is a

company or an association or other body of persons, every person who, at the time of commission of the offence, was a director, manager, secretary or other similar officer of such company, association or other body of persons or was purporting to act in any such capacity shall be deemed to be guilty of that offence unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence.

61. (1) Where a person has been found guilty of an offence against any of the provisions of this Act or of any regulations made thereunder, the court may, besides sentencing the offender to the punishment applicable according to law, order him to pay the fees, or part thereof, due to the person or persons who shall have made the examination or the analysis, as the case may be, under the provisions of section 56 of this Act.

Payment of fees for analysis, etc., and compensation for damages to articles.

(2) Where a person is charged with an offence against any of the provisions of this Act or of any regulations made thereunder but is found not guilty of such offence, the court may, if it deems fit according to the circumstances of the case, order the Government, as represented by the department of health, to pay such person an amount fixed by the court as compensation for any damage caused in the articles seized or in any part thereof, by the examination or analysis referred to in subsection (1) of this section.

62. A person charged with an offence against any of the provisions of this Act or of any regulations made thereunder shall, upon information given by him to the court on the day appointed for the trial of the case and before the hearing commences, be entitled to have any person, to whose act or default he alleges that the contravention of the provisions in question was due, brought before the court in the proceedings; and if, after the commission of the offence has been proved, the original defendant proves to the satisfaction of the court that the said other person had committed the offence without his knowledge, consent or connivance, the said other person shall be convicted of the offence and the original defendant shall be acquitted, saving the provisions of section 59 of this Act.

Charging by defendant for another person as actual offender.

63. (1) Subject to the provisions of this section, in any proceedings for an offence under this Act or any regulations made thereunder, being an offence consisting of selling, or offering, exposing or advertising for sale, or having in his possession for the purpose of sale, any article or substance, it shall be a defence for the defendant to prove -

When warranty may be placed as defence.

- (a) that he purchased it as being an article or substance which could lawfully be sold or otherwise dealt with as aforesaid, or, as the case may be, could lawfully be so sold or dealt with under the name or description or for the purpose under or for which he sold or dealt with it, and with a written warranty to that effect;
- (b) that he had no reason to believe, at the time of the commission of the alleged offence, that it was otherwise; and

(c) that it was, at the time of the commission of the alleged offence, in the same state as when he purchased it.

(2) No warranty given by a person resident outside Malta shall be a defence in any proceedings as aforesaid unless the defendant proves that he had taken reasonable steps to ascertain, and did in fact believe in, the accuracy of the statement contained in such warranty.

(3) Where the defendant in any such proceedings is an employee or an agent of the person who purchased the article or substance under a warranty, he shall be entitled to rely on the provisions of this section in the same way as his employer or principal would have been entitled to do if he had been the defendant.

(4) Where the defendant in any such proceedings has been acquitted under the foregoing provisions of this section, new proceedings may be taken against the person by whom the warranty relied on by the defendant in the original proceedings is alleged to have been given.

(5) For the purposes of this and the next following section, a name or description entered in an invoice shall be deemed to be a written warranty that the article or substance to which the entry refers can be sold or otherwise dealt with under that name or description.

Offences in relation to warranties given.

64. (1) A defendant who, in any proceedings under this Act, wilfully applies to any article or substance a warranty given in relation to any other article or substance shall be guilty of an offence against this Act.

(2) A person who, in respect of any article or substance sold by him, being an article or substance in respect of which a warranty might be pleaded under the provisions of section 63 of this Act, gives to the purchaser a false warranty in writing, shall be guilty of an offence against this Act, unless he proves that when he gave the warranty he had reason to believe that the statements or description contained therein were accurate or that he gave such warranty more than a year before proceedings were taken against him.

Prosecuting officer.

65. (1) Where the proceedings are instituted by the Police, any medical officer of health, government veterinary surgeon or health inspector, deputed by the Superintendent of Public Health, may lay the charge before the court, produce evidence and plead the case instead of the Police.

(2) The sworn statement by any of the officers mentioned in subsection (1) of this section to the effect that he has been deputed by the Superintendent of Public Health for the purpose therein mentioned shall be conclusive evidence of the fact should the proof thereof be required by the accused.

Evidence of prosecuting officer.

66. (1) Any of the officers mentioned in subsection (1) of section 65 of this Act may be called as a witness at the request of

the accused.

(2) Where, however, the evidence of such officer is required by the Police, the said officer shall be heard before he assumes the duties of prosecuting officer, unless the necessity of his evidence arises at a later stage of the proceedings.

67. Any damages due in respect of any offence against this Act shall be recoverable by the injured party as a civil debt.

Recovery of
damages by injured
party.

68. Where any food or any drug has been seized under the provisions of this Act, and the owner thereof consents in writing to the destruction of such food or drug, the Superintendent of Public Health may direct that the said food or drug be destroyed, without prejudice to the taking of any proceedings against the person responsible for the offence.

Destruction with
consent.

69. (1) Any licence issued under the provisions of this Act or of any regulations made thereunder shall lapse on the thirty-first day of December of the year of its issue or renewal.

Licences.

(2) No licence issued under any provision of this Act or of any regulations made thereunder shall be deemed to exempt from the requirement of any other licence or permit imposed by any other provision of this Act or by any regulations or other law in force for the time being.

70. *Repealed by Act XIV.2002.52.*

Savings.
Amended by:
XIII. 1978.9.