

**CONSULTANT'S DRAFT (1)  
FOOD SAFETY AND QUALITY ACT, 2003**

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An Act to provide for the safety and quality of food produced in, imported into and exported from -----  
 ---to ensure its safety and quality.

### **Preamble**

Whereas the Government of -----(hereinafter called “the Government”) is committed to ensuring the safety and quality of food and the management of food safety risks for the people of-----:

And Whereas, the Government wishes to promote an efficient and effective food safety system that incorporates preventive, risk-based approaches, comprising surveillance, risk assessment and implementation of risk management strategies and protects the citizens of -----from unsafe food imports:

And Whereas the Government wishes to improve both domestic food production standards and provide assurance to countries that wish to import from -----that its food exports are safe:

And Whereas in furtherance of its commitment, the Government is undertaking the establishment and operation of a National Animal and Food Safety Committee (hereinafter called “the Committee”) to coordinate, facilitate and oversee the execution of programmes, to promote public awareness and education, and to establish an effective regulatory regime which will ensure food safety and quality:

## **PART I**

### **PRELIMINARY**

#### **Short Title.**

This Act may be cited as the Food Safety and Quality Act, 2003.

#### **Interpretation.**

In this Act unless the context otherwise requires –

“agricultural or aquatic commodity” includes –

- (a) commodities that are plants, plant products, animals, animal products, micro-organisms and microbiological products and any parts or by-products of them that are intended for use as food, that may be used as food or from which food is or may be derived;
- (b) deadstock, offal and fallen animals; and
- (c) plants, plant products, animals, animal products and other agri-food products that, are unfit for human consumption, pose a risk to or otherwise affect food safety or quality, directly or indirectly;

"agricultural input" means a substance or an organism that may be used in the production of commodities, the growing of a plant or an organism or the raising of an animal and includes feed, fertilizers, seeds, pesticides, manure and other biosolids, water, soil conditioners, drugs, supplements, additives, treatments, growth promotants and other substances and organisms;

“Committee” means the National Animal and Human Health Committee established under section 5.

"deadstock" means an animal that has died from a cause, other than slaughter;

"fish" includes –

- (a) parts of fish,
- (b) shellfish, crustaceans, fresh water and marine animals and any parts of shellfish, crustaceans and those animals, and
- (c) the eggs, sperm, spawn, larvae, spat and juvenile stages of fish, shellfish, crustaceans, fresh water and marine animals;

“food” means any substance whether processed, semi-processed or raw, which is intended for human consumption, and includes agricultural or aquatic commodities, meat, fish, milk, drinks, chewing gum, water and any substance which has been used in the manufacture, preparation or treatment of “food” but does not include cosmetics, tobacco or substances used only as drugs;

“food hazard” means a biological, chemical or physical agent in, or condition of, food with the potential to cause an adverse health-effect thus rendering the food unsafe;

"food safety risk" means-

- (a) a food or an agricultural or aquatic commodity, which has or may have an adverse effect on the health or safety of a person who consumes it, or
- (b) a food, an agricultural or aquatic commodity, an agricultural input, any other substance or thing, an environmental condition or a condition of a premises or transportation, that –
  - (i) has or may have an adverse effect on the health or safety of a person who consumes a food or agricultural or aquatic commodity that is or may be produced using it, by any means, in whole or in part, or
  - (ii) may, by any means, directly or indirectly, in whole or in part, affect the safety for human consumption of the food or agricultural or aquatic commodity;

“governmental entity” includes the Ministry of Agriculture, -----and Customs Division;

"inspector" means an inspector appointed under section .....of the Health Services Act;

"licence" means a licence issued under section 10 of this Act;

“licensed activity” means any of the following –

- (a) the production, processing, manufacturing or other preparation for consumption of food,
- (b) the growing, harvesting or other preparation for consumption of plants and micro-organisms that may be used as food,
- (c) the raising, slaughter or other preparation for consumption of animals that may be used as food,
- (d) the using of agricultural inputs;
- (e) the sale, import, export and handling of food, collection, buying, receiving, possessing, possessing for prescribed purposes, identification, branding, handling, storage, moving, transporting, grading, packing, packaging, marking, labelling, advertising, marketing, displaying, giving, selling by any means including on consignment, offering for sale, distribution, disposal or destruction of food, agricultural or aquatic commodities or agricultural inputs,
- (f) any other activity similar to those described in paragraphs (a) to (e);

"licencee" means the holder of a licence;

"Minister" means the member of Cabinet having responsibility for food;

"plant" means a botanical plant or part of it and includes fresh water and marine plants;

“production” means cultivation of crops or husbandry of animals or farming and catching of fish for the purpose of sale for human consumption;

"regulations" means the regulations made under this Act, unless the context requires otherwise;

“relevant authority” includes the Ministry of Agriculture or Customs Division;

“vehicle” means aircraft, train, vessel or other thing used to transport food, agricultural or aquatic commodities, agricultural inputs or other things to which this Act applies;

### **Scope and application.**

3. This Act shall apply to activities related to the production, processing, sale, import, export and handling of food and shall make provision for the principles, regulations and standards for the conduct of food operations in -----to ensure their safety and quality.

Notwithstanding the generality of subsection (1) this Act shall not apply to –

- (a) food that is produced, imported or exported for private consumption;

- (b) food that is brought into -----in ship or aircraft stores and used for sailors, crew or passengers on board such ships or aircraft;
- (c) food that is transported through -----that is not intended for sale or consumption in-----.

## PART II

### ADMINISTRATION

#### **Responsibilities of Minister.**

4. (1) The Minister is charged with the responsibility of ensuring the safety and quality of food so as to protect human health from risks associated with the production, processing, sale, import, export and handling of food.
- (2) In particular, it is the responsibility of the Minister to-
  - (a) ensure the establishment of a coordinated and integrated system in which the Committee, in consultation with other persons, facilitates cooperation among governmental entities and regional and international bodies to protect, enhance and safeguard food safety and quality;
  - (b) enhance the legal and institutional framework for food safety and quality to meet the requirements of international agreements, protocols, procedures and programmes to which Barbados is a party;
  - (c) ensure harmonisation between national, regional and international food safety and quality standards for domestic and foreign foods;
  - (d) develop an effective mechanism for the efficient use of human resources in ensuring food safety and quality;
  - (e) strengthen policy, planning and services capacity of regional, national, public and private sector and community institutions and organisations in the area of food safety and quality;
  - (f) strengthen national and regional capacity to develop and sustain effective food borne disease surveillance and response programmes; and
  - (g) ensure compliance in all matters and activities related thereto.

#### **Establishment of National Animal and Human Health Committee.**

5. (1) There shall be established, for the purposes of this Act, a Committee to be known as the National Animal and Human Health Committee which shall be responsible for advising the Minister on any matter relating to food safety and quality.

- (2) The provisions of the First Schedule shall have effect with respect to the constitution and procedure of the Committee and otherwise in relation thereto.
- (3) Notwithstanding anything contained in this section, the Minister may appoint committees for the purpose of advising him on any specialised area of food safety and quality.
- (4) Persons may be appointed to any such committees mentioned in paragraph (3) for a period of two years but any person so appointed shall be eligible for reappointment.

**Policy directions from Minister.**

- 6. The Minister may from time to time give the Committee directions of a general or specific character in the exercise of the powers conferred and the duties imposed on the Committee by or under this Act.

**Establishment, functions and duties of Food Safety and Quality Department.**

- 7. (1) There is hereby established a Food Safety and Quality Department which shall be under the control and direction of the Chief Environmental Officer and it shall arrange and carry out all functions which are required for the proper discharge of its responsibilities under this Act.
- (2) Without prejudice to the generality of subsection (1), the Department shall-
  - (a) advise the Minister on any matter concerning food safety and quality and specifically the setting and achievement of objectives and priorities for food safety and quality;
  - (b) develop and implement updated and comprehensive legislation, regulation and enforcement policies and other programmes in relation to food safety and quality;
  - (c) coordinate activities with the National Enquiry Point regarding-
    - (i) sanitary or phytosanitary regulations;
    - (ii) control and inspection procedures, production and quarantine treatment, pesticide tolerance and food additive approval procedures;
    - (iii) risk assessment procedures; and
    - (iv) providing justification to other countries concerning sanitary measures applied either through risk analysis or by reference to applicable international standards;
  - (d) develop food safety training programmes for food industries, tourism, processing plants and food vendors;
  - (e) develop training programmes for inspectors in modern food safety systems;

- (f) establish databases for imported and domestic foods, including inspections;
- (g) develop national food handler training and certification programmes for the retail, processing and farm industries;
- (h) ensure the training of laboratory staff in current analytical methods and quality control programmes;
- (i) enhance the awareness of food-borne diseases and effective intervention strategies; and
- (j) represent the country's interests at meetings, workshops, and seminars on global food issues.

**Chief Environmental Health Officer to report.**

8. The Chief Environmental Health Officer shall report to the medical officer of health in the locality in which a risk occurs or to the Chief Medical Officer of Health every matter of which the Chief Environmental Health Officer becomes aware and that, in his opinion, is or may be a food safety risk that constitutes a significant risk to public health and safety.

**PART III**

**LICENCES**

**Requirement for licence.**

9. (1) Subject to section 3, any person who carries on a licensed activity shall, subject to subsection (3), apply to the Department for a licence within three months of the commencement of this Act.
- (2) The fee for an application for a licence is specified in the Second Schedule.
- (3) Any fee paid in respect of an application referred to in subsection (2) shall not be refundable.
- (4) The procedure, requirements and other matters in relation to an application for a licence is specified in the Third Schedule.

**PART IV**

**STANDARDS**

**Standards.**

10. (1) The -----shall establish physical, chemical and biological standards of quality and safety for any licensed activity premises, vehicles, facilities and equipment used in such activity;

- (2) Any person engaged in the conduct of a licensed activity shall carry on such activities in a manner that complies with the standards proclaimed in accordance with subsection (1).
- (3) In the event of a conflict between the requirements of this Act and any standard that is proclaimed by the -----in respect of licensed activities the latter shall prevail.

## PART V

### INSPECTIONS, SAMPLING AND ORDERS

#### **Power to enter and inspect.**

11. For the purposes of exercising any powers under this Act, an inspector may, at any reasonable time and without a warrant, enter and inspect any premises or vehicle in accordance with this section where –
  - (a) he has reasonable grounds to believe that the premises or the vehicle is being used for the purposes of carrying on any of the following licensed activities that are being carried on as a food business –
    - (i) the production, processing, manufacturing or other preparation for consumption of food;
    - (ii) the growing, harvesting, or other preparation for consumption of plants and micro-organisms that may be used as food;
    - (iii) the raising, slaughter or other preparation for consumption of animals that may be used as food;
    - (iv) the storage, transportation, processing, preparation for use, packing, packaging, selling by any means, including on consignment, offering for sale or distribution of food and agricultural or aquatic commodities;
    - (v) the buying, handling, storage, preparation for use, use, selling by any means, including on consignment, or offering for sale of agricultural inputs;
    - (vi) the collection, receiving or identification of deadstock.
  - (b) he has reasonable grounds to believe that the premises or vehicle contains any thing that is or may be a food safety risk that constitutes a significant risk to public health or safety or that may be relevant to the existence of a food safety risk that constitutes a significant risk to public health or safety;
  - (c) it is necessary to ascertain whether there is a violation of the provisions of this Act or Regulations made thereunder.

**Exercise of power.**

12. (1) An inspector may exercise any of the powers specified in subsection (2) for the purpose of discharging or, as the case may be, assisting in the discharge of the functions of the Department.
- (2) The powers of the inspector referred to in subsection (1) are –
- (a) to demand the production of –
    - (i) any food, agricultural or aquatic commodity, agricultural input or other thing that is or may be a food safety risk or that may be relevant to the existence of a food safety risk, if the thing is capable of being produced, or;
    - (ii) any books, records or other documents related to the source, use or disposition of the thing mentioned in subclause (i) or copies of extracts from the books, records or other documents;
  - (b) at the risk and expense of the owner, examine, test, analyse, take samples of or dispose of samples of any food, agricultural or aquatic commodity, agricultural input or other thing that is or may be a food safety risk or that may be relevant to the existence of a food safety risk;
  - (c) delay, for the time necessary to complete the inspection, the transportation of any food, agricultural or aquatic commodity, agricultural input or other thing that is or may be a food safety risk or that may be relevant to the existence of a food safety risk;
  - (d) seize or detain any food, agricultural or aquatic commodity, agricultural input or other thing that is or may be a food safety risk or that may be relevant to the existence of a food safety risk, if the thing is capable of being seized or detained;
  - (e) subject to section 13 and orders if any made under it, require or authorise a person, who had custody of the food, agricultural or aquatic commodity, agricultural input or other things at the time that the inspector seized or detained under clause (d), to remove them from the place of detention at the person's expense;
  - (f) inquire into all information, records and other matters that –
    - (i) are relevant to the source, use or disposition of any food, agricultural or aquatic commodity, agricultural input or other thing that is or may be a food safety risk,
    - (ii) are relevant to any thing that is or may be a food safety risk, or
    - (iii) may be relevant to the existence of a food safety risk;
  - (g) demand the production for inspection of anything described in subsection (f);

- (h) use any data storage, processing or retrieval device or system belonging to the persons being inspected in order to produce a record in readable form of the information, records and other matters described in subsection (f) (i), (ii) or (iii);
  - (i) pass through or over any land, other than the curtilage surrounding a dwelling, without being liable to trespass or any other action in relation to that land, in order to gain access to the premises that are subject to inspection under this section, where –
    - (i) it is necessary to do so in order to gain the access or to gain the access in a timely manner, and
    - (ii) it is impractical to use any other means to gain the access.
  - (j) inspect and take copies of any entry in any records;
  - (k) require any person to afford him such facilities and assistance within that person's control or in relation to which that person has responsibilities as are necessary to enable the inspector to exercise any of the powers conferred on him by this section.
- (2) Every person who wilfully obstructs or delays an inspector in the exercise of any power under this section or who fails to comply with any request of such inspector shall be guilty of an offence and liable to the penalties under paragraph (c) of the Fourth Schedule.
  - (3) Where an inspector makes a demand for any thing under subsection (1), the person having custody of the thing shall produce it to the inspector and, at the request of the inspector, shall provide whatever assistance is reasonably necessary, including using any data storage, processing or retrieval device or system to produce a record in readable form, if the demand is for a document.
  - (4) An inspector shall carry out any reviewing or copying of things with reasonable dispatch, and shall forthwith after the reviewing or copying return the things to the person who produced them.
  - (5) A copy certified by an inspector as a copy made under subsection (4) is admissible in evidence to the same extent, and has the same evidentiary value, as the thing copied.
  - (6) The Minister may by regulations make provision as to the procedure to be followed in connection with the taking of, and the dealing with, samples under subsection (2) (b).
  - (7) An inspector exercising his duties under this section shall not be liable in any civil or criminal proceedings for anything done in the performance thereof if the court is satisfied that the act was done in good faith and that there was reasonable grounds for doing it.
  - (8) An inspector who exercises powers under this section may call for the assistance of any member of the Police Service where such assistance is required to preserve the peace.
  - (9) Any person assisting an inspector in exercising powers under this section is deemed to be vested with the powers of an inspector while acting under the direction of such inspector.

**Minister's order for inspection.**

13. (1) Where the Minister is of the opinion that any food, agricultural or aquatic commodities or agricultural inputs that are being transported in a designated area are or may become a food safety risk that constitutes a significant risk to public health or food safety and the Minister is of the opinion that it is necessary to do so, the Minister may, by order, require the persons in charge of the things being transported to proceed to a designated inspection point and to remain there until an inspector makes an inspection of such food, agricultural or aquatic commodities or agricultural inputs.
- (2) The Minister may designate areas and inspection points for the purpose of inspections mentioned in subsection (1) as he considers necessary.

**Search with warrant, food safety risk.**

14. (1) A magistrate may issue a warrant authorising an inspector named in the warrant to stop any vehicle, enter and inspect any premises or vehicle or exercise any of the powers mentioned in section 12 with respect to a place named in the warrant, if the magistrate is satisfied on information under oath that there are reasonable grounds to believe that –
- (a) the premises or vehicle contains any thing that is or may be a food safety risk or that may be relevant to the existence of a food safety risk; and
  - (b) it is necessary for the inspector to exercise the powers authorised in the warrant in order to protect the health or safety of the public or any person from a food safety risk.
- (2) A warrant issued under this section shall name a date on which it expires, which date shall not be later than 30 days after its issue.
- (3) A magistrate may extend the date on which a warrant expires for an additional period of no more than 30 days upon application without notice by the inspector named in the warrant.
- (4) A warrant issued under this section authorises the inspector named in the warrant to call upon police officers as necessary to execute the warrant.
- (5) A magistrate who issues a warrant under this section may authorise the inspector named in the warrant to use as much force as is reasonably necessary to execute the warrant or to exercise any authority specified in the warrant.
- (6) Unless otherwise ordered, a warrant issued under this section shall be executed only during normal business hours for the premises named in the warrant.
- (7) When executing the warrant, an inspector may pass through or over any land, other than the curtilage surrounding a dwelling, without being liable to trespass or any other action in relation to that land, in order to gain access to the premises that are subject to inspection under this section where –
- (a) it is necessary to do so in order to gain access or to gain access in a timely manner; and

- (b) it is impractical to use any other means to gain access.

**Enabling order for inspector.**

15. A magistrate may issue an order authorising an inspector to do anything that the inspector is empowered to do under section 12 or to gain entry to any premises or vehicle for the purpose of doing the thing if the magistrate is satisfied, on evidence under oath by an inspector, that there are reasonable grounds to believe that it is appropriate for the administration and enforcement of this Act or the regulations for the inspector to do the thing and that the inspector may not be able to effectively carry out his or her duties without an order under this section because –
- (a) no occupier is present to grant access to a place that is locked or otherwise inaccessible;
  - (b) a person has prevented the inspector from doing anything that the inspector is empowered to do;
  - (c) there are reasonable grounds to believe that a person may prevent an inspector from doing anything that the inspector is empowered to do;
  - (d) it is impractical, because of the remoteness of the place to be inspected or because of any other reason, for the inspector to obtain an order under this section without delay if access is denied; or
  - (e) there are reasonable grounds to believe that an attempt by the inspector to do anything that the inspector is empowered to do under those sections without the order might not achieve the purpose of the thing or might endanger human health or safety or animal welfare.

**Improvement Notice.**

16. (1) Where an inspector has reasonable grounds for suspecting that the person in charge of food is failing to comply the requirements of this Act or any Regulations made hereunder, he may serve on such person an Improvement Notice.
- (2) The Improvement Notice shall -
- (a) briefly describe the reasons for the order and the circumstances on which the reasons are based;
  - (b) specify the matters which constitute non-compliance;
  - (c) specify the measures which, the person in charge of the food is required to take in order to to prevent, decrease, control or eliminate a food safety risk that has resulted from or is likely to result from anything that the person has done or not done and ensure compliance;

(d) specify the period within which, in any event no more than fourteen days, such measures shall be taken;

(e) within the time specified report to the inspector, and

(f) specify that the person to whom it is directed has the right to request a hearing by the Chief Environmental Health Officer.

(3) Without limiting the generality of subsection (2), the order may direct a person to,

(a) clean and disinfect premises or equipment;

(b) modify equipment;

(c) alter production or processing practices for any food, agricultural or aquatic commodity or agricultural input;

(d) not use those pesticides or other agricultural inputs specified in the order during the time period specified in the order;

(e) modify or stop operations until the person has taken the remedial action specified in the order.

(4) The order shall not require any person to recall any food, agricultural or aquatic commodities or agricultural input to a point from which it has been moved or transported.

(5) A person who is served with an order made under subsection (1) or (3) shall comply with the order within the period of time specified in the order.

(6) This section and section 17 shall apply to any regulations made under this Part which makes provision for -

(a) requiring, prohibiting or regulating the use of any process or treatment in the preparation of food; or

(b) securing the observance of good manufacturing practice and hygienic conditions in connection with the carrying out of commercial operations with respect to food or food sources.

(7) Where the delay necessary to put the order in writing will or is likely to increase substantially the risk to the health of any person, the inspector may make the order orally.

#### **Prohibition order.**

17. (1) Where the owner of a food business is convicted of an offence under these Regulations; and the court before which he is so convicted is satisfied that a food safety risk is posed with respect to that business the court shall impose a prohibition order with respect to such business.

(2) The food safety risk condition is fulfilled with respect to any food business if any of the following poses the risk of injury to health, namely -

- (a) the process or treatment which is used for the purposes of the food business;
- (b) the construction of any premises used for the purposes of the food business;
- (c) the state or condition of any premises or equipment used for the purposes of the food business.

(3) The prohibition order mentioned in subsection (1) may be issued in respect of -

- (a) the use of the process or treatment used by the food business; or
- (b) the use of the premises or equipment for the purposes of the food business.

(4) As soon as practicable after the making of the prohibition order mentioned in paragraph (1) the inspector shall -

- (a) serve a copy of the order on the owner of the food business; or
- (b) affix a copy of the order in a conspicuous position on such premises.

(5) Any person who knowingly contravenes a prohibition order shall be guilty of an offence and shall be liable to the penalties prescribed under paragraph (c) of the Fourth Schedule.

(6) A prohibition order shall cease to have effect -

- (a) where the Chief Environmental Health Officer is satisfied that the owner of the food business has implemented sufficient measures to ensure that the food safety risk condition is removed in relation to that activity and issues a certificate to that effect; or
- (b) the court before which the owner of the food business was convicted gives a direction to that effect.

**Emergency prohibition order.**

18. (1) If an inspector is satisfied that a food safety risk is posed by the operation of a food business he may serve an emergency prohibition notice on the person conducting such business.

(2) If a magistrate is satisfied, on application of such inspector, that a food safety risk is posed by the operation of the food business, he may impose an emergency prohibition order.

(3) Subsections (2) and (3) of section 28 shall apply for the purposes of this section as they apply for the purposes of that section, but as if the reference in subsection (2) to risk of injury to health were a reference to imminent risk of injury to health.

- (4) As soon as practicable after the service of an emergency prohibition notice, the inspector shall affix a copy of the notice in a conspicuous position on such premises used for the purposes of the business.
- (5) Any person knowingly contravening the provisions of such notice shall be guilty of an offence and shall be liable to the penalties prescribed in paragraph (c) of the Fourth Schedule.
- (6) As soon as practicable after the making of an emergency prohibition order, the inspector shall -
- (a) serve a copy of the order on the owner of the food business; and
  - (b) affix a copy of the order in a conspicuous position on such premises.
- (7) An emergency prohibition notice shall cease to have effect -
- (a) if no application for an emergency prohibition order is made within three days beginning with the service of the notice, at the end of that period;
  - (b) if such an application is made, on the determination or abandonment of the application; or
  - (c) where the inspector issues a certificate to the effect that he is satisfied that the owner of the food business has taken sufficient measures to secure that the health risk condition is no longer posed by the operation of the food business.
- (8) An emergency prohibition order shall cease to have effect where the Inspector issues a certificate to the effect that he is satisfied that the owner of the food business has taken sufficient measures to secure that the health risk condition is no longer posed by the operation of the food business.
- (9) An inspector shall issue a certificate under subsections (7)(c) and (8) within three days of his being satisfied of the matters mentioned in paragraphs (7)(c) and (8); and the owner of the business applies for such a certificate.

**Preventive order.**

19. An inspector may, without warrant or court order, stop any vehicle or enter and inspect any premises or vehicle in accordance with this section where –

- (a) the inspector has reasonable grounds to believe that the premises or the vehicle –
  - (i) is subject to an order made under section 17;
  - (ii) is owned or occupied by a person who is subject to an order made under section 18 and contains any food, agricultural or aquatic commodity, agricultural input or any other thing that is subject to such order, or;

(iii) is being used by a person, who is subject to an order made under section 17, to carry on any activity or do any thing that is subject to the order or that is reasonably necessary to determining whether there has been compliance with the order; and

(b) the inspector is conducting the inspection for the purpose of determining whether a person who is subject to the order has complied with it.

**Enforcement order.**

20. (1) In conducting an inspection under this section, an inspector may exercise any of the powers vested in him under section 13 and in so doing may –

(a) demand the production of –

(i) any food, agricultural or aquatic commodity, agricultural input or other thing that is or may be relevant to determining whether there has been compliance with the order made under section 17, if the thing is capable of being produced, or

(ii) any books, records or other documents that are or may be relevant to determining compliance with the order made under section 17 or copies of extracts from the books, records or other documents;

(b) at the risk and expense of the owner, examine, test, analyse, take samples of or dispose of samples of any food, agricultural or aquatic commodity, agricultural input or other thing that is or may be relevant to determining whether there has been compliance with the order made under sections 17 or 18;

(c) delay, for the time necessary to complete the inspection, the transportation of any food, agricultural or aquatic commodity, agricultural input or other thing that is or may be relevant to determining whether there has been compliance with the order made under section 17 or 18;

(d) seize or detain any food, agricultural or aquatic commodity, agricultural input or other thing that is capable of being seized or detained and that –

(i) is or may be a food safety risk;

(ii) may be relevant to the existence of a food safety risk, or

(iii) is or may be relevant to determining whether there has been compliance with the order made under section 17;

(e) subject to section 13 and orders if any made under it, require or authorise a person, who had custody of the food, agricultural or aquatic commodity, agricultural input or other things at the time that the inspector seized or detained them under subsection (2) (d), to remove them from the place of detention at the person's expense;

- (f) inquire into all information, records and other matters that are or may be relevant to determining whether there has been compliance with the order made under section 17;
  - (g) demand the production for inspection of anything described in subsection (2) (f);
  - (h) use any data storage, processing or retrieval device or system belonging to the persons being inspected in order to produce a record in readable form of information that is or may be relevant to determining whether there has been compliance with the order made under section ....;
  - (i) pass through or over any land, other than the curtilage surrounding a dwelling, without being liable to trespass or any other action in relation to that land, in order to gain access to the premises that are subject to inspection under this section, where-
    - (i) it is necessary to do so in order to gain the access or to gain the access in a timely manner, and
    - (ii) it is impractical to use any other means to gain the access.
- (2) An inspector shall not, without the consent of the occupier, exercise a power to enter a place that is being used as a dwelling, except under the authority of a search warrant issued by a magistrate.

**Search with warrant.**

21. A magistrate may issue a warrant authorising an inspector named in the warrant to stop any conveyance, enter and inspect any premises or conveyance or exercise any of the powers mentioned in section 12 with respect to a place named in the warrant, if the justice is satisfied on information under oath that –
- (a) the premises or the vehicle –
    - (i) is subject to an order made under section 17,
    - (ii) contains any food, agricultural or aquatic commodity, agricultural input or any other thing that is subject to an order made under section 17, or
    - (iii) is being used by a person, who is subject to an order made under section 17, to carry on any activity or do any thing that is subject to the order or relevant to determining whether there has been compliance with the order; and
  - (b) it is necessary for the inspector to exercise the powers authorised in the warrant in order to determine whether a person who is subject to the order has complied with it.

**Search of control areas.**

22. (1) An inspector may, with or without warrant or court order, stop any vehicle or enter and inspect any premises or vehicle within a control area, established under an order in accordance with this section where –

- (a) the inspector has reasonable grounds to believe that the premises or the vehicle is being used for the purposes of carrying on any licensed activity carried on as a business;
- (b) the inspector has reasonable grounds to believe that the premises or the vehicle -
  - (i) is subject to an order made in relation to a control area;
  - (ii) contains any food, agricultural or aquatic commodity, agricultural input or any other thing that is subject to an order made in relation to a control area, or
  - (iii) is being used by a person, who is subject to an order made in relation to the control area, to carry on any activity or do any thing that is subject to the order or relevant to determining whether there has been compliance with the order.

(2) In an inspection under this section, an inspector may exercise such powers as are vested in him under section 12.

**Compliance order.**

23. An inspector may, without warrant or court order, stop any vehicle or enter and inspect any premises or conveyance in accordance with this section where –

- (a) the inspector has reasonable grounds to believe that the premises or the vehicle –
  - (i) is subject to an order made under section 18 or made under a regulation,
  - (ii) is owned or occupied by a person who is subject to an order described in subsection (i) and contains any food, agricultural or aquatic commodity, agricultural input or any other thing that is subject to an order described in subsection (i), or
  - (iii) is being used by a person, who is subject to an order described in subsection (i), to carry on any activity or do any thing that is subject to the order or that is reasonably necessary to determining whether there has been compliance with the order; and
- (b) the inspector is conducting the inspection for the purpose of determining whether a person who is subject to the order has complied with it.

**Inspection of premises.**

24. An inspector may, without warrant or court order, enter and inspect any premises or vehicle in accordance with this section where –

- (a) the inspector has reasonable grounds to believe that the premises is used for the purpose of carrying on a licenced activity; and
- (b) the inspector is conducting the inspection for the purpose of determining whether a person is carrying on such licenced activity in accordance with this Act and the regulations.

**Stopping a vehicle.**

25. Where an inspector gives an operator of a vehicle a signal to stop, the operator of the vehicle shall immediately stop.

**Disposal of seized goods.**

26. (1) Any food, agricultural or aquatic commodity, agricultural input or other thing that an inspector seizes or detains under section 20 shall be disposed of in accordance with the regulations and remains at the risk and expense of the owner until it is disposed of in accordance with the regulations.
- (2) Subsection (1) does not apply to any thing that an inspector seizes under section 20 if a warrant was issued by a magistrate and is required to be carried before such magistrate.

**PART VI**

**IMPORT AND EXPORT OF FOOD**

**Notice of intention to import, export food.**

27. (1) Any person who, at the time of the commencement of this Act, proposes to import or export food shall within sixty days of such importation or exportation submit a duly completed notice of intention to import or export food in the form and containing the particulars set out in the Fifth Schedule to the Department.
- (2) The Department shall send a copy of the notice mentioned in subsection (1) to the Council for its consideration.
- (3) Where the Council objects to the importation or exportation of food, the Department shall send a copy of the objection to the person who has given notice of the activity and thereupon such person shall take such steps as identified in such notice and re-submit the notice accordingly.

**Licence to import, export food.**

28. (1) Where there are no objections to the importation or exportation of food the Department shall direct the person giving the notice to apply to the Department for a licence under section 10.
- (2) In addition to the requirements established under section 10, an application for a licence to import food shall be accompanied by –
- (a) a Certificate of Compliance from the exporting country which indicates that the required standards and requirements established by this Act or prescribed by regulation are met in respect of such food;
  - (b) a signed, written contract or a series of such contracts, excluding any confidential financial information, between the exporter and the person who is importing the food into -----or, where the importer and the person who exports the food are the same legal entity doing business in both -----and the country of export, between representatives of the entity in both countries that includes a term that requires the person who imports the food waste into ----- --which is subsequently found not to be safe or does not meet the requirements established under this Act or regulations that such food shall be re-exported to the exporter or to such place that the Department may approve for the purpose of destroying such food.
- (3) In addition to the requirements established under section 10, an application for a licence to export food shall be accompanied by written confirmation from the relevant authority of the importing country that the relevant authority consents, in accordance with the laws of that country with respect to giving that consent, to the proposed import into that country of such food.
- (4) The Department may, dispense with, or modify any of the requirements under subsection (1) in relation to an application for a licence where the Department considers it appropriate to do so on the ground that the information to which the requirement relates is already available to the Department.
- (5) The requirements of this section shall be in addition to the requirements of the Customs Act, and nothing in this Act relieves a person from the requirements of the Customs Act.

**Refusal to grant licence.**

29. The Department may, in addition to the reasons prescribed in the Third Schedule refuse to grant a licence to import or export food where it has reason to believe -
- (a) the transportation arrangements, whether by land, sea or air are inadequate and present a serious risk to human health and safety and quality of the food;
  - (b) written authorisation from the relevant authority authorising the import of the food, has not been issued by the relevant authority of the importing State; or

(c) where in the opinion of the Department, the issue of the licence would not be in the best interest of-----, having regard to such factors as the Department considers relevant including -

- (i) the protection of human health and safety; or
- (ii) the preservation of the character of the environment, including animals and plants.

**Compensation.**

30. Compensation shall not be paid to a licensee for the import or export of food where the decision to cancel a licence was necessary for the purposes of protecting human health and safety or conserving the environment, any animal or plant or by reason of an unforeseeable change in circumstances on the basis of which the licence was granted.

**Offence to import, export food.**

31. (1) Any person who imports or exports food before obtaining a licence under section 10 shall be guilty of an offence and liable to the penalties prescribed under paragraph (c) of the Fourth Schedule.
- (2) Any person who, while disqualified from holding a licence obtains or attempts to obtain such licence shall be guilty of an offence and shall be liable to the penalties prescribed under paragraph (d) of the Fourth Schedule.
- (3) A person convicted of an offence under subsection (2) shall be permanently disqualified from obtaining a licence to import or export food.

**Foods to be inspected.**

32. (1) The Minister shall publish a list of foods that require inspection at the port of entry before exportation from -----or upon importation into -----by an inspector.
- (2) An importer or exporter of any food listed in accordance with subsection (1) shall ensure that the required inspection is conducted prior to the completion of import procedures or exportation as the case may be.
- (3) Where there are reasonable grounds for believing that food that is not included on the list mentioned in subsection (1) is not safe or does not comply with the requirements of this Act, such food may be inspected by an inspector.
- (4) Where a governmental entity determines that imported food or food that is to be exported does not meet the required standards established under this Act, such authority shall notify the Department accordingly.

**Time of inspections.**

33. Inspections shall be carried out during normal business hours, except where food is extremely perishable, an inspection may be carried at any other time.

**Unsafe imported food.**

34. (1) Where upon inspection an inspector determines that imported food -

- (a) presents a risk to food safety;
- (b) does not meet the required standards established by this Act or regulations;
- (c) is unaccompanied by the required documentation;

the inspector may order such food to be re-labelled, treated, destroyed or re-exported from-----.

(2) It shall be the duty of a licensee to report to the Department any finding he may make regarding unsafe food.

**Release of food.**

35. Where, after an inspection of imported food or food that is to be exported is carried out, an inspector determines that such food –

- (a) does not present a food safety risk;
- (b) meets the required standards established by this Act or regulations;
- (c) is accompanied by the required documentation;

the inspector shall release such food to the importer or exporter as the case may be.

**Holding orders, imported food.**

36. The Department may, at any time, order that any food that is imported into----- be held at a particular place until an inspection or re-inspection, as applicable, is conducted.

**Report on activities.**

37. (1) Within six months after the commencement of this Act, every licensee for the import or export of food shall, no later than forty-five days after the end of the operating year, prepare a report relating to the activities for the previous calendar year including –

- (a) types and quantities of food imported or exported;
- (b) data concerning shipment of food;

- (c) food found by importing country of food found not to be in compliance with the statutory requirements of the importing country;
  - (d) a summary of any incidents accidents that may have occurred and any action taken regarding food found not to be safe for export;
  - (e) any other matter the Department may require.
- (2) The report prepared under subsection (1) shall be submitted to the Department.
- (3) A report to which this section refers shall be submitted both in electronic format acceptable to the Department and in hard copy generated from the electronic format and shall be signed by the licensee.
- (4) Any person who fails to comply with the requirements of paragraphs (1) to (3) shall be guilty of an offence and shall be liable the penalties prescribed in paragraph (b) of the Fourth Schedule.

#### **Registers of information.**

38. (1) Any person who is granted a licence under this Act shall, where applicable, keep books, documents, records or things showing, as the case may be -
- (a) the amount of food he has imported or exported;
  - (b) the date of such exportation;
  - (c) signed copies of manifests;
  - (d) records of test results, analyses, licence and standard conditions of licences;
  - (e) such other information as the Department may require.
- (2) The licensee shall keep such information to which subsection (1) refers, for a period of not less than three years or for such other extended time as the Department may determine.

## **PART VII**

### **FOOD HAZARDS AND FOOD BORNE DISEASES**

#### **Emergency measures.**

39. (1) Any person who reasonably suspects that a food hazard or outbreak of food borne disease exists shall within twenty-four hours notify the Minister.

- (2) Whenever the Chief Environmental Health Officer reasonably believes that a food hazard or outbreak of food borne disease presents a threat to human health and safety, the Chief Environmental Health Officer may, after consultation with the Council and other appropriate governmental entities, undertake such emergency response measures as he may deem necessary to eliminate the risk to public health and safety including -
- (a) declaring a food safety emergency;
  - (b) prohibiting the production, processing, handling or sale of the suspected food, agricultural or aquatic commodity or agricultural input.;
  - (c) recalling of food that has been distributed for sale or consumption;
  - (d) ordering the destruction of suspected food agricultural or aquatic commodity or agricultural input.;
  - (e) prescribing measures for the disposal of food, food products or treatment of vehicles, whether or not they have been found to be affected, in order to preventing the further spread of the hazard or disease.

**Threat in premises, vehicle.**

40. Whenever the Minister believes that a food hazard or the threat of a food borne disease exists in respect of any premises or vehicle he shall serve a written notice on the owner or occupier of such premises or vehicle in a form determined by the Department, which shall include -
- (a) a request that the owner take such actions as he determines necessary to eliminate the risk to public health and safety posed by the food hazard or disease within such time as is specified in the notice;
  - (b) an invitation to the owner or occupier to make representations to the Department concerning the matters specified in the notice within a specified time.
  - (b) enter into any premises at any reasonable time;
  - (c) take such samples as he considers necessary; or
  - (d) inspect any food, utensils or equipment.

**Non-compliance by owner.**

41. (1) Where an owner or occupier to whom a notice has been served under section 40 fails to comply with the requirements of such notice, the Minister may authorise an inspector or other authorised person to enter such premises or vehicle to carry out the requirements of the notice and take other actions as is deemed necessary.

(2) The Department may recover the costs of any action taken under subsection (1) from the owner or occupier of the premises or vehicle.

**Preventive measures.**

42. The Department shall conduct out the following activities for the purpose of preventing or predicting food hazards and outbreaks of foodborne disease –
- (a) carry out surveys of food;
  - (c) maintain food-related statistics; and
  - (c) organise testing and analysis of food.

**PART VIII**

**ENFORCEMENT**

**Exemptions for inspectors.**

43. Subject to the conditions that the Minister considers necessary, the Minister may exempt, from the application of any provision of this Act or the regulations, an inspector who is exercising powers under this Act or any other person who is exercising those powers and who is authorised to do so.

**Inquiry about food safety risk.**

44. (1) The Chief Environmental Health Officer or a person authorised in writing by the Minister may –

- (a) make inquiries of any person into information, records and other matters in the person's custody that are relevant to any thing that –
    - (i) is or may become a food safety risk that constitutes a significant risk to public health or safety, or
    - (ii) may contribute to the prevention, decreasing or elimination of that risk; or
  - (b) demand the production for inspection of any thing described in section 12;
- (2) Where a person makes an inquiry about information or things under subsection (1), the person having custody of the information or things shall respond immediately, fully and accurately to the inquiry.
- (3) Where a person makes a demand for things under subsection (1), the person having custody of the things shall produce them.

**Disclosure of information or things.**

45. (1) The Chief Environmental Health Officer or a person authorised in writing by the Minister for that purpose who receives information or things in response to an inquiry or a demand under section 44 shall not disclose them except in accordance with this section.

(2) A person who receives information or things in response to an inquiry or a demand under subsection (1) or an officer who receives them in the exercise of duties under this Act shall disclose them in accordance with the limitations, if any, specified in the regulations to any of the persons or bodies specified in subsection (3) if the person or officer who received them is of the opinion that -

(a) they relate to a food safety risk; and

(b) their disclosure to any of those persons or bodies is necessary to protect the health or safety of the public or any person.

(3) A person shall make the disclosure under subsection (2) to -

(a) a Minister for the purpose of the administration of any other Act dealing with public health or safety;

(b) the medical officer of health in the locality in which the food safety risk occurs or the Chief Medical Officer of Health under the Public Health Act; or

(c) any person whom the Minister or the person authorised in writing by the Minister considers is or may be affected by the risk or who may contribute to the prevention, decreasing or elimination of the risk.

**Administrative penalties.**

46. (1) Where -

(a) the Chief Environmental Health Officer is of the opinion that a person has contravened a provision of this Act or the regulations, has failed to comply with an order under this Act or has failed to comply with a condition of a licence, certificate or permit; and

(b) the contravention or failure is not one in respect of which he is required to issue a notice or order,

the Chief Environmental Health Officer may, issue a notice in writing requiring the person to pay an administrative penalty in the amount set out in the notice for each day or part of a day on which the contravention or failure occurred or continues.

(2) The Chief Environmental Health Officer shall not issue a notice under subsection (1) in respect of a contravention or failure later than two years after the later of -

- (a) the day the contravention or failure occurred; and
- (b) the day on which the evidence of the contravention or failure first came to the attention of the director.

**Amount of penalty.**

47. The Minister shall prescribe regulations establishing the amount of an administrative penalty in respect of a contravention or failure to comply with the provisions of this Act.

**Contents of notice on compliance.**

48. (1) The notice of an administrative penalty served on the person who is required to pay the penalty shall –
- (a) contain a description of the contravention or failure to which the notice relates, including, where appropriate, the date and location of the contravention or failure;
  - (b) specify the amount of the penalty determined by the Chief Environmental Health Officer;
  - (c) give particulars respecting the time for paying the penalty and the manner of payment; and
  - (d) provide information to the person as to the person's right to require the Chief Environmental Health Officer who issued the notice to hold a hearing of the matter under subsection (2).
- (2) The person who is required by a notice to pay an administrative penalty may, within the prescribed time after service of the notice on the person, by a written notice served on the Chief Environmental Health Officer who issued the notice, require the Chief Environmental Health Officer to hold a hearing with respect to-
- (a) whether the contravention or failure to which the notice relates occurred; and
  - (b) whether the amount of the penalty is justified in the circumstances.
- (3) If the person requests a hearing by the Chief Environmental Health Officer, the requirement to pay is stayed until the disposition of the matter.
- (4) After the hearing, the Chief Environmental Health Officer may confirm, rescind or amend the notice according to what he or she considers reasonable in the circumstances, but the Chief Environmental Health Officer shall not vary the amount of the penalty unless he or she considers the amount to be unreasonable.

- (5) If the person who is required by the notice or the decision of the Chief Environmental Health Officer to pay the administrative penalty does not do so in accordance with the notice or decision of the Chief Environmental Health Officer, as the case may be –
- (a) the Chief Environmental Health Officer may bring an action in a court of competent jurisdiction to recover the penalty imposed under this section and the court shall-
    - (i) determine whether the person is liable to the penalty, and
    - (ii) if the person is liable to the penalty, give judgment for the amount of the penalty imposed by the Chief Environmental Health Officer or whatever other amount that the court considers just;
  - (b) the Chief Environmental Health Officer may by order suspend any licence, certificate or permit that has been issued to the person until the penalty is paid; or
  - (c) the director may refuse to issue or renew any licence, certificate or permit to the person until the penalty is paid.

**Regulations.**

49. (1) The Minister may make Regulations –

- (a) specifying the form and content of notices of administrative penalties;
  - (b) governing the determination of the amount for the administrative penalty that must be set out in a notice, including the criteria to be considered and including providing for different amounts depending on when an administrative penalty is paid;
  - (c) specifying contraventions or failures or classes of contraventions or failures in respect of which the Chief Environmental Health Officer is required to issue a notice;
  - (d) setting a specific amount or a range of amounts for the administrative penalty that must be set out in a notice that the Chief Environmental Health Officer is required to issue;
  - (e) respecting any other matter necessary for the administration of a system of administrative penalties provided for by this section. Court order to enforce orders.
- (2) If a person fails to comply with an order issued under this Act, the Chief Environmental Health Officer may apply to the High Court for an order requiring the person to comply with such order.

**Injunction.**

50. If a person contravenes this Act or the regulations made hereunder, fails to comply with an order under this Act or fails to comply with a condition of a licence, certificate or permit, the Chief Environmental Health Officer may, in addition to any other remedy and to any penalty imposed by law, apply to the High Court for an order restraining the person from continuing the contravention or failure.

**Court order.**

51. If a court convicts a person of an offence under this Act, it may, on its own initiative or on application by counsel for the prosecutor, in addition to any other remedy and to any other penalty imposed by law, make an order prohibiting the continuation or repetition by the person of the act or omission for which the person is convicted.

**PART IX**

**MEMORANDUM OF UNDERSTANDING**

**Memorandum of understanding.**

52. (1) The Department shall, not later than three months after the commencement of this Act, initiate consultations with other governmental entities performing various functions relating to food safety and quality, with the objective of entering into memoranda of understanding or other arrangements between the Department and such other governmental entities to facilitate the more efficient carrying out within Barbados of the purpose and intent of this Act.
- (2) Without limiting the generality of subsection (1), the memorandum of understanding shall contain the limitations, conditions and requirements and all other provisions that the Minister considers advisable in the public interest, including provisions that provide for –
- (a) the establishment of mechanisms for coordination across jurisdictional lines;
  - (b) the implementation of integrated food safety and quality programmes;
  - (c) the exercise by the party entering into the memorandum of understanding of powers or duties under this Act of an inspector or any person authorised to act way on behalf of any of them;
  - (d) the payment of money required for the exercise by the party entering into the memorandum of understanding of powers or duties under subsection (1)(c);
  - (e) an undertaking by the governmental entity, individual, organisation, association, marketing board or Board of Health as defined in the Health Services Act to meet or improve on the standards laid down by law for the promotion of food safety and quality which are applicable to the subject matter of the agreement;

- (f) a set of measurable targets for fulfilling the undertaking mentioned in subsection (b);
- (g) the exercise by the governmental entity entering into the memorandum of agreement of provisions for -

- (i) independent verification of reports;
- (ii) regular independent monitoring and inspections;
- (iii) verifiable indicators of compliance with any targets, norms and standards laid down in the agreement or any obligations established in law;
- (iv) the measures to be taken in the event of non-compliance with commitments in the agreement, including where appropriate penalties for non-compliance and the provision of incentives to communities or persons.

- (3) Any memorandum of understanding or other arrangements developed under subsection (1), and any other such arrangements developed thereafter, may be amended from time to time in order to further the objectives of this Act.

#### **Delegation of administration.**

- 53. (1) Subject to subsection (3), the Minister may –

- (a) by regulation, designate provisions of this Act or a regulation as delegated legislation for the purpose of this section;
- (b) in the designation of legislation, specify exemptions and limitations to which the delegation is subject.

- (2) The exemptions and limitations in the designation of legislation may exempt or limit the designation based on geographic area, food or agricultural or aquatic commodity affected by the legislation, any powers or duties contained in the legislation or any other characteristic.

- (3) The Minister shall not designate as delegated legislation any powers or duties of the Minister, a director or an inspector under this Act with respect to a food safety risk.

- (4) A delegation under a memorandum of understanding shall not be effective unless -

- (a) the Minister makes a regulation specifying the party to which the administration and enforcement of the legislation is to be delegated; and;
- (b) the party so specified is a relevant entity n individual, partnership, organization, association, marketing board or Board of Health as defined under the Health Services Act.

- (5) If the Minister enters into a memorandum of understanding with respect to the administration and enforcement of delegated legislation and makes a regulation in accordance with subsection (4), all provisions in the legislation relating to its administration and enforcement are delegated to the relevant governmental entity, subject to the exemptions and limitations that are specifically set out in the designation of the legislation or the regulation.
- (6) The Minister may by regulation revoke a delegation under a memorandum of understanding in whole or in part if, in the opinion of the Minister –
- (a) the governmental entity contravened or failed to comply with the delegation agreement; or
  - (b) it is in the public interest to do so.
- (7) The governmental entity shall carry out the administration and enforcement of the designated legislation so delegated in accordance with the law and, in particular, in accordance with this Act and the memorandum of understanding.
- (8) The governmental entity shall report annually to the Minister, in the time and manner specified in the memorandum of understanding, on its activities over the previous year with respect to the administration and enforcement of the designated legislation so delegated.

## PART X

### OFFENCES AND PENALTIES

#### **Offences.**

54. A person is guilty of an offence if the person contravenes this Act or the regulations, fails to comply with an order made under this Act, a warrant issued under this Act or a condition of a licence, certificate or permit or fails to pay an administrative penalty that the person is directed to pay under the regulations.

#### **Corporations.**

55. (1) If a corporation commits an offence under this Act, an officer, director, employee or agent of the corporation who directed, authorised, assented to, acquiesced in or participated in the commission of the offence is party to and guilty of the offence and is liable on conviction to the punishment provided for the offence, whether or not the corporation has been prosecuted for the offence.
- (2) For the purpose of jurisdiction over an offence, the contravention or failure to comply that gives rise to the offence shall be deemed to have arisen at the place where the contravention or the failure occurred or at the residence, usual place of residence, place of business or usual place of business of the person charged with the contravention or failure.

**Continuing offences.**

56. Where a person is convicted of an offence under this Act or the regulations, then, if the contravention in respect of which he was convicted is continuing after he was convicted he shall be guilty of an offence and liable on conviction to a further fine of one-fourth of the maximum penalty prescribed for that offence for each day on which the offence continues.

**Other proceedings and remedies not affected.**

57. (1) Nothing in this Act shall prevent the prosecution of any person for an offence under any other law.

(2) No civil remedy for an act or omission is suspended or affected by reason only that the act or omission is an offence under this Act and nothing in this Act shall be construed so as to repeal, remove, or reduce any remedy available to any person under any other law.

**PART XI****REGULATIONS AND ORDERS****Regulations.**

58. (1) The Minister may make regulations –

- (a) prohibiting any person or class of persons from carrying on a licensed activity or from constructing or altering premises, facilities, equipment or transport to carry on the licensed activity unless, before doing so, the person or class of persons has given a notice to the Department;
- (b) prohibiting any person or class of persons from carrying on a licensed activity where the activity does not meet the basic standards of food safety and quality;
- (c) respecting the qualifications, education, training and certification necessary in order to carry out prescribed licensed activities and prohibiting persons other than those with the prescribed qualifications, education, training or certification from performing the prescribed licensed activities;
- (d) requiring or respecting the examining, analysing, testing or grading of any food, agricultural or aquatic commodity, agricultural input or thing related to carrying on a licensed activity;
- (e) respecting the qualifications, education, training and certification necessary in order to carry out the examining, analysing, testing or grading described in subsection (d) and prohibiting persons or facilities other than those with the prescribed qualifications, education, training or certification from performing that examining, analysing, testing or grading;

- (f) requiring or respecting the taking, supplying, examining, testing and analysing of samples of food, agricultural or aquatic commodities, agricultural inputs or any thing related to carrying on a licenced activity and prohibiting persons or facilities other than those that the Minister or a director has appointed, certified, designated or approved from performing that taking, supplying, examining, testing and analysing;
- (g) requiring that any food, agricultural or aquatic commodity or agricultural input or any thing related to the carrying on of a licensed activity be inspected and prescribing the terms and conditions under which the inspection may take place;
- (h) respecting the qualifications, education, training and certification that an inspector is required to have in order to exercise powers or carry out duties under this Act;
- (i) prohibiting persons from constructing, altering or using premises, facilities, equipment or conveyances to carry out any prescribed licensed activities unless a permit has been issued for the premises, facilities, equipment or conveyances in accordance with the regulations;
- (j) governing the location, design, construction, alteration, operation including hours of operation, and maintenance of premises, facilities, equipment and conveyances used in any licensed activity;
- (k) governing the issuance of licences, certificates or permits, including their expiry, renewal, suspension and revocation and conditions attached to them and appeals from decisions made by authorised persons with respect to the issuance of licences, certificates and permits;
- (l) allowing the persons or classes of persons who are authorised to issue licences, certificates or permits to attach conditions to them in the prescribed manner; requiring a person to pay fees to reimburse the Ministry for its reasonable costs of providing any service or doing any thing that is connected with the administration and enforcement of this Act and that relates to the person;
- (m) requiring a person to pay fees for the issuance or renewal of a licence, certificate or permit;
- (n) establishing the amount of the fees mentioned in subsection (l) or (m) and the manner and time in which the person is required to make payment of those fees;
- (o) requiring a person to pay interest in the amount specified by the Minister on the amount of fees mentioned in clause (l) or (m) that a person is required to pay under that clause and fails to pay as required;
- (p) authorising the Department to withhold any service that is connected with the administration and enforcement of this Act and that relates to the person if the person has not paid in full all fees and amounts of interest that the person is required to pay under this section;

- (q) requiring that a person, who is required to pay the fees that are mentioned in clause (l) or (m) in respect of designated legislation and that are specified in the regulations, shall pay them to the delegate to whom the administration and enforcement of the designated legislation is delegated;
  - (r) specifying the purposes for which the delegate described in subsection (q) may use the fees described in that subsection and requiring that the delegate pay all amounts that are not required for the specified purposes to the Minister or a separate account in the Consolidated Fund;
  - (s) identifying the ports which are appropriate for the import and export of food;
  - (t) identifying the food, agricultural or aquatic commodity or agricultural input, which may be imported into Barbados;
  - (u) the procedures that are to be adopted for the importation and exportation of food, agricultural or aquatic commodity or agricultural input;
  - (v) the procedures which inspectors shall adopt with regard to the disposal of food that presents a food safety risk;
  - (w) the procedures by which control areas are to be established;
  - (x) any other matter relating to the quality and safety of food;
  - (y) any other matter required or permitted by this Act to be prescribed, or necessary or convenient for carrying out or giving effect to this Act.
- (2) A regulation may adopt by reference, in whole or in part, with the changes that the Minister on the advice of the Council considers necessary for the efficient carrying out of the purposes and intent of this Act, any code, formula, standard, guideline, protocol or procedure including –
- (a) Codex Alimentarius; and
  - (b) HACCP;

and may require compliance with any code, formula, standard, guideline, protocol or procedure so adopted.

### **Orders.**

59. The Minister may make orders –

- (a) establishing control areas where there is a food safety risk that constitutes a significant risk to public health or safety;

- (b) prohibiting or restricting persons or classes of persons from having, storing, transporting or distributing food, agricultural or aquatic commodities or agricultural inputs within, from or to the control areas in the circumstances and for the purposes specified in the regulation, if any;
- (c) establishing and governing systems to ascertain all places of origin or destination of food, agricultural or aquatic commodities, agricultural inputs, or any thing used in or related to a licensed activity including requiring persons who come into contact with the food, agricultural or aquatic commodities, agricultural inputs or things to identify and track them in the prescribed manner and at the prescribed times and to maintain records and other documents with respect to them in the prescribed manner and at the prescribed times;
- (d) prohibiting persons from using, storing or handling prescribed agricultural inputs in any manner or in any manner except in the prescribed manner;
- (e) establishing requirements for and governing food safety, quality control and other similar programs, including recognizing other established programs as the programs, providing for the administration of the programs, specifying who is authorized or required to administer any part of the programs, specifying who is authorized to participate in the program, certifying persons who successfully complete the programs and providing for means of auditing the effectiveness of the program;
- (f) providing that a person who is in possession of any food, agricultural or aquatic commodity or agricultural input is deemed to possess it for the purpose specified in the regulations;
- (g) authorising the Chief Environmental Health Officer to designate or approve persons, organizations or facilities to exercise those powers and carry out those duties that are related to any thing described in a regulation made under this section and that are specified in the regulations made under this section.

## **PART XII**

### **GENERAL**

#### **Appeals.**

60. (1) Any person who is aggrieved by a decision of the Department may at any time within twenty-eight days of the decision, by notice in writing appeal against such decision.
- (2) Appeals shall be made to the Public Health Board, in accordance with rules applicable to appeals under the Health Services Act.

#### **Amendment.**

61. The Minister may amend or revoke any regulations, orders, schedules or notices made under this Act.

**Review of this Act.**

62. The Minister shall conduct a review of this Act three years after it is enacted.

**Accredited inspection and testing bodies.**

63. The Department shall publish a list of inspection and testing bodies that are accredited to conduct inspections and tests in relation to food.

**Compensation.**

64. Any person who is found liable for causing damage to the territory of Barbados shall in addition to the penalties prescribed in the Fourth Schedule shall be liable for the payment of compensation for the costs of any remedial measures that is undertaken by the Department.



**FIRST SCHEDULE**  
**National Animal and Human Health Committee**

**Composition**

1. (1) The National Animal and Human Health Committee (in this Schedule referred to as “the Committee”) shall be appointed by the Minister and consist of no less than .... nor more than members, the majority of whom shall be knowledgeable and with experience in matters relating to the food safety and quality, and may be drawn from government agencies and private sector representing environmental health, agriculture, veterinary services, trade, pesticides, water, tourism, legal affairs, standards, analytical services, forensics, markets, and persons who represent stakeholders or persons who have experience, expertise or skills necessary to enable the Committee to carry out its functions.
- (2) A member of the Committee shall be appointed for a term not exceeding three years under such terms and conditions of service as the Minister may fix in the instrument of appointment.

**Chairman, Vice-Chairman etc.**

2. (1) The Minister may appoint one of the members of the Committee to be the Chairman of the Committee;
- (2) The Committee shall select from among its members a Deputy Chairman and a Secretary.

**Functions of the Council.**

3. The functions of the Committee shall be to –
  - (a) oversee the operations of the Department;
  - (b) appoint working groups, subcommittees or bodies as needed to enable the Department to carry out its functions;
  - (c) approve food safety and quality policies and the manner of implementation;
  - (d) propose food safety laws or regulations to the Minister;
  - (e) approve workplans and programmes;
  - (f) provide guidance on matters related to risk analysis and applicable international standards; and
  - (g) such other duties and functions as are relevant to the effective implementation of this Act.

**Meetings.**

4. The Committee shall meet at least once in each month and at such other times as the Chairman determines is necessary for the efficient discharge of its functions.

**Procedure.**

5. The Committee may determine its own procedure and may, subject to the approval of the Minister, make rules governing such procedure, and prescribe such forms as are considered necessary.

**Removal of member of Council.**

6. (1) The Minister may remove a member of the Committee if the member –
  - (a) becomes incapable of carrying out his duties;
  - (b) is convicted of an offence;
  - (c) is guilty of misconduct;
  - (d) is absent, except on leave from the Committee, from all meetings of the Committee held during two consecutive months or during any three months in any period of twelve months;
  - (d) fails to comply with section 8;
  - (e) if he thinks it expedient to do so.

**Resignation.**

7. The Chairman may resign from office by an instrument in writing addressed to the Minister, and any other member may resign from office by an instrument in writing addressed to the Chairman.

**Disclosure of interest.**

8. (1) Any member of the Committee who has any interest, directly or indirectly, in any matter before the Committee-
  - (a) shall disclose the nature of the interest to the Committee; and
  - (b) shall not take part in any deliberations or decisions of the Committee with respect to that matter.
- (2) A disclosure under this section shall be recorded in the minutes.

**SECOND SCHEDULE**

**FEES**

<b>Application</b>	<b>Fee \$</b>
Fee for application for a an export licence	
Fee for application for a an import licence	
Fee for application for renewal of a licence	
Fee for application to transfer of a licence	
Fee for application to vary a licence	

**THIRD SCHEDULE**

**REQUIREMENTS FOR LICENCE**

1. (1) An application for a licence shall -
- (a) be completed in triplicate and shall be submitted to the Department together with the fee specified in the Schedule;
  - (b) shall be in respect of one activity;
  - (c) shall contain the following information -
    - (i) the company or corporate name, the names of directors if any, the name and position of the applicant, the name of the owner or occupier and exact location of the activity;
    - (ii) proof that the applicant either owns the facility or has a lease or other agreement with the landowner or occupier to enable the applicant to conduct the activity on the facility or has the legal right or ability to conduct the activity without the consent of the landowner or occupier;
    - (iii) a detailed description of the process or activity;
    - (v) a summary of required monitoring information which has not already been submitted to the Department;
    - (vi) an indication whether or not the application is a new application or application for renewal or variance;

- (viii) an indication whether or not a permit or licence from any other government entity is required under written law and whether such permits or licences have been obtained;
- (ix) copies of existing licences, permits or certificates or licences relating to the activity, that have been granted to the applicant by the Department or any government entity;
- (x) copies of any risk assessment relating to the activity has been conducted;
- (xi) an account of the measures undertaken to determine any associated potential biological and economic consequences or adverse effect on human or animal health arising from the presence of additives, contaminants, toxins or disease-causing organisms in food, beverages or feedstuffs;
- (xii) proof that the applicant can financially mitigate or carry out remedial work;
- (xiii) any other information deemed necessary by the Department.

(2) Where the applicant is a company, the applicant shall supply the Department with a Registrar's certificate furnished by the Registrar of Companies under section...of the Companies Act stating that the name of the company is on the Register of Companies.

**Power to grant licence.**

2. (1) The Department shall within six weeks of receipt of a completed application grant a licence to the applicant or refuse to grant.
- (2) Where the Department considers that it shall not be able to make a determination after receiving the information under section 9, it may grant to the applicant an interim licence which shall be effective for a period not exceeding one year.
- (3) The Department may grant a licence to a licensee whose licence granted under subsection (1) has been cancelled or has expired.

**Duration of licence.**

3. Subject to section 10 (2), unless previously cancelled by the Agency, a licence shall be effective until a fixed date specified in the licence, which date shall not be beyond three years from the date on which the licence was granted.

**Application for variance.**

4. (1) A person to whom a licence has been granted may make an application to the Department to vary any provision thereof on submission of supporting particulars together with the fee prescribed under section 9.

- (2) The particulars submitted under subsection (1) shall be based on supported scientific evidence.
- (3) For the purposes of subsection (1), varying the provisions of a licence includes any –
- (a) change in the method of production, processing, structure, or arrangement of the facility or any plant, building, equipment, machine, apparatus, mechanism or thing serving the facility or any technology used or installed at the facility from which effluent may be discharged;
  - (b) change in the use of raw materials;
  - (c) material change in the quality, quantity, composition of the food;
  - (d) change in operational procedures;
  - (e) change in products being manufactured; and
  - (f) change in waste produced.
- (4) The Department may approve the application under subsection (1) if –
- (i) there is no known practicable means of control to enable compliance with the existing conditions contained in the licence; or
  - (ii) the estimated cost to be incurred for compliance will be prohibitive having regard to the nature and size of the industry, trade or process being carried out in the premises in which the activities are being conducted; or
  - (iii) the imposition of the conditions as prescribed in the licence are not, having regard to all factors, reasonably practicable or are contrary to the intent and spirit of this Act.
- (5) Where the Department approves an application under subsection (1) the Department shall cancel the existing licence and re-issue to the applicant a new licence.
- (6) Any person who varies the provisions of a licence without an approval therefor shall be guilty of an offence and shall be liable to the penalties prescribed under paragraph...of the Fourth Schedule.

**Transfer of licence.**

5. (1) No licence is assignable or transferable to any person without the prior consent of the Department first having been obtained.

(2) The Department may, on the application of a licensee, transfer his licence to another person.

- (3) The Department shall not approve an application under subsection (2) unless the application is in respect of an activity to which the licence applies.
- (4) An application for a transfer shall contain –
- (a) the name and address of the proposed transferee; and
  - (b) the signatures of the proposed transferee and the applicant.
- (5) An application for a transfer shall be accompanied by the licence which is to be transferred.
- (6) Where the proposed transferee is a company, an application for a transfer shall be accompanied by a Registrar's certificate furnished by the Registrar of Companies under the Companies Act stating that the name of the company is on the Register of Companies.
- (7) Where the Department approves an application under subsection (2), the Department shall –
- (a) endorse the transfer on the licence submitted under subsection (5);
  - (b) substitute the name of the applicant on the licence for that holder; and
  - (c) endorse the date the application is approved.
- (8) The transferee shall be deemed to be the person to whom the licence was granted from the date specified in subsection (7)(c).
- (9) Where the proposed transferee commences the activity before a final determination of the application is made by the Department, the conditions and restrictions of the licence shall be binding on the proposed transferee and shall be observed by him, notwithstanding that he is not yet the holder of the licence or that the licence may have expired before such determination is made.
- (10) The Department may, on the application to transfer a licence, modify, revoke or re-issue such licence or incorporate such other requirements as the Department may consider necessary.

**Renewal of licence.**

6. (1) Where a licensee wishes to continue an activity in respect of which a licence was granted beyond the expiration of a licence, the licensee shall submit an application for a new licence to the Department together with the prescribed fee.
- (2) An application for a new licence shall be made at least six months before the expiration of the licence.
- (3) Where a licensee, after the expiration of the licence, has submitted an application for a new licence in accordance with subsection (1), the expired licence shall continue in force until the effective date of the new licence.
- (4) In considering an application for the renewal of a licence, the Department may –

(a) carry out physical inspections of the premises; and

(b) specify other standards or conditions with which such premises shall comply.

(5) Where there has been no material change in the circumstances that existed at the time the licence was granted, the Department may grant the renewal.

**Changes in particulars.**

7. (1) The Department may, while considering an application for a licence, request additional oral or additional written information from –

(a) an applicant or an agent of the applicant;

(b) a person who is directly affected by the application;

(c) a local authority or any other government agency; or

(d) any other source which the Department considers appropriate.

(2) Prior to the issue of a licence, any change in the particulars furnished in the application or after the grant of the licence, any change in the particulars on the basis of which a licence has been granted shall be notified immediately in writing to the Department by the applicant or his agent, or, as the case may be, by the holder of such licence.

**Incomplete applications.**

8. (1) Where the Department considers that the applicant has omitted to provide any of the information required under section 9, the Department shall notify the applicant in writing of the omission within fifteen of receipt of the application and shall request the applicant to furnish the requisite information within fifteen days.

(2) The Agency may at the request of the applicant allow an extension of the time limit fixed under subsection (1).

(3) Where the applicant does not supply the information under subsection (1) or (2), the Department may refuse to grant a licence.

(4) The Department shall establish in each licence such terms and conditions, as required on a case-by-case basis as it deems fit and may include -

(a) that the licensee shall at all times properly operate and maintain all premises and systems of production, processing or manufacturing to achieve compliance with the licence inclusive of Good Manufacturing Practices, Good Agricultural Practices, HACCP and Codex Alimentarius, adequate laboratory controls and the appropriate quality assurance procedures and back-up or auxiliary facilities to achieve compliance with the licence;

- (b) that the licensee shall establish a monitoring programme at his own expense or bear the cost of such programme within such period or at such time and in such manner as the Department may specify to make provision for –
  - (i) methods of sampling;
  - (ii) methods of analysis;
  - (iii) reporting procedures;
  - (iv) recruitment and training of staff to conduct monitoring activities;
  - (v) such other matters as the Department may require.
- (c) that the licensee shall furnish the Department in an annual report any information which the Department may request to determine whether cause exists for modifying, varying, suspending, revoking or re-issuing the licence or to determine compliance with the licence;
- (d) that the licensee shall furnish to the Department upon request, copies of records to be kept by the licensee;
- (e) that the licensee report all instances of anticipated non-compliance to the Department and shall give advance notice to the Department of any planned changes in the activity which may result in non-compliance with the licence;
- (f) that, where there has been non-compliance with the licence, the licensee shall -
  - (i) report to the Department within twenty-four hours of the time the licensee becomes aware of the non-compliance and the anticipated manner in which it may endanger food safety and quality;
  - (ii) within seventy-two hours submit to the Department a written report containing a description of the non-compliance, its cause and the period of non-compliance including exact dates and time; and
  - (iii) submit a report to the Department indicating the reasons therefor and the anticipated time it is expected to continue if the non-compliance has not been corrected.

(5) In deciding the terms and conditions of the licence the Department shall have regard to the information submitted in section 9.

**Grounds for refusal to grant licence.**

9. The Department may refuse to grant a licence under this Act where it has reason to believe -

- (a) that the application contains or is based on false or misleading representation or information which is false in a material particular;
- (b) in case of an individual that he -
  - (i) is under the age of eighteen years;
  - (ii) is an undischarged bankrupt;
  - (iii) is not in a position to comply with the provisions of this Act;
- (c) in case of a body corporate, that –
  - (i) a resolution has been passed against it for its voluntary winding up or an order has been made by a court of competent jurisdiction for its winding up;
  - (ii) a receiver has been appointed to manage any of its assets; or
  - (iii) any of its directors has been convicted of any offence specified under this Act during the period of five years immediately preceding the application; or
  - (iv) where in the opinion of the Department, the issue of the licence would not be in the best interest of ~~the public~~, having regard to such factors as the Department considers relevant to ensuring food safety and quality and the protection of human health.

**Cancellation, suspension and modification of licence.**

10. (1) The Department may at any time by notice in writing to the licensee, cancel or suspend such licence or impose such conditions as the Department considers appropriate in addition to or in place of the existing conditions, with effect from such date as the Department may specify provided that the cancellation, suspension or modification shall not give rise to an additional adverse effect.
- (2) The Department may cancel, suspend or modify a licence during its currency for any of the following reasons -
- (a) the licensee made a misrepresentation or willful omission in obtaining the licence or in any report submitted to the Department or in any other way obtained the licence improperly;
  - (b) the a licensee is contravening any material condition of the licence;
  - (c) violation of any condition of the licence;

- (d) changes in circumstances relating to the licence;
  - (e) the licensee –
    - (i) dies;
    - (ii) becomes bankrupt;
    - (iii) goes into liquidation or receivership; or
    - (iv) becomes a party to an amalgamation;
    - (v) there is a change in ownership;
    - (vi) the licensee proposes to change the process of operation of technology used in the facility and which is likely to cause a change in the nature and composition of the product;
  - (f) the Department establishes new or revised standards in respect of the conduct of the activities;
  - (g) any other change, situation or activity relating to the use of a licence that in the judgment of the Department is not consistent with the Act.
- (3) The Department shall cancel the licence provided if the Department considers it is contrary to the public interest to cancel the licence, the Department may suspend the authorisation instead.
- (4) The Department shall, while suspending a licence , notify the licensee thereof in writing –
- (a) stating the breach which gave rise to the suspension;
  - (b) requiring the licensee to remedy the breach;
  - (c) stating the time within which the breach is to be remedied; and
  - (d) stating whether the licence is to be returned within a specified time to the Department.
- (5) The the licensee under subsection (4), upon remedying the breach, shall so inform the Department and the Department shall, if it is satisfied that the breach is remedied, forthwith return the licence to the holder thereof.
- (6) A suspension under this section may be for a specified period or until the fulfillment of specific conditions or until further order of the Department.
- (7) Before the Department acts under subsection (2) the Department shall –

(a) notify the licensee in writing of its proposed action specifying the reason for the proposed action; and

(b) allow the licensee at least seven days within which to make written submissions to the Department in relation to the Department's proposed action.

(8) Where the Department modifies a licence, the Department shall cancel the existing licence and re-issue licensee with a modified licence.

**Monitoring of licence by Department.**

11. (1) Where a licence is in force it shall be the duty of the Department to take the steps needed –

(a) for the purpose of ensuring that the activities authorised by the licence are conducted in such a manner as to maintain the food safety and quality standards as prescribed by this Act; and

(b) for the purpose of ensuring that the conditions of the licence are complied with.

(2) For the purpose of performing that duty, any officer of the Department may, if it appears to him that by reason of an emergency it is necessary to do so, carry out work in relation to the land, plant or equipment to which the licence relates.

(3) The costs of any work conducted in accordance with subsection (3) shall be recoverable from the licensee.

**FOURTH SCHEDULE****PENALTIES**

<b><u>Paragraph</u></b>	<b><u>Prescribed penalties</u></b>
(a)	
(b)	
(c)	
(d)	
(e)	
(f)	

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Judy Daniel



**FIFTH SCHEDULE**

**NOTICE OF INTENTION TO EXPORT/IMPORT FOOD**

Name of Exporter/Importer:	I.....the person providing the information give notice as required under the Food Safety Act of intention to import/export the product described, and that the information supplied on this form is correct in every particular.
Address of Exporter/Importer:..... .....	
..... .....	
Tel. No.....Fax No.....	Signature of importer/exporter..... .....
E-mail address.....	Date..... .....
Name of importer/exporter.....	
Address of Exporter/Importer..... .....	
	Date inspection requested.....
Tel. No.....Fax No.....	Identification Marks.....
E-mail address.....	
Processing date.....	
Where processed.....	Port of landing..... ...
Place where product may be inspected.....	Final destination..... ...
Name of ship or flight no.....	
Date of export.....	
Certification required by importing country.....	
Accompanying certification..... ..... .....	