CHAPTER 30

An Act to amend and consolidate certain enactments in Scotland relating to food and drugs, and for purposes connected therewith. [15th March, 1956]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

GENERAL PROVISIONS AS TO FOOD AND DRUGS

Composition and labelling of Food and Drugs

Offences in connection with preparation and sale of injurious foods and adulterated drugs.

1.—(1) No person shall add any substance to food, use any substance as an ingredient in the preparation of food, abstract any constituent from food, or subject food to any other process or treatment, so as (in any such case) to render the food injurious to health, with intent that the food shall be sold for human consumption in that state.

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

(3) Subject to the provisions of this section, no person shall—

(*a*) sell for human consumption, offer, expose or advertise for sale for human consumption, or have in his possession for the purpose of such sale, any food rendered injurious to health by means of any operation described in subsection (1) of this section; or

(*b*) sell, offer, expose or advertise for sale, or have in his possession for the purpose of sale, any drug injuriously

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affected in its quality, constitution or potency by means of any operation described in subsection (2) of this section.

(4) A person who contravenes any of the foregoing provisions of this section shall be guilty of an offence against this Act.

(5) In determining for the purposes of this Act whether an article of food is injurious to health, regard shall be had not only to the probable effect of that article on the health of a person consuming it, but also to the probable cumulative effect of articles of substantially the same composition on the health of a person consuming such articles in ordinary quantities.

(6) In proceedings under this section for an offence consisting of the advertisement for sale of any food or drug, it shall be a defence for the person charged to prove that, being a person whose business it is to publish, or arrange for the publication of, advertisements, he received the advertisement for publication in the ordinary course of business, and did not himself make, or cause to be made, any material alteration in the substance of that advertisement.

General protection for purchasers of food and drugs.

2.—(1) If a person sells to the prejudice of the purchaser any food or drug which is not of the nature, or not of the substance, or not of the quality, of the food or drug demanded by the purchaser, he shall, subject to the provisions of the next following section, be guilty of an offence against this Act.

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

(3) In this section, except so far as it relates to drugs, the reference to sale shall be construed as a reference to sale for human consumption.

Defences available in proceedings under s. 2.

3.—(1) In proceedings under section two of this Act for an offence consisting of the sale of food to which any substance has been added, or in the preparation of which any substance has been used as an ingredient, or from which any constituent has been abstracted, or which has been subjected to any other process or treatment, other than food thereby rendered injurious to health, it shall be a defence for the person charged to prove that the operation in question was not carried out fraudulently, and that the article was sold having attached thereto a notice of adequate size, distinctly and legibly printed and conspicuously visible, stating explicitly the nature of the operation, or was sold in a wrapper or container displaying such a notice.

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

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(3) In proceedings under the said section two for an offence alleged to have been committed by the sale of an article containing extraneous matter, it shall be a defence for the person charged to prove that the presence of that matter was an unavoidable consequence of the process of collection or preparation.

(4) In proceedings under the said section two for an offence alleged to have been committed by the sale of diluted spirit, being whisky, brandy, rum or gin, it shall be a defence for the person charged to prove that the spirit was diluted with water only and that its strength was not lower than thirty-five degrees under proof; but nothing in this subsection shall affect the provisions of subsection (4) of section one hundred and sixty-one of the Customs and Excise Act, 1952 (which relates to the dilution of spirits after computation of duty).

Regulations as to composition of food, etc.

4.—(1) The Secretary of State may, so far as appears to him to be necessary or expedient in the interests of the public health, or otherwise for the protection of the public, make regulations for any of the following purposes:—

(*a*) for requiring, prohibiting or regulating the addition of any specified substance, or any substance of any specified class, to food intended for sale for human consumption or any class of such food, or the use of any such substance as an ingredient in the preparation of such food, and generally for regulating the composition of such food;

(*b*) for requiring, prohibiting or regulating the use of any process or treatment in the preparation of any food intended for sale for human consumption, or any class of such food;

(*c*) for prohibiting or regulating the sale, possession for sale, offer or exposure for sale, consignment or delivery of food which does not comply with any of the regulations, or in relation to which an offence against the regulations has been committed or would have been committed if any relevant act or omission had taken place in Scotland, or the importation of any such food as aforesaid;

(*d*) for prohibiting or regulating the sale, possession for sale, or offer, exposure or advertisement for sale, of any specified substance, or of any substance of any specified class, with a view to its use in the preparation of food for human consumption, and the possession of any such substance for use in the preparation of food intended for sale for human consumption.

(2) In the exercise of his functions under this section the Secretary of State shall have regard to the desirability of restricting, so far as practicable, the use of substances of no nutritional value as foods or as ingredients of foods.

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(3) Regulations made under this section may apply to cream and separated milk, and to any food containing milk; but except as aforesaid such regulations shall not apply to milk.

(4) Regulations so made may provide, in relation to such cases as may be specified and subject to such exceptions as may be allowed by or under the regulations, that where any food is certified by a public analyst as being food to which the regulations apply so far as they are made under paragraph (*c*) of subsection (1) of this section that food may be treated for the purposes of section nine of this Act as being unfit for human consumption:

Provided that nothing in any such regulations shall be taken as prejudicing the generality of the powers conferred by the said section nine.

Power of Secretary of State to obtain particulars of certain food ingredients.

5.—(1) For the purpose of enabling him to exercise his functions under the last foregoing section, the Secretary of State may by order require every person who at the date of the order or at any subsequent time carries on a business which includes the production or importation or use of substances of any class specified in the order to furnish to him, within such time as may be so specified, such particulars as may be so specified of the composition and use of any such substance sold in the course of that business for use in the preparation of food for human consumption, or used for that purpose in the course of that business.

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

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

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

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

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

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(3) No particulars furnished in accordance with an order under this section, and no information relating to any individual business obtained by means of such particulars, shall, without the previous consent in writing of the person carrying on the business in question, be disclosed except—

(*a*) in accordance with directions of the Secretary of State, so far as may be necessary for the purposes of the last foregoing section or of any corresponding enactment for the time being in force in England and Wales or Northern Ireland;

(*b*) for the purposes of any proceedings for an offence against the order or any report of those proceedings,

and if any person discloses any such particulars or information in contravention of this subsection he shall be guilty of an offence against this Act.

(4) Section fifty-one of the Patents Act, 1949 (which secures inventions against anticipation in certain cases), shall apply in relation to the disclosure of any invention made in pursuance of an order under this section, and to anything done in consequence of any such disclosure, as it applies in relation to such communications of inventions as are therein mentioned, and to anything done in consequence of such communications.

Labels and advertisements describing incorrectly food or drugs.

6.—(1) A person who gives with any food or drug sold by him, or displays with any food or drug exposed by him for sale, a label, whether attached to or printed on the wrapper or container or not, which falsely describes that food or drug, or is calculated to mislead as to its nature, substance or quality, shall be guilty of an offence against this Act, unless he proves that he did not know, and could not with reasonable diligence have ascertained, that the label was of such a character as aforesaid.

(2) Subject to subsection (4) of this section, a person who publishes, or is a party to the publication of, an advertisement (not being such a label so given or displayed by him as aforesaid) which falsely describes any food or drug or is calculated to mislead as to its nature, substance or quality shall be guilty of an offence against this Act; and in any proceedings under this subsection against the manufacturer, producer or importer of the food or drug, it shall rest on the accused to prove that he did not publish, and was not a party to the publication of, the advertisement.

(3) It is hereby declared that for the purposes of this section, a label or advertisement which is calculated to mislead as to the nutritional or dietary value of any food is calculated to mislead as to the quality of the food.

(4) In proceedings under subsection (2) of this section it shall be a defence for the accused to prove either—

(*a*) that he did not know, and could not with reasonable diligence have ascertained, that the advertisement was

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of such a character as is described in that subsection; or

(*b*) that, being a person whose business it is to publish, or arrange for the publication of, advertisements, he received the advertisement for publication in the ordinary course of business, and did not himself make, or cause to be made, any material alteration in the substance of that advertisement.

(5) In proceedings for an offence against this section the fact that a label or advertisement in respect of which the offence is alleged to have been committed contained an accurate statement of the composition of the food or drug shall not preclude the court from finding that the offence was committed.

(6) In this section, except so far as it relates to drugs, any reference to sale shall be construed as a reference to sale for human consumption.

Regulations as to labelling and description of food.

7.—(1) Without prejudice to the provisions of the last foregoing section, the Secretary of State may make regulations for imposing requirements as to, and otherwise regulating, the labelling, marking or advertising of food intended for sale for human consumption. and the descriptions which may be applied to such food.

(2) In relation to the labelling and marking of food with respect to weight, measure and number, the last foregoing subsection shall apply with the substitution for the reference to the Secretary of State of a reference to the Board of Trade.

(3) Regulations made under this section may make provision for any purpose authorised by paragraph (*c*) of subsection (1) of section four of this Act in the case of regulations under that section.

(4) Regulations made under this section may apply to cream and separated milk, and to any food containing milk; but except as aforesaid such regulations shall not apply to milk.

Food Unfit for Human Consumption

Prohibition on sale, etc., of food unfit for human consumption.

8.—(1) Subject to the provisions of this section, any person who—

(*a*) sells, or offers or exposes for sale, or has in his possession for the purpose of sale or of preparation for sale; or

(*b*) deposits with, or consigns to, any person for the purpose of sale or of preparation for sale,

any food intended for, but unfit for, human consumption shall be guilty of an offence against this Act.

(2) Where food in respect of which an offence under paragraph (*a*) of the last foregoing subsection has been committed was sold

to the offender by some other person, that person also shall, subject to the provisions of this section, be guilty of an offence against this Act.

(3) Where a person is charged with an offence under paragraph (*b*) of subsection (1) of this section or under the last foregoing subsection it shall be a defence for him to prove—

(*a*) that he had no reason to suppose that the person, with whom he deposited, or to whom he consigned or sold the food in question, intended the food for human consumption, and that he gave notice to that person that the food was unfit for such consumption, or

(*b*) that, at the time when he delivered or dispatched it to that person, it was fit for human consumption, or

(*c*) that, at such time as aforesaid he did not know, and could not with reasonable diligence have ascertained, that it was unfit for human consumption.

Examination and seizure of suspected food.

9.—(1) An authorised officer of a local authority may at all reasonable times examine any food intended for human consumption which has been sold, or is offered or exposed for sale, or is in the possession of, or has been deposited with or consigned to, any person for the purpose of sale or of preparation for sale, and, if it appears to him to be unfit for human consumption, may seize it and remove it in order to have it dealt with by a justice of the peace.

(2) An officer who seizes any food under the last foregoing subsection shall inform the person in whose possession it was found of his intention to have it dealt with by a justice of the peace, and any person who under the last foregoing section might be liable to a prosecution in respect of the food shall, if he attends before the justice upon the application for its condemnation, be entitled to be heard and to call witnesses.

(3) If it appears to a justice of the peace on sworn information in writing that any food, whether seized under the provisions of this section or liable to be so seized, is unfit for human consumption, he shall condemn it and make an order in writing for it to be destroyed, or to be so disposed of as to prevent it from being used for human consumption, and any such order shall be sufficient evidence of the unfitness for human consumption of the food in question in any proceedings under this Act.

(4) If a justice of the peace refuses to condemn any food seized under this section by an authorised officer of a local authority, the authority shall compensate the owner of the food for any depreciation in its value resulting from its seizure and removal.

(5) In this section any reference to a justice of the peace includes a reference to the sheriff and to a magistrate.

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Food offered as prizes, etc.

10.—(1) Sections eight and nine of this Act shall apply—

(*a*) in relation to any food which is intended for human consumption and is offered as a prize or reward or given away in connection with any entertainment to which the public are admitted whether on payment of money or not, as if that food were, or had been, exposed for sale by each person concerned in the organisation of the entertainment;

(*b*) in relation to any food which is intended for human consumption and is offered as a prize or reward or given away for the purpose of advertisement, or in furtherance of any trade or business, as if that food were, or had been, exposed for sale by the person offering or giving away the food;

(*c*) in relation to any food which is intended for human consumption and is exposed or deposited in any premises for the purpose of being so offered or given away as aforesaid, as if that food were, or had been, exposed for sale by the occupier of the premises.

(2) In this section the expression " entertainment " includes any social gathering, amusement, exhibition, performance, game, sport, trial of skill or any lottery.

Power to examine food in course of transit.

11.—(1) Subject to the provisions of this section, if an authorised officer of a local authority has reason to suspect that any vehicle or container contains any food which is intended for sale for human consumption, or is in the course of delivery after sale for human consumption, he may examine the contents of the vehicle or of the container, and for that purpose may, if necessary, detain the vehicle or the container, and, if he finds any food which appears to him to be intended for, but unfit for, human consumption, he may deal with it as food falling within subsection (1) of section nine of this Act and subsections (2) to (4) of that section shall apply accordingly.

(2) Nothing in this section shall authorise the detention of—

(*a*) any vehicle belonging to the British Transport Commission and used by them for the purposes of their railway undertaking, and any vehicle belonging to a railway company and used by them for the purposes of their undertaking; or

(*b*) any authorised vehicle used for the purpose of his business as a carrier of goods by a person holding an A licence or a B licence under Part I of the Road and Rail Traffic Act, 1933.

(3) Where the duties of an officer of customs and excise with respect to any goods have not been wholly discharged, nothing in this section shall authorise the examination of those goods without his consent.

Food Hygiene

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Slaughter of animals intended for food.

12.—(1) Subject to the provisions of this and the next following section no animal, the meat derived from which is intended for sale for human consumption, shall be slaughtered in any place other than a slaughterhouse unless accident, illness or other emergency affecting such an animal requires that it be slaughtered elsewhere.

(2) No person shall sell, or offer or expose for sale, or have in his possession for the purpose of sale, or of preparation for sale, for human consumption any part of, or product derived wholly or partly from, an animal which has been slaughtered in a knacker's yard or of which the carcase has been brought into a knacker's yard.

(3) Any person who contravenes any of the provisions of the two last foregoing subsections shall be guilty of an offence against this Act.

(4) In this section—

(*a*) in subsection (1) the expressions "animal" and "slaughterhouse" have the same meanings as in Part II of the Slaughterhouses Act, 1954; and

(*b*) in subsection (2) the reference to an animal includes a reference to poultry.

Regulations as to food hygiene.

13.—(1) The Secretary of State may make such regulations as appear to him to be expedient for securing the observance of sanitary and cleanly conditions and practices in connection with the sale of food for human consumption or the importation, preparation, transport, storage, packaging, wrapping, exposure for sale, service or delivery of food intended for sale or sold for human consumption, or otherwise for the protection of the public health in connection with the matters aforesaid.

(2) Without prejudice to the generality of the last foregoing subsection, regulations made by the Secretary of State under this section may make provision—

(*a*) for imposing requirements as to the construction, layout, drainage, equipment, maintenance, cleanliness, ventilation, lighting, water supply, and use of premises in, at or from which food is sold, or offered, exposed, stored or prepared for sale for human consumption (including any parts of such premises in which apparatus, equipment, containers or utensils are cleansed or in which refuse is disposed of or stored);

(*b*) for imposing requirements as to the provision, maintenance and cleanliness of sanitary and washing facilities in connection with such premises, the disposal of refuse and the maintenance and cleanliness of apparatus, equipment, furnishings, containers or utensils used in

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such premises, and in particular for imposing requirements that every sanitary convenience situated in such premises shall be supplied with water through a suitable flushing appliance;

(*c*) for prohibiting or regulating the use of any specified materials, or of materials of any specified class, in the manufacture of apparatus, equipment, containers or utensils designed for use in the preparation of food for human consumption, and the sale or importation for sale of apparatus, equipment, containers or utensils designed for such use and containing any specified materials or materials of any specified class;

(*d*) for prohibiting spitting on premises where food is sold or offered, exposed, stored or prepared for sale for human consumption (including any parts of such premises in which apparatus, equipment, containers or utensils are cleansed);

(*e*) for imposing requirements as to the clothing worn by persons in such premises;

(*f*) for securing the inspection of animals intended for slaughter and of carcases for the purpose of ascertaining whether meat intended for sale for human consumption is fit for such consumption;

(*g*) for requiring the staining or sterilisation in accordance with the regulations of meat which is unfit for human consumption, or which is derived from animals slaughtered in knackers' yards or from carcases brought into such yards or which, though not unfit for human consumption, is not intended therefor;

(*h*) for regulating generally the treatment and disposal of such meat and of any food unfit for human consumption;

(*i*) for prohibiting or regulating, or enabling local authorities to prohibit, or regulate, the sale for human consumption or the offer, exposure or distribution for sale for human consumption, of shell-fish taken from beds or other layings for the time being designated by or under the regulations.

(3) In the last foregoing subsection "animals" includes poultry.

(4) Regulations under this section may make different provisions in relation to different classes of business; and without prejudice to the foregoing provisions of this section or of section fifty-six of this Act, any such regulations imposing requirements in respect of premises may—

(*a*) impose responsibility for compliance with those requirements on the occupier of the premises and, in the

case of requirements of a structural character, on any owner of the premises who either lets them for use for a purpose to which the regulations apply or permits them to be so used after notice from the authority charged with the enforcement of the regulations;

(*b*) provide, subject to such limitations and safeguards as may be specified, for conferring, in relation to particular premises, exemptions from the operation of specified provisions contained in regulations made for the purposes of paragraph (*a*) or paragraph (*b*) of subsection (2) of this section while there is in force a certificate of the local authority to the effect that compliance with those provisions cannot reasonably be required with respect to the premises or any activities carried on therein.

(5) The Secretary of State may make regulations imposing, to such extent as may seem to him appropriate, in respect of accommodation in home-going ships, and in respect of vehicles, stalls, and places other than premises any requirement which could be imposed under the foregoing provisions of this section in respect of premises.

(6) The Secretary of State shall from time to time take such steps as he thinks expedient for publishing codes of practice in connection with matters which may be made the subject of regulations under this section, for the purpose of giving advice and guidance to persons responsible for compliance with such regulations.

Registration

Registration of manufacturers and traders.

14.—(1) Subject to the provisions of this section, and to such exceptions as the Secretary of State may by order prescribe, no person shall use any premises for the preparation, exposure, or offer for sale or sale of food for human consumption, or the storage of food intended for sale for human consumption, in the course of any business of a class prescribed by order made by the Secretary of State unless he is registered in respect of the premises for that purpose by the local authority.

(2) Subject to the following provisions of this section, and to such exceptions as the Secretary of State may by order prescribe, no person shall engage, otherwise than in, at or from premises, in any business of a class prescribed by order and consisting of or including the preparation, exposure, or offer for sale, or sale of food for human consumption or the storage of food intended for sale for human consumption unless he is registered by the local authority, and the provisions of this and the next following section in respect of premises shall apply to such persons and where applicable to vehicles, stalls or places in, at or from

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which any such business is carried on with such adaptations or modifications as the Secretary of State may by such order prescribe.

(3) An application for registration in respect of any premises under this section shall be made by the person who proposes to use the premises and shall contain such information in relation to these premises as the local authority may require, and, in the case of an application in respect of premises not yet erected, or of premises to be reconstructed, shall be accompanied by plans showing the proposed works.

(4) A local authority shall require a person who applies for registration under this section to give to them before his application is considered information as to any similar registration for which he has applied at any time either in their area or in the area of any other local authority.

(5) Subject to the provisions of the next following section the local authority shall, on an application for registration being duly made by a person in respect of any premises, register that person in respect of the premises, and shall upon so registering him issue to him a certificate in that behalf.

(6) The registers kept by a local authority for the purposes of this section shall be open to public inspection free of charge at all reasonable hours.

(7) A certificate granted by a local authority under this section shall be kept fixed in a conspicuous place in the premises.

(8) Subject to the provisions of section fifty-one of this Act, where a person engaged in a class of business prescribed by an order made under this section has, in accordance with the provisions thereof, made an application for registration on or before a date specified by the order in that behalf he shall be entitled to engage in that business until such later date as may be appointed in the order or until the application is refused whichever is the earlier.

(9) Where, upon any change in the occupation of premises in respect of which there is a registration under this section, the incoming occupier within fourteen days of the said change applies for such a registration for the same purpose as was specified in the registration first-named, he may use the said premises for that purpose from the date of the change until his application has been refused, or is deemed to have been refused by virtue of the next following section.

(10) Where a person who is registered under this section dies, the registration shall, unless previously revoked or cancelled, enure for the benefit of his executor or his widow, or any other member of his family, until the expiration of six months from his death, or until the expiration of such longer period as the registering authority may for special reasons allow.

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(11) Any person who contravenes any of the provisions of subsections (1), (2) and (7) of this section shall be guilty of an offence against this Act.

Refusal, etc., of registration under s. 14.

15.—(1) Subject to the provisions of this section, if in the case of an application for registration under the last foregoing section or of a registration under that section, it appears to the local authority—

(*a*) that any person applying for registration under the last foregoing section or who is so registered is not suitable having regard to considerations of public health and to the requirements of any enactment relating to food to make use of any premises for the purpose specified in the application or the certificate of registration, as the case may be; or

(*b*) that the requirements of regulations in force under section thirteen of this Act are not complied with in connection with the business carried on at the premises specified in that registration, or in connection with the premises so specified, or, as the case may be, in connection with the premises specified in the application; or

(*c*) that the premises or any part thereof are otherwise unsuitable (having regard to considerations of hygiene and in particular to the situation, construction or condition of the premises, or to any activities carried on therein) for use for the purpose or purposes specified in the application, or for which they are used, as the case may be,

the authority may refuse or, as the case may be, may cancel or vary the registration.

(2) A local authority shall not refuse, cancel, or vary any registration unless—

(*a*) they have served on the applicant or the person registered in respect of the premises a notice of their proposal so to do for reasons specified in the notice, stating the place and time, not being less than twenty-one days after the date of the service of the notice, at which they will take the matter into consideration, and informing him that he may attend or be represented before them, with any witnesses he desires to call, at that place and time to show cause why the authority should not proceed with the proposal; and

(*b*) the applicant or person registered as aforesaid fails to show cause to their satisfaction.

(3) If the local authority refuse, cancel, or vary a registration they shall forthwith give the applicant or the person registered in respect of the premises notice of their decision in the matter.

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(4) An application for registration shall, if not already determined by the local authority, be deemed to have been refused by the authority—

(*a*) in the case of a person referred to in subsection (8) of the last foregoing section, at the date appointed by the Secretary of State; and

(*b*) in any other case, at the expiry of three months from the date upon which the application was made.

(5) A person aggrieved by a decision of a local authority under this section to refuse, cancel, or vary any registration may appeal to the sheriff.

(6) On any appeal to the sheriff under this section the sheriff may make such order in the matter as he thinks equitable, and any order so made shall be binding and conclusive on all parties.

Special provisions as to certain foods

Regulations as to milk.

16.—(1) The Secretary of State may make regulations for determining what deficiency in any of the normal constituents of milk, or what proportion of water, in a sample shall for the purposes of this Act raise a presumption, until the contrary is proved, that the article sampled is not genuine milk.

(2) The Secretary of State may make regulations for prohibiting or restricting the application of any specified description in relation to milk intended for sale for human consumption (being a description which in the opinion of the Secretary of State ascribes to the milk a quality higher than the minimum quality prescribed for milk under regulations made under the last foregoing subsection), unless that milk contains not less than a specified quantity of any specified normal constituent, and conforms to such other requirements as such regulations may prescribe as regards the production and description of such milk and the use of a special designation in relation to it.

(3) In the last foregoing subsection "special designation" means a designation within the meaning of section three of the Milk and Dairies (Amendment) Act, 1922.

(4) Regulations made under this section shall not apply to cream.

Certain additions not to be made to milk and certain liquids not to be sold as milk.

17.—(1) No person shall—

(*a*) add any water or colouring matter, or any dried or condensed milk or liquid reconstituted therefrom, to milk intended for sale for human consumption; or

(*b*) add any separated milk, or mixture of cream and separated milk, to unseparated milk intended for such sale; or

(*c*) sell, or offer or expose for sale, or have in his possession for the purpose of sale, for human consumption, any milk to which any addition has been made in contravention of the provisions of this subsection.

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

(3) Any person who contravenes any of the provisions of this section shall be guilty of an offence against this Act.

Cream substitutes.

18.—(1) Subject to the provisions of this section, no person shall sell, or offer or expose for sale, for human consumption—

(*a*) any substance which resembles cream in appearance, but is not cream, or

(*b*) any article of food containing such a substance,

under a description or designation which includes the word "cream" (whether or not as part of a composite word).

(2) The foregoing subsection shall not apply to the sale, or offer or exposure for sale, of any substance being reconstituted or imitation cream as defined by this section, or of any article containing such a substance, under a description or designation which identifies the substance as such, or to the sale, or offer or exposure for sale, of any substance under a description or designation which indicates that the substance is not for use as, or as a substitute for, cream.

(3) In this section "reconstituted cream" means a substance which, not being cream, resembles cream in appearance and contains no ingredient not derived from milk, except—

(*a*) water, or

(*b*) ingredients (not added fraudulently to increase bulk, weight or measure, or conceal inferior quality) which may lawfully be contained in a substance sold for human consumption as cream or butter;

and "imitation cream" means a substance which, not being cream or reconstituted cream, resembles cream in appearance and is produced by emulsifying edible oils or fats with water, either by themselves, or with other substances not prohibited by regulations made for the purposes of this section under section four of this Act, nor added in quantities so prohibited.

(4) For the purposes of this section, the description or designation under which a substance or article is sold, or offered or exposed for sale, shall be deemed to include the word "cream" if it includes any other word (composite or otherwise) which is calculated to lead a purchaser to suppose that the substance is or, as the case may be, the article contains either cream or a substance for use as cream.

(5) A person who contravenes subsection (1) of this section shall be guilty of an offence against this Act.

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Sign to be displayed on premises, etc., where horseflesh is sold for human consumption.

19.—(1) No person shall sell, or offer or expose for sale, or have in his possession for the purpose of sale, any horseflesh for human consumption elsewhere than in premises or in a stall, vehicle or place other than premises over or on which a notice in legible letters not less than four inches in height stating that horseflesh is sold there, is at all times displayed in a conspicuous position.

(2) No person shall supply horseflesh for human consumption to a purchaser who has not asked to be supplied with horseflesh, or who has asked to be supplied with some compound article of food not ordinarily made of horseflesh.

(3) A person who contravenes any of the provisions of this section shall be guilty of an offence against this Act.

(4) If any horseflesh is exposed for sale elsewhere than in premises or in a stall, vehicle or place other than premises distinguished as aforesaid without anything to show that it was not intended for sale for human consumption, the onus of proving that it was not so intended shall rest upon the person exposing it for sale.

(5) In this section the expression " horseflesh " means the flesh of horses, asses and mules, and includes any such flesh whether cooked or uncooked and whether alone, or accompanied by, or mixed with, any other substance, and the expression " flesh " includes any part of any such animal.

Cleansing of shell-fish

Provision of means for cleansing shell-fish.

20.—(1) A local authority may provide, whether within or without their area, tanks or other apparatus for cleansing shell-fish and may make charges in respect of the use of any tank or other apparatus so provided.

(2) A local authority may contribute towards the expenses incurred under this section by any other local authority or any combination of local authorities, or towards expenses incurred by any other person in providing, and making available to the public, means for cleansing shell-fish.

(3) In this section the expression " cleansing shell-fish " includes the subjection of shell-fish to any germicidal treatment.

(4) Nothing in this section shall authorise the establishment of any tank or other apparatus, or the execution of any other work, on, over or under tidal lands below high-water mark of ordinary spring tides, except in accordance with such plans and sections, and subject to such restrictions and conditions, as may, before the work is commenced, be approved by the Minister of Transport and Civil Aviation.

PART I —*cont.*

Cold Stores

Establishment by local authority of cold stores.

21.—(1) A local authority may, with the approval of the Secretary of State, provide a cold store for the storage and preservation of meat and other articles of food, and may make charges in respect of the use of any such store:

Provided that any proposal to provide under this section a cold store within the area of another local authority shall require the consent of that authority, but such consent shall not be unreasonably withheld, and any question whether or not consent is unreasonably withheld shall be referred to and determined by the Secretary of State.

(2) A local authority who apply for the approval of the Secretary of State under this section shall give notice thereof by advertisement in one or more newspapers circulating in their area, and, where the consent of the local authority of another area is required, in one or more newspapers circulating in that area, which advertisement shall state that objections to the said application may be made to the Secretary of State within a period of four weeks from the date of the advertisement.

(3) If any objection duly made as aforesaid is not withdrawn the Secretary of State shall, before approving the application, cause a local inquiry to be held.

Food poisoning

Notification of cases of food poisoning.

22.—(1) If a registered medical practitioner becomes aware, or suspects, that a patient whom he is attending within the area of any local health authority is suffering from food poisoning, other than a disease which is notifiable under any other enactment, he shall forthwith send to the medical officer for that area a certificate stating—

(*a*) the name, age and sex of the patient, and the address of the premises or other place where the patient is; and

(*b*) particulars of the food poisoning from which he is, or is suspected to be, suffering,

and also stating whether the case occurs in the general medical practice of the practitioner, or in his practice as medical officer of a public body or institution.

(2) A local health authority shall pay to a registered medical practitioner for each certificate duly sent by him under the last foregoing subsection to their medical officer a like fee to that which may from time to time be prescribed in regulations made under section one of the Public Health (Scotland) Act, 1945, in relation to the notification by registered medical practioners of cases of certain diseases.

Amendment of s. 1 of Public Health (Scotland) Act, 1945.

23. After paragraph (*c*) of subsection (1) of section one of the Public Health (Scotland) Act, 1945 (which section empowers the Secretary of State by regulations to provide among other

PART I —*cont.*

things for preventing the spread of certain diseases), there shall be inserted the following paragraph—

"(*d*) for preventing the contamination of food by any person affected with a condition or disease likely to cause food poisoning;"

and after the words "to any disease" there shall be inserted the words "or condition".

Provisions as to suspected food.

24.—(1) If the medical officer of any local authority has reasonable ground for suspecting that any food is likely to cause food poisoning he may give notice to the person in charge of the food that, until his investigations are completed, the food, or any specified portion thereof, is not to be used for human consumption and either is not to be removed, or is not to be removed except to some place specified in the notice.

A person who uses or removes any food in contravention of the requirements of a notice given under this subsection shall be guilty of an offence against this Act.

(2) If as a result of his investigations the medical officer is satisfied that the food in question may safely be used for human consumption he shall forthwith withdraw his notice, but if he is not so satisfied he shall cause it to be destroyed, and he shall also cause to be destroyed any other food in charge of the person to whom the notice has been given as to which he is not so satisfied.

(3) Where a notice given under subsection (1) of this section is withdrawn by the medical officer, or the medical officer under subsection (2) of this section causes any food to be destroyed, the local authority shall compensate the owner of the food for any depreciation in its value resulting from the action taken by the medical officer or, as the case may be, for the loss of its value:

Provided that—

(*a*) no compensation shall be payable under this section in respect of the destruction of any food if the local authority prove that it was likely to cause food poisoning;

(*b*) no compensation shall in any case be payable under this section in respect of any food manufactured on or brought within any premises while a notice given under subsection (1) of this section with respect to anything on those premises was operative.

For the purposes of this subsection the value of any food shall not be assessed at a sum exceeding the cost incurred by the owner in making or purchasing it.

(4) In this section the expression "food poisoning" includes any disease transmissible by food.

PART II

ADMINISTRATION AND ENFORCEMENT

Administration

Scottish Food Hygiene Council.

25.—(1) There shall be constituted a Council, to be called the Scottish Food Hygiene Council, which shall consist of a chairman appointed by the Secretary of State and such number of other members so appointed as the Secretary of State may determine.

(2) The members of the said Council so appointed shall include—

(*a*) persons appearing to the Secretary of State to be qualified to represent the interests of the public generally in relation to matters of food hygiene and related matters;

(*b*) persons appearing to the Secretary of State to be representative of persons carrying on any of the classes of trade or business affected by the operation of this Act in relation to food; and

(*c*) persons appearing to the Secretary of State to be representative of workers employed in any of the said classes of trade or business;

and the terms of their appointment shall be such as the Secretary of State may determine.

(3) The Secretary of State may from time to time refer to the said Council for consideration or advice such questions as he thinks fit, being questions relating to this Act as it applies in relation to food.

(4) Without prejudice to the last foregoing subsection, where the Secretary of State proposes—

(*a*) to make any regulations under section seven or section thirteen of this Act, or

(*b*) to make any order under section fourteen of this Act, or

(*c*) to publish any such code of practice as is mentioned in subsection (6) of section thirteen of this Act,

he shall (unless it appears to him to be inexpedient to do so having regard to the urgency of the matter) refer the proposals in the form of draft regulations or a draft order or a draft code of practice or otherwise, to the Scottish Food Hygiene Council for consideration and advice.

(5) The said Council may make representations to the Secretary of State on the operation of any regulation, order or code of practice published or, as the case may be, made under any of the sections referred to in the last foregoing subsection, or having effect as if so made.

PART II —*cont.*

(6) The Secretary of State may, out of moneys provided by Parliament, pay to the chairman and other members of the Scottish Food Hygiene Council, and to persons attending meetings at the request of the Council, such allowances as he may, with the approval of the Treasury, determine in respect of travelling and subsistence expenses and in respect of other expenses (if any) necessarily incurred by them for the purpose of enabling them to discharge their functions as members of the Council, or to attend such meetings, as the case may be.

(7) Nothing in this section shall be taken as prejudicing the effect of subsection (6) of section fifty-six of this Act.

Administrative authorities.

26.—(1) It shall be the duty of a local authority or, where an order has been made under the next following subsection, of a port local authority, to enforce and execute the provisions of this Act within their area with respect to which the duty is not expressly or by necessary implication imposed on some other authority.

(2) Orders made by the Secretary of State under section one hundred and seventy-two of the Public Health (Scotland) Act, 1897, may assign to a port local authority any of the functions, rights and liabilities of a local authority under this Act.

(3) Regulations made under Part I of this Act may specify the authorities, whether county councils, town councils, port local authorities or the Commissioners of Customs and Excise, by whom they are to be enforced and executed, and may provide for the giving of assistance and information by any authority concerned in the administration of the regulations, or of this Act, to any other authority so concerned for the purposes of their respective duties thereunder.

(4) Subject to the foregoing provisions of this section, in this Act the expression " local authority " means the council of a county or of a large burgh within the meaning of the Local Government (Scotland) Act, 1947; and any small burgh within the meaning of that Act shall, for the purposes of this Act, be included in the county in which it is situated.

(5) For the purposes of this section the expression " port local authority " includes a joint port local authority.

(6) Nothing in the provisions of this Act shall be construed as authorising any authority charged with the enforcement of this Act or regulations made thereunder to institute proceedings for any offence.

Sampling and Analysis

Public analysts.

27.—(1) Every local authority shall appoint in accordance with the provisions of this section one or more persons (in this Act referred to as " public analysts ") to be analysts of food and drugs within their area.

(2) No person shall be appointed a public analyst unless he possesses either the prescribed qualifications or such other qualifications as the Secretary of State may approve, and no person shall be appointed public analyst for any area who is engaged directly or indirectly in any trade or business connected with the sale of food or drugs.

(3) The appointment of a public analyst and the terms of his appointment and the removal of a public analyst shall require the approval of the Secretary of State.

(4) A local authority shall pay to a public analyst such remuneration as may be agreed, and such remuneration may be expressed to be payable either in addition to any fees received by him under this Part of this Act, or on condition that any fees so received by him are paid over by him to the authority.

(5) A local authority who appoint only one public analyst may appoint also a deputy to act during any vacancy in the office of public analyst, or during the absence or incapacity of the holder of the office.

(6) The foregoing provisions of this section with respect to the qualifications, appointment, removal and remuneration of a public analyst shall apply also in relation to a deputy public analyst, and any reference in the following sections of this Act to a public analyst shall be construed as including a reference to a deputy public analyst appointed under this section.

Powers of sampling.

28.—(1) An authorised officer of a local authority may exercise such powers of procuring samples for analysis, or for bacteriological or other examination, as are conferred upon him by this section, and any such officer is in this Act referred to as a " sampling officer ".

(2) A sampling officer may purchase samples of any food or drug, or of any substance capable of being used in the preparation of food, but nothing in this subsection shall be construed as authorising any purchase or sale of drugs in contravention of the Dangerous Drugs Act, 1951, or of regulations made thereunder.

(3) Subject to the provisions of this section, a sampling officer may take a sample of any food, or of any substance capable of being used in the preparation of food, which appears to him to be intended for sale or to have been sold for human consumption, or is found by him on or in any premises, stall, vehicle, ship or aircraft or place other than premises which he is authorised to enter for the purposes of the execution of this Act.

(4) Without prejudice to the last foregoing subsection, a sampling officer may, at the request of a person to whom any food or substance is or is to be delivered in pursuance of a contract of sale, take a sample of that food or substance.

PART II —*cont.*

(5) Except as provided in the last foregoing subsection, or with the consent of the purchaser, a sampling officer shall not take a sample of any food or substance which appears to him to have been sold by retail while the food or substance is in the course of delivery to the purchaser, or at any time after such delivery; and nothing in this section shall authorise a sampling officer to take a sample of any food or substance in a ship not being a home-going ship or in any aircraft, other than food imported or otherwise carried as part of the cargo of that ship or aircraft for unloading at a place in Scotland.

(6) Nothing in the provisions of Part IV of the Licensing (Scotland) Act, 1903, relating to the sale of exciseable liquors on Sunday shall apply in relation to the purchase of a sample of such liquor by a sampling officer.

Right to have samples analysed.

29.—(1) If a sampling officer who has procured a sample of any food, drug or substance considers that it should be analysed, he shall submit it to be analysed by the public analyst for the area in which the sample was, or is deemed to have been, procured.

(2) A person, other than a sampling officer, who has purchased any food, drug or substance capable of being used in the preparation of food may submit a sample of it to be analysed by the public analyst for the area in which the purchase was made.

(3) The public analyst shall analyse as soon as practicable any sample submitted to him in pursuance of this section, and give to the person by whom it was submitted a certificate in the prescribed form specifying the result of the analysis:

Provided that, in the case of a sample submitted by a person not being an officer of the local authority, the analyst may demand in advance such fee as may be fixed by that authority.

(4) If the office of public analyst for the area in question is vacant, or if the public analyst for that area determines that he is for any reason unable to perform an effective analysis, the sample shall be submitted, or, as the case may be, sent by the public analyst to whom it was originally submitted, to the public analyst for some other area and, upon payment to him of such sum as may be agreed, he shall analyse it and give to the person by whom it was submitted such a certificate as aforesaid.

(5) Where a sample taken or purchased by a sampling officer has been analysed by a public analyst, any person to whom a part of the sample was given in accordance with the provisions of this Act shall be entitled, on payment to the authority by whose officer the sample was procured of a fee of one shilling, to be supplied with a copy of the certificate given by the public analyst under subsection (3) of this section.

(6) Any certificate of the results of an analysis given by a public analyst in pursuance of this section shall be signed by the public analyst, but the analysis may be made by any person acting under his direction.

Disposal of samples taken for analysis.

30.—(1) A sampling officer who procures a sample of any food, drug or substance for the purpose of analysis by a public analyst shall forthwith divide it into three parts, each part to be marked and sealed or fastened up in such manner as its nature will permit, and shall deal with the parts in accordance with the following provisions of this section.

(2) Subject to the provisions of this section, the sampling officer shall dispose of one part of the sample as follows, that is to say—

(*a*) in the case of a sample purchased by the sampling officer, he shall give the part to the vendor;

(*b*) in the case of a sample of goods consigned from outside Scotland taken by the sampling officer before delivery to the consignee, he shall give the part to the consignee;

(*c*) in the case of a sample of milk taken by the sampling officer otherwise than as mentioned in the last foregoing paragraph, he shall give the part to the person who caused the milk to be placed in the container from which the sample was taken;

(*d*) in the case of a sample of any food or substance taken by the sampling officer at the request of a purchaser, or taken with the consent of a purchaser by retail, not being a sample taken as mentioned in the foregoing paragraphs, he shall give the part to the vendor;

(*e*) in the case of a sample taken in transit by the sampling officer otherwise than as mentioned in the foregoing paragraphs, he shall give the part to the consignor;

(*f*) in any other case, the officer shall give the part to the person appearing to be the owner of the food, drug or substance,

and in each case the sampling officer shall inform the person to whom the part is given that the sample was purchased or taken for the purpose of analysis by a public analyst.

(3) Of the remaining parts of the sample, the sampling officer shall, unless he decides not to have an analysis made, submit one for analysis in accordance with the last foregoing section, and retain the other for future comparison.

(4) If it appears to a sampling officer that any food, drug or substance of which he has procured a sample for the purpose

PART II —*cont.*

of analysis was manufactured or put into its wrapper or container by a person (not being a person to whom one part of the sample is required to be given under this section) having his name and an address in the United Kingdom displayed on the wrapper or container, the officer shall, unless he decides not to have an analysis made, within three days of procuring the sample send to that person a notice informing him that the sample has been procured by the officer and where the sample was taken or, as the case may be, from whom it was purchased.

(5) In relation to a sample purchased from an automatic machine, paragraph (*a*) of subsection (2) of this section shall have effect as if for the reference to the vendor there were substituted a reference—

(*a*) if the name and address (being an address in Scotland) of a person stated to be the proprietor of the machine appears on the machine, to that person;

(*b*) in any other case, to the occupier of the premises on which the machine stands or to which it is affixed.

(6) Any part of a sample which under this section is to be given to any person may be given either by delivering it to him or to his agent or by sending it to him by post in a registered packet.

(7) The foregoing provisions of this section (except subsection (4)) shall apply to the purchase of samples by any person who is neither a sampling officer nor a person having the powers of a sampling officer as they apply in relation to the purchase of samples by a sampling officer; and references to a sampling officer shall be construed accordingly.

Special provisions as to the sampling of milk and proceedings subsequent thereto.

31.—(1) The provisions of this Act relating to the procuring of samples by sampling officers, and proceedings in connection therewith, shall, in relation to milk, have effect subject to the provisions of this section.

(2) Where milk sold or exposed for sale within the area of any local authority is obtained from a dairy situated outside that area, an authorised officer of the local authority may by notice in writing to an authorised officer of the local authority within whose area the dairy is situated, or through whose area the milk is transported, request him to procure a sample of the milk and it shall be the duty of an officer who receives such a notice to procure, as soon as is practicable, a sample of the milk in question and to forward those parts of the sample mentioned in subsection (3) of the last foregoing section to the officer who gave the notice, or to such person as that officer may direct, and, for the purposes of this Act, a sample so procured shall be

deemed to have been procured within the area for which the last-mentioned officer acts:

Provided that expenses incurred by an officer in complying with a notice given to him under this subsection shall be borne by the authority whose officer gave the notice, and any dispute as to the amount of any such expenses shall be referred to and determined by the Secretary of State.

(3) Any power of an authorised officer in respect of procuring samples of milk may be exercised at a place outside the area of the local authority whose officer he is, if the local authority of the area within which that place is situated have consented to samples of milk being procured within their area by officers of the first-mentioned local authority, and, for the purposes of this Act, any samples so procured shall be deemed to have been procured within the area for which the officer in question acts.

A local authority shall not unreasonably withhold consent for the purposes of this subsection and any question whether or not consent is unreasonably withheld shall be referred to and determined by the Secretary of State.

(4) So much of any contract as requires a purveyor of milk, on a sample of milk being procured under this Act, to send to the person from whom he obtained the milk any part of such sample, or to give to that person notice that a sample has been so procured, shall be void.

For the purposes of this subsection the expression "purveyor of milk" means any person who sells milk whether wholesale or by retail.

(5) Subject to the provisions of the next following subsection, in any proceedings for an offence in respect of a sample of milk taken from any container, such milk shall, unless the contrary is proved, be presumed as regards any deficiency in any of its normal constituents, or as regards the proportion of water therein, to have remained unaltered from the time the milk was placed in such container until the time when the sample was taken.

(6) It shall be a defence for a person charged with any offence against this Act or against the Milk (Special Designations) Act, 1949, in respect of a sample of milk taken after the milk has left his custody or control, to prove that the container from which the sample was taken was effectively closed and sealed at the time when it left his custody or control, but had been opened before the person by whom the sample was taken had access to it.

Power of Secretary of State to have foods analysed and examined.

32. The Secretary of State, in relation to any matter appearing to him to affect the general interests of consumers, may direct an officer of his department to procure samples of any specified food, and thereupon the officer shall have all the

PART II —*cont.*

powers of a sampling officer, and this Act shall apply as if he were a sampling officer, except that any fee for analysis shall be payable by the Secretary of State.

Provision as to cases in which division of sample into parts is impracticable.

33. Where any person procures a sample consisting of a food, drug or substance contained in unopened containers, and the division into parts of the food, drug or substance contained in those containers—

(*a*) is not reasonably practicable; or

(*b*) might affect the composition or impede the proper analysis of the contents;

the provisions of section thirty of this Act, with respect to the division of samples into parts shall be deemed to be complied with if the person procuring the sample divides the containers into three lots and deals with each lot as if it were a part in the manner provided by that section; and references in this Act to a part of a sample shall be construed accordingly.

Examination by local authorities of food not for sale.

34.—(1) A local authority may, at the request of a person who has in his possession any food which has not been sold, and is not intended for sale, and on payment by that person of such fee, if any, as may be fixed by the authority, arrange to have the food examined.

(2) Subject to the provisions of section twenty-four of this Act, where any food examined in pursuance of the last foregoing subsection is found to be unfit for human consumption, the local authority may, with the consent of the aforesaid person, arrange for the disposal of the food.

Quarterly reports by analysts.

35.—(1) Every public analyst shall, as soon as may be after the last day of March, the last day of June, the last day of September and the last day of December in every year, report to the authority by whom he was appointed the number of articles which have been analysed by him or on his behalf under this Act in his capacity of public analyst for their area during the preceding quarter of a year and the result of each analysis.

(2) Every local authority shall transmit to the Secretary of State, at such times as he may direct, a copy of each quarterly report received by them from a public analyst together with details of any action taken in each case.

Entry, obstruction, etc.

Power to enter premises.

36.—(1) Subject to the provisions of this section, any authorised officer of a local authority shall on producing, if so required, some duly authenticated document showing his authority, have a right to enter any premises at all reasonable hours—

(*a*) for the purpose of ascertaining whether there is or has been on, or in connection with, the premises any contravention of the provisions of this Act or of any

regulations made thereunder, being provisions which the authority are required or empowered to enforce; and

(*b*) generally for the purpose of the performance by the authority of their functions under this Act, or such regulations:

Provided that admission to any premises used only as a private dwelling-house shall not be demanded as of right unless twenty-four hours' notice of the intended entry has been given to the occupier.

(2) If a justice of the peace on sworn information in writing—

(*a*) is satisfied that there are reasonable grounds for entry into any premises for any such purpose as aforesaid, and

(*b*) is also satisfied either—

(i) that admission to the premises has been refused, or a refusal is apprehended and that notice of the intention to apply for a warrant has been given to the occupier, or

(ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry, or that the case is one of urgency, or that the premises are unoccupied or the occupier temporarily absent,

the justice may by warrant under his hand authorise the local authority by any authorised officer to enter the premises, if need be by force.

(3) An authorised officer entering any premises by virtue of this section, or of a warrant issued thereunder, may take with him such other persons as may be necessary, and on leaving any unoccupied premises which he has entered by virtue of such a warrant shall leave them as effectively secured against unauthorised entry as he found them.

(4) Every warrant granted under this section shall continue in force for a period of one month.

(5) If—

(*a*) any person who, in compliance with the provisions of this section, or of a warrant issued thereunder, enters a factory or workplace, discloses to any person any information obtained by him in the factory or workplace with regard to any manufacturing process or trade secret; or

(*b*) any member or officer of a local authority or officer of the Secretary of State, to whom by reason of his official position any information obtained as aforesaid is disclosed, discloses that information to any person;

he shall, unless such disclosure was made in the performance of his duty, be guilty of an offence against this Act.

PART II —*cont.*

(6) Nothing in this section shall authorise any person, except with the permission of the local authority under the Diseases of Animals Act, 1950, to enter any byre or other place in which an animal affected with any disease to which that Act applies is kept and which is situated in a place declared under that Act to be infected with such a disease.

(7) The provisions of this section shall not apply in relation to the enforcement of regulations made by the Board of Trade under section seven of this Act, but section ten of the Sale of Food (Weights and Measures) Act, 1926 (which confers special powers of entry and inspection on inspectors of weights and measures), shall apply as if references therein to the said Act of 1926 and to its requirements included references respectively to regulations so made as aforesaid and to the requirements of such regulations.

(8) In this section, any reference to a justice of the peace includes a reference to the sheriff and to a magistrate.

Power to enter ships, aircraft, vehicles, etc.

37.—(1) An authorised officer of a local authority shall, on producing, if so required, some duly authenticated document showing his authority, have a right at all reasonable hours—

(*a*) to enter any ship or aircraft for the purpose of ascertaining whether there is in the ship or aircraft any food imported or otherwise carried as part of the cargo for unloading at a place in Scotland in contravention of the provisions of regulations made under Part I of this Act being provisions which the authority are required or empowered to enforce; and

(*b*) to enter any vehicle, stall or place other than premises, or any home-going ship for any purpose for which he is empowered under the last foregoing section to enter premises.

(2) Subsections (2), (3), (4), (6) and (7) of the last foregoing section shall apply in relation to any ship, aircraft, vehicle, stall or place other than premises, which may be entered under the powers conferred by the foregoing subsection as they apply in relation to premises, and as if any reference to the occupier of premises were a reference to the master, commander or other person in charge of the ship, aircraft, vehicle, stall or place other than premises.

Restriction on movement of imported food.

38.—(1) Without prejudice to any power of examining food which may be conferred by regulations made under Part I of this Act an authorised officer of a local authority into whose area any food has been imported with a view to sale for human consumption may give directions to the person in possession of the food prohibiting or restricting its removal or delivery—

(*a*) during any period not exceeding forty-eight hours; and

(*b*) if within that period the officer so requires, until that person has notified the officer of the name of the person to whom, and the address to or at which, he proposes to send or deliver the food.

(2) Any person who fails to comply with any direction given under the last foregoing subsection or who in any notification thereunder knowingly makes any misstatement shall be guilty of an offence against this Act.

Offences in relation to execution of Act.

39.—(1) A person who wilfully obstructs any person acting in the execution of this Act or of any regulation, order or warrant made or issued thereunder, shall be guilty of an offence against this Act.

(2) If a sampling officer applies to purchase any food, drug or substance offered or exposed for sale, and tenders the price for the quantity which he requires as a sample, and the person offering or exposing the food, drug or substance for sale refuses to sell to the officer such quantity thereof as aforesaid, or if the seller or consignor, or any person having for the time being the charge of any food or substance of which an officer is empowered to take a sample, refuses to allow the officer to take the quantity which he requires as a sample, the person so refusing shall, for the purposes of the last foregoing subsection, be deemed to have wilfully obstructed the officer:

Provided that, where any food, drug or substance is offered or exposed for sale in an unopened container, no person shall be required to sell it except in the unopened container in which it is contained.

(3) A person who fails to give to any person acting in the execution of this Act or of any regulation, order or warrant made or issued thereunder, any assistance which that person may reasonably request him to give, or any information which that person is expressly authorised by this Act to call for or may reasonably require, or who, when required to give any such information, knowingly makes any misstatement in respect thereof, shall be guilty of an offence against this Act:

Provided that nothing in this subsection shall be construed as requiring a person to answer any question or give any information, if to do so might incriminate him.

PART III

PROCEDURE AND EVIDENCE

Legal proceedings and evidence

Penalties.

40.—(1) A person guilty of an offence against this Act shall be liable—

(*a*) on summary conviction to

(i) a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding six months or to both such fine and imprisonment; and

(ii) in the case of a continuing offence to a further fine not exceeding ten pounds for every day during which the offence is continued; or

(*b*) on conviction on indictment to

(i) a fine not exceeding five hundred pounds or to imprisonment for a term not exceeding one year or to both such fine and imprisonment; and

(ii) in the case of a continuing offence to a further fine not exceeding fifty pounds for every day during which the offence is continued.

(2) Subsection (2) of section five of the Milk and Dairies (Amendment) Act, 1922 (which provides a special penalty in respect of the sale of tuberculous milk), shall cease to have effect, and for subsection (1) of section nine of that Act and subsection (1) of section twenty-four of the Milk and Dairies (Scotland) Act, 1914, (which respectively provide penalties for offences against the provisions of those Acts) there shall be substituted the following subsection:—

"(1) A person guilty of a contravention of or a failure to comply with the provisions of this Act or of any order made thereunder, or any person who wilfully obstructs any person acting in the execution thereof, shall be liable to be proceeded against in like manner as if he were guilty of an offence against the Food and Drugs (Scotland) Act, 1956, and subsection (1) of section forty of that Act (which relates to the punishment of offences against that Act) shall apply accordingly."

Proceedings.

41.—(1) Subject as hereinafter provided, where a sample has been procured under this Act, any proceedings in respect of the article or substance sampled shall be taken before a court having jurisdiction in the place where the sample was procured:

Provided that where a sample of milk procured within one area is for the purposes of this Act deemed to have been procured within another area, proceedings in the sheriff court may, at the

option of the prosecution, be taken either before a court having jurisdiction within the area within which the sample was procured, or before a court having jurisdiction within the area within which it is deemed to have been procured.

(2) In any proceedings under this Act in respect of an article or substance sampled, the case shall not proceed to trial less than fourteen days from the day on which the complaint or, as the case may be, the indictment was served, and a copy of any certificate of analysis obtained on behalf of the prosecutor shall be served with the complaint or, as the case may be, the indictment.

(3) Where a sample has been procured under this Act no proceedings in respect of the article or substance sampled shall be commenced after the expiry of two months beginning with the date on which the sample was procured unless the court is satisfied that, having regard to the circumstances of the particular case, it was not practicable to take proceedings at an earlier date.

(4) The time within which summary proceedings may be commenced under section forty-seven of this Act in respect of the giving of a false warranty shall, instead of being six months in accordance with the provisions of section twenty-three of the Summary Jurisdiction (Scotland) Act, 1954, be twelve months.

(5) In any proceedings under this Act, where a sample has been procured in such circumstances that its division into parts is required by this Act, the part of the sample retained by the person who procured it shall be produced at the trial.

(6) Where an offence against this Act or any regulations or order made thereunder which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in such capacity, he as well as the body corporate shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

In this subsection, the expression "director", in relation to any body corporate established by or under any enactment for the purpose of carrying on under national ownership any industry or part of an industry or undertaking, being a body corporate whose affairs are managed by the members thereof, means a member of that body corporate.

(7) Any offence against regulations or orders made under this Act may be prosecuted summarily or, where the regulations or orders so provide, on indictment.

PART III —*cont.*

Evidence of certificates of analysis, etc.

42.—(1) In any proceedings under this Act, the production by one of the parties of a document purporting to be a certificate of a public analyst in the prescribed form, or of a document supplied to him by the other party as being a copy of such a certificate, shall be sufficient evidence of the facts stated therein, unless, in the first-mentioned case, the other party requires that the analyst shall be called as a witness, and in that event the evidence of the analyst shall be sufficient evidence of the aforesaid facts.

(2) In any such proceedings, if a sample of milk has been taken by an officer of one authority at the request of an officer of another authority, a document purporting to be a certificate signed by the officer who took the sample and stating that the provisions of this Act with respect to the manner in which samples are to be dealt with were complied with shall, if a copy thereof has been served on the accused with the complaint or, as the case may be, the indictment, be sufficient evidence of compliance with those provisions, unless the accused requires that the officer shall be called as a witness, and in that event the evidence of the officer shall be sufficient evidence of such compliance.

(3) In any such proceedings, if an accused person intends to produce a certificate of a public analyst, or under subsection (1) of this section to require that a public analyst shall be called as a witness, or under the last foregoing subsection to require that a sampling officer shall be called as a witness, notice of his intention together, in the first-mentioned case, with a copy of the certificate shall be given to the other party at least three clear days before the day on which the case proceeds to trial, and, if this requirement is not complied with, the court may, if it thinks fit, adjourn the diet on such terms as it deems proper.

(4) Regulations made under Part I of this Act may prescribe a method of analysis for the purpose of ascertaining the presence in or absence from any food of any substance specified in the regulations, or the quantity of any such substance which is present in any food; and in any proceedings under this Act—

(*a*) for a contravention of any regulations made under the said Part I; or

(*b*) for an offence against section two or section six of this Act,

in respect of any food alleged to contain or not to contain any substance specified as aforesaid, or any particular quantity of such a substance, evidence of an analysis carried out by the prescribed method shall be preferred to evidence of any other analysis or test.

PART III —*cont.*

43. For the purposes of this Act and of any regulations made thereunder— Presumptions.

(*a*) any article commonly used for human consumption shall, if sold or offered, exposed or kept for sale, be presumed, until the contrary is proved, to have been sold, or, as the case may be, to have been or to be intended for sale, for human consumption;

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

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

Power of court to require analysis by Government Chemist.

44.—(1) The court before which any proceedings are taken under this Act may, if it thinks fit, and upon the request of either party shall, cause the part of any sample produced before the court under subsection (5) of section forty-one of this Act to be sent to the Government Chemist, who shall make an analysis and transmit to the court a certificate of the result thereof, and the costs of the analysis shall be paid by the prosecutor or the accused as the court may order.

(2) If, in a case where an appeal is brought, no action has been taken under the last foregoing subsection, the provisions thereof shall apply also in relation to the court by which the appeal is heard.

(3) Any certificate of the results of an analysis transmitted by the Government Chemist under this section shall be signed by or on behalf of the Government Chemist, but the analysis may be made by any person acting under the direction of the person by whom the certificate is signed; and any certificate so transmitted by the Government Chemist shall be sufficient evidence of the facts stated therein unless any party to the proceedings requires that the person by whom it is signed shall be called as a witness, and in that event the evidence of that person shall be sufficient evidence of the aforesaid facts.

PART III —*cont.*

Contravention due to default of some other person.

45.—(1) Where a contravention of any provision of this Act, or of any regulation or order made thereunder, for which any person is liable to a penalty was due to an act or default of any other person, then, whether proceedings are or are not taken against the first-mentioned person, that other person may be charged with and convicted of the contravention and shall be liable on conviction to the same punishment as might have been inflicted on the first-mentioned person if he had been convicted of the contravention.

(2) Where a person who is charged with a contravention of any provision of this Act, or of any regulation or order made thereunder, proves to the satisfaction of the court that he has used all due diligence to secure that the provision in question was complied with and that the contravention was due to the act or default of some other person, the first-mentioned person shall be acquitted of the contravention.

Conditions under which a warranty may be pleaded as defence.

46.—(1) Subject to the provisions of this section, in any proceedings for an offence against this Act, or any regulations made thereunder or any order deemed to be so made, being an offence consisting of selling or offering, exposing or advertising for sale, or having in possession for the purpose of sale, any article or substance, it shall be a defence for the accused person to prove—

(*a*) that he purchased it as being an article or substance which could be lawfully sold or otherwise dealt with as aforesaid or, as the case may be, could lawfully be so sold or dealt with under the name or description or for the purpose under or for which he sold or dealt with it, and with a written warranty to that effect; and

(*b*) that he had no reason to believe at the time of the commission of the alleged offence that it was otherwise; and

(*c*) that it was then in the same state as when he purchased it.

(2) A warranty shall only be a defence in proceedings under this Act if—

(*a*) the accused person has within seven days, or such longer period as the court may allow, of the service of the complaint, or, as the case may be, the indictment, sent to the prosecutor a copy of the warranty with a notice stating that he intends to rely on it and specifying the name and address of the person from whom he received it, and has also sent a like notice of his intention to that person; and

(*b*) in the case of a warranty given by a person resident outside the United Kingdom, the accused person proves that he had taken reasonable steps to ascertain and did in fact believe in the accuracy of the statement contained therein.

PART III —*cont.*

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

(4) The person by whom the warranty is alleged to have been given shall be entitled to appear at the diet and to give evidence, and the court may, if it thinks fit, adjourn the diet to enable him to do so.

(5) For the purposes of this and the next following section, a name or description entered in an invoice shall be deemed to be a written warranty that the article or substance to which the entry refers can be sold or otherwise dealt with under that name or description by any person without contravening any of the provisions of this Act or of regulations made thereunder or any order deemed to be so made.

(6) The provisions of this section shall not apply in the case of proceedings which relate to milk or butter-milk.

Offences in relation to warranties and certificates of analysis.

47.—(1) An accused person who in any proceedings under this Act wilfully applies to any article or substance a warranty or certificate of analysis given in relation to any other article or substance shall be guilty of an offence against this Act.

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

(3) Where the accused in a prosecution under this Act relies successfully on a warranty given to him or to his employer, any proceedings under the last foregoing subsection in respect of the warranty may, at the option of the prosecution, be taken either before the court having jurisdiction in the place where a sample of the article or substance to which the warranty relates was procured, or before the court having jurisdiction in the place where the warranty was given.

Compensation, etc.

Disputes as to compensation.

48. Where by any of the foregoing provisions of this Act provision is made for the payment of compensation to any person, any dispute arising as to the fact of damage or loss, or as to the amount of compensation, shall be determined by a single arbiter, who, failing agreement between the parties, shall be appointed by the sheriff.

PART III —*cont.*

Apportionment of expenses of alterations to premises.

49. If any person, being either the owner or the occupier of premises, who has incurred or is about to incur any expense for the purpose of securing that the requirements of any regulation made under section thirteen of this Act are complied with with respect to the premises, alleges that the whole or any part of the expense ought to be borne by any other person having an interest in the premises, he may apply to the sheriff in whose jurisdiction the premises are situated, and the sheriff may make such order concerning the expenses or their apportionment as appears to him, having regard to all the circumstances of the case, including the terms of any contract between the parties, to be just and equitable, and any order made under this section may direct that any such contract as aforesaid shall cease to have effect in so far as it is inconsistent with the terms of the order.

Appeals against decisions of local authorities

Appeals to the sheriff against decisions of local authorities.

50.—(1) Where any enactment in, or regulation made under, this Act provides for an appeal to the sheriff against a refusal or other decision of a local authority, the time within which such an appeal may be brought shall be one month from the date on which notice of the local authority's refusal or other decision was given to the person desiring to appeal, or from the date on which a refusal is deemed to have been made under the provisions of subsection (4) of section fifteen of this Act.

(2) In any case where such an appeal lies, the document notifying to the person concerned the decision of the local authority in the matter shall state the grounds on which that decision is based, the right of appeal to the sheriff, and the time within which such an appeal may be brought.

Right to carry on business in certain cases while appeal is pending.

51. Where a decision of a local authority under this Act refusing, cancelling, or varying a registration makes it unlawful for a person to carry on any business which he, or his immediate predecessor in the business, was lawfully carrying on at the date when the decision of the local authority was given, or to use any premises for any purpose for which he, or his immediate predecessor in the business, was lawfully using them at the said date, he may carry on that business and use those premises for that purpose until the time for appealing has expired, and, if an appeal is lodged, until the appeal is finally disposed of or abandoned, or has failed for want of prosecution.

PART IV

MISCELLANEOUS AND GENERAL

Miscellaneous

Application to the Crown.

52.—(1) Her Majesty may by Order in Council provide for the application to the Crown of such of the provisions of this Act and of any regulations or order made thereunder as may be specified in the Order, with such exceptions, adaptations and modifications as may be so specified.

PART IV —*cont.*

(2) Without prejudice to the generality of the last foregoing subsection, an Order under this section may make special provision for the enforcement of any provisions applied by the Order, and, where any provision so applied imposes a liability on a person by reason that he is the occupier or owner of premises or the owner of a business or the principal on whose behalf any transaction is carried out, the Order may make provision for determining, in a case where the premises are occupied or owned or the business is owned by the Crown or the transaction is carried out on behalf of the Crown, the person who is to be treated as so liable.

Acquisition of land.

53.—(1) A local authority may be authorised by the Secretary of State to purchase compulsorily any land, whether situated within or outside its area, for the purpose of any of their functions under this Act.

(2) The Acquisition of Land (Authorisation Procedure) (Scotland) Act, 1947, shall apply in relation to the compulsory purchase of land under this section as if subsection (1) thereof had been in force immediately before the commencement of that Act.

Borrowing by local authorities.

54. The maximum period for the repayment of sums borrowed by a local authority for the purposes of this Act shall be such period not exceeding sixty years as may be sanctioned by the Secretary of State; and accordingly there shall be added to the Sixth Schedule to the Local Government (Scotland) Act, 1947, the following entry, that is to say—

"Food and Drugs (Scotland) Act, 1956.	Such period not exceeding sixty years as the Secretary of State may fix."

Default of local authority.

55.—(1) If the Secretary of State after communication with a local authority is of opinion that the authority have failed to exercise any of their functions under this Act or under any regulations or order made thereunder by him he may by order empower an officer of his department to exercise or procure the exercise of that function.

(2) Any expenses incurred in pursuance of the last foregoing subsection by the Secretary of State or his officer shall be paid in the first instance out of moneys provided by Parliament, but the amount of those expenses as certified by the Secretary of State shall, on demand, be paid to him by the local authority and shall be recoverable by him from them as a debt due to the Crown, and the authority shall have the like power of raising the money required as they have of raising money for defraying expenses incurred directly by them as a local authority.

(3) Nothing in this section shall affect any other power exercisable by the Secretary of State with respect to defaults of local authorities.

PART IV —*cont.*
Orders and regulations.

56.—(1) Any Order in Council made under section fifty-two of this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(2) Any power conferred by this Act to make orders (other than orders made by the Secretary of State in pursuance of section fifty-five of this Act) or regulations shall be exercisable by statutory instrument, and any instrument containing an order made under section five of this Act or any such regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) No order shall be made under section fourteen of this Act unless a draft thereof has been laid before Parliament and has been approved by resolution of each House of Parliament.

(4) Regulations made under section thirteen and orders made under section fourteen of this Act may be made so as to apply throughout Scotland or to apply only in such area or areas as may be specified in the regulations or orders, and may contain different provisions for different areas.

(5) Any power conferred by this Act or by the Milk and Dairies (Scotland) Act, 1914, to make orders shall include a power exercisable in the like manner and subject to the same conditions to vary or revoke any such order, and any Order in Council made under section fifty-two of this Act may be revoked or varied by a subsequent Order in Council made thereunder.

(6) Before making orders or regulations under this Act (other than orders made in pursuance of section fifty-five, section fifty-nine or section sixty-one of this Act), the Secretary of State shall consult with such organisations as appear to him to be representative of interests substantially affected by the orders, or regulations.

(7) In relation to regulations made by the Board of Trade under section seven of this Act, the last foregoing subsection shall apply to the Board as it applies to the Secretary of State.

(8) All regulations made under Part I of this Act, without prejudice to the generality of the provisions under which they are made, may—

(*a*) modify for the purposes of the regulations any provisions of this Act relating to the procuring, analysis and examination of samples;

(*b*) apply, as respects matters to be dealt with by the regulations, any provision in any Act (including this Act) dealing with the like matters, with the necessary modifications and adaptations;

(*c*) provide for an appeal to the sheriff or Secretary of State against any refusal or other decision of a local authority by whom the regulations are to be enforced and executed;

(*d*) authorise the making of charges for the purposes of the regulations or for any services performed thereunder, and provide for the recovery of charges so made;

(*e*) contain provisions for imposing on persons offending against the regulations penalties not exceeding the maximum penalties specified in section forty of this Act;

(*f*) require persons carrying on any activity to which the regulations apply to keep and produce records and furnish returns;

(*g*) make such consequential, ancillary and incidental provisions as appear to the Secretary of State or, as the case may be, the Board of Trade to be necessary or desirable.

(9) The provisions of the last foregoing subsection shall apply to any order made under section five of this Act, and the provisions of paragraphs (*b*) and (*g*) of that subsection shall apply to any order made under section fourteen of this Act, as those provisions apply to the regulations mentioned in the said subsection.

Expenses.

57. There shall be defrayed out of moneys provided by Parliament any expenses incurred by any Minister of the Crown or Government department in consequence of the provisions of this Act.

Interpretation, repeals, etc.

Interpretation.

58.—(1) In this Act, unless the context otherwise requires—

" advertisement " includes any notice, circular, label, wrapper, invoice or other document, and any public announcement made orally or by any means of producing or transmitting light or sound and " advertise " shall be construed accordingly;

" analysis " includes micro-biological assay, but no other form of biological assay and " analyse " shall be construed accordingly;

" animal " does not include bird or fish;

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

" authorised officer " means, as respects any local authority, an officer of the authority authorised by them in writing, either generally or specially, to act in matters of any specified kind or in any specified matter and, for the

PART IV —*cont.*

purposes of the provisions of this Act relating to the taking of samples, includes a constable so authorised with the approval of the police authority concerned:

Provided that—

(*a*) the medical officer and the sanitary inspector of a local authority shall by virtue of their appointments be deemed to be authorised officers for all the purposes of this Act;

(*b*) any veterinary surgeon employed by a local authority for the purposes of any regulations made under section thirteen of this Act shall be deemed to be an authorised officer for the examination and seizure of meat;

"business" includes the undertaking of a canteen, club, school, hospital or institution, whether carried on for profit or not, and any undertaking or activity carried on by a public or local authority;

"container" includes a package or receptacle of any kind, whether open or closed;

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

"dairy" includes any farm, byre, milk store, milk shop, creamery or other premises from which milk is supplied on or for sale, or in which milk is kept or used for purposes of sale;

"drug" includes medicine for internal or external use;

"enactment" includes an enactment contained in a local Act and any order, regulation or other instrument having effect by virtue of an Act;

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

(*a*) water, live animals or birds;

(*b*) fodder or feeding stuffs for animals, birds or fish; or

(*c*) articles or substances used only as drugs;

"functions" includes powers and duties;

"home-going ship" means a ship plying in inland waters, or a ship engaged in coastal passenger services, and for the purposes of this definition "coastal passenger service" means a passenger service or excursion between places in Scotland which does not involve calling at any place outside Scotland;

"human consumption" includes use in the preparation of food for human consumption;

" importation " has the same meaning as it has for the purposes of the Customs and Excise Act, 1952, and " import " shall be construed accordingly;

" knacker's yard " has the same meaning as in the Public Health (Scotland) Act, 1897;

" local authority " has the meaning assigned to it by section twenty-six of this Act;

" local health authority " has the same meaning as in the National Health Service (Scotland) Act, 1947;

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

" officer " includes servant;

" premises " means a building or any part thereof and any forecourts, yards and places of storage used in connection therewith;

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

" prescribed " means prescribed by regulations made by the Secretary of State;

" public analyst " has the meaning assigned to it by section twenty-seven of this Act;

" sampling officer " has the meaning assigned to it by section twenty-eight of this Act;

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

" ship " includes any boat or craft;

" substance " includes any liquid or gas.

(2) For the purposes of this Act—

(*a*) the supply of food for human consumption, otherwise than by sale, at, in or from any place where food is supplied in the course of a business, shall be deemed to be a sale of that food, and references to purchasers shall be construed accordingly;

(*b*) where in connection with any business in the course of which food is supplied the place where food is served to the customers is different from the place where the food is consumed, both those places shall be deemed to be places in which food is sold.

(3) References in this Act to any enactment shall, unless the context otherwise requires, be construed as references to that enactment as amended by or under any other enactment including this Act.

(4) Anything required or authorised by or under this Act to be done by, to or before the Board of Trade may be done by,

PART IV —*cont.*

to or before the President of the Board, any Minister of State with duties concerning the affairs of the Board, any Secretary, Under-Secretary, or Assistant Secretary of the Board, or any person authorised in that behalf by the President.

In this subsection the expression "Minister of State" means such a Minister of the Crown as is referred to in section two of the Re-election of Ministers Act, 1919, as explained by the House of Commons Disqualification (Declaration of Law) Act, 1935.

Repeal or amendment of local enactments.

59.—(1) The provisions of this Act or of any order or regulations made thereunder shall have effect in substitution for the provisions of any local enactment relating to food or drugs, and of like effect, and any such enactment shall, in so far as it is inconsistent with the provisions of this Act or, as the case may be, of such order or regulations, cease to have effect:

Provided that the Secretary of State may, on the representations of a local authority, restrict or exclude by order the operation of any of the provisions of such regulations in the area of that authority.

(2) If it appears to the Secretary of State that any provision of a local enactment such as is mentioned in the last foregoing subsection in force immediately before the coming into operation of any of the provisions of this Act, or of any orders or regulations made thereunder, is inconsistent with such provisions or is no longer required, or requires to be amended having regard to such provisions as aforesaid, he may by order repeal or amend that provision as he may consider appropriate.

(3) The provisions of the First Schedule to this Act shall apply to orders made under the last foregoing subsection.

Minor amendments, repeals and savings.

60.—(1) The enactments mentioned in the first column of the Second Schedule to this Act shall have effect subject to the amendments specified in the second column of that Schedule (being amendments consequential upon the foregoing provisions of this Act or relating to matters of minor detail).

(2) The enactments specified in the Third Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.

(3) Subject to any express provision in this Act to the contrary, in so far as any appointment, agreement or any provision in a regulation or order made, or any notice, direction, consent, approval, warrant, or certificate given under any enactment repealed by this Act, or registration effected, or deemed to have been effected, proceedings instituted or other thing done under any such enactment could have been made, passed, given,

granted, effected, instituted or done under a corresponding provision of this Act, it shall not be invalidated by this repeal, but shall have effect as if it had been made, passed, given, granted, effected, instituted or done under that corresponding provision and may be amended, varied, revoked or enforced accordingly, and, in the case of any legal proceedings, may be continued and appealed against as if this Act had not been passed.

(4) Any order made under Regulation 2 of the Defence (Sale of Food) Regulations, 1943, or any regulation continued in force by virtue of the last foregoing subsection, shall have effect (subject to any variation thereof by regulations under this Act) as if the order or the regulation contained a provision making any contravention thereof, or failure to comply therewith, an offence against this Act.

(5) Any such order as aforesaid shall also have effect,—

(*a*) in the case of an order made by the Secretary of State or the Minister of Agriculture, Fisheries and Food, as if it specified local authorities as the authorities to enforce and execute within their areas the provisions of the order; and

(*b*) in the case of an order made by the Board of Trade, as if it specified local authorities for the purposes of the Weights and Measures Acts, 1878 to 1936, as the said authorities.

Short title, commencement and extent.

61.—(1) This Act may be cited as the Food and Drugs (Scotland) Act, 1956.

(2) This Act shall come into operation on such date as may be appointed by order of the Secretary of State, and different dates may be appointed for different provisions and different purposes.

(3) This Act shall extend to Scotland only.

SCHEDULES

Section 59.

FIRST SCHEDULE

PROCEDURE FOR MAKING CERTAIN ORDERS AND PROVISIONS AS TO THEIR VALIDITY

PART I

Procedure for making orders

1. Before making an order to which this Schedule applies the Secretary of State shall, after consultation with any local authority concerned, prepare a draft order, and shall publish once in the Edinburgh Gazette and once at least in each of two successive weeks in one or more newspapers circulating in the area affected by the draft order a notice—

(*a*) stating the general effect of the draft order;

(*b*) specifying the time (not being less than twenty-eight days) within which and the manner in which objections to the draft order may be made.

2. Not later than the date on which the notice aforesaid is first published, the Secretary of State shall serve a copy of the said notice and of the draft order on any local authority concerned.

3. The Secretary of State shall, at the request of any person interested, furnish him with a copy of the draft order on payment of such charge, not exceeding two shillings, as the Secretary of State thinks reasonable.

4. The Secretary of State may make the order either in the terms of the draft or in those terms as modified in such manner as he thinks fit, but, where he proposes to make any modification and considers that persons other than those to whom the draft order relates may be adversely affected thereby, he shall give and publish additional notices in such manner as he thinks best adapted for informing all persons likely to be affected by the modification proposed.

5. If before the expiration of the time specified under paragraph 1 of this Schedule, or before the expiration of any period specified in notices given under the last foregoing paragraph, an objection is duly received by the Secretary of State from any body on whom notice is required to be served under paragraph 2 of this Schedule, or from any person appearing to him to be affected by the order, or, as the case may be, by the proposed modification, and the objection is not withdrawn, the Secretary of State before making the order shall cause a local inquiry to be held.

6. On the making of an order to which this Schedule applies, the Secretary of State shall, if an objection has been duly made by any person under the foregoing provisions of this Schedule and has not been withdrawn, give notice of the making of the order and of the effect thereof to every person who has made such an objection which has not been withdrawn, and in that case the order shall not have effect until the expiration of twenty-eight days from the date of the said notice; and if within that period any such person gives notice to the Secretary of State that he objects to the order and the objection is not withdrawn, the order shall be subject to special parliamentary procedure.

7.—(1) Any inquiry required by paragraph 5 of this Schedule shall, if the Secretary of State so directs, be held by commissioners under the Private Legislation Procedure (Scotland) Act, 1936, and where any direction is so given it shall be deemed to have been given under section two, as read with section ten, of the Statutory Orders (Special Procedure) Act, 1945.

(2) The publication of a notice in accordance with the provisions of paragraph 1 of this Schedule in connection with any such order as aforesaid shall be deemed to be sufficient compliance with the requirements of the Statutory Orders (Special Procedure) Act, 1945, with regard to the giving of notice by advertisement.

PART II

Provisions with respect to the validity of orders not confirmed by Parliament

8. After the making of an order, the Secretary of State shall publish in the Edinburgh Gazette, and in such other manner as he thinks best adapted for informing persons affected, a notice stating that the order has been made and naming a place where a copy thereof may be seen at all reasonable hours:

Provided that in the case of an order to which paragraph 6 of this Schedule applies the said notice shall not be published until the expiration of the period of twenty-eight days referred to in that paragraph, and the notice shall state whether or not the order is subject to special parliamentary procedure.

9.—(1) If any person aggrieved by an order desires to question its validity on the ground that it is not within the powers of this Act or that any requirement of this Act has not been complied with, he may within six weeks after the date of the first publication of the said notice make an application for the purpose to the Court of Session, and on any such application the Court, if satisfied that the order is not within the powers of this Act or that the interests of the applicant have been substantially prejudiced by a failure to comply with any such requirement as aforesaid, may quash the order either generally or in so far as it affects the applicant; but except as aforesaid the order shall not at any time be questioned in any proceedings whatsoever:

Provided that this paragraph shall not apply to an order which is confirmed by Act of Parliament under section two as read with section ten of the Statutory Orders (Special Procedure) Act, 1945, or under section six of that Act, and shall have effect in relation to any other order which is subject to special parliamentary procedure by virtue of paragraph 6 of this Schedule as if for the reference to the date of the publication of the notice there were substituted a reference to the date on which the order becomes operative under the said Act.

(2) Except by leave of the Court of Session no appeal shall lie to the House of Lords from a decision of the Court of Session under this paragraph.

Section 60.

SECOND SCHEDULE

CONSEQUENTIAL AND MINOR AMENDMENTS

Act to be amended	Amendment
The Milk and Dairies (Scotland) Act, 1914. 4 & 5 Geo. 5. c. 46.	In section twenty-four, in subsection (2) the word " pecuniary " shall be omitted.
The Milk and Dairies (Amendment) Act, 1922. 12 & 13 Geo. 5. c. 54.	In section fourteen, in paragraph (*e*) for the words " procurator-fiscal " there shall be substituted the word " prosecutor ".
Pharmacy and Medicines Act, 1941. 4 & 5 Geo. 6. c. 42.	In section eighteen, at the end there shall be added the following paragraph— " (*d*) in subsection (2) of section thirteen for the words ' admissible as ' there shall be substituted the word ' sufficient ', and at the end of that subsection there shall be inserted the words, ' and in that event the evidence of that person shall be sufficient evidence of the aforesaid matters '."
The Milk (Special Designations) Act, 1949. 12 & 13 Geo. 6. c. 34.	In section fifteen, in subsection (1) for the words " under the Milk and Dairies (Amendment) Act, 1922 " there shall be substituted the words " against the Food and Drugs (Scotland) Act, 1956 ".

Section 60.

THIRD SCHEDULE

ENACTMENTS REPEALED

Session and Chapter	Short Title	Extent of Repeal
52 & 53 Vict. c. 11.	The Sale of Horse-flesh, etc., Regulation Act, 1889.	The whole Act.
60 & 61 Vict. c. 38.	The Public Health (Scotland) Act, 1897.	Section forty-three.
3 Edw. 7. c. 33.	The Burgh Police (Scotland) Act, 1903.	Section fifty-four. Section ninety-seven so far as relating to the section whereof the marginal note is " Manufacture and sale of ice-cream".
7 Edw. 7. c. 32.	The Public Health (Regulations as to Food) Act, 1907.	The whole Act.
4 & 5 Geo. 5. c. 46.	The Milk and Dairies (Scotland) Act, 1914.	In section twelve, subsection (1), in subsection (2), paragraphs (*b*) and (*c*). Section twenty-five.

3RD SCH. —*cont.*

Session and Chapter	Short Title	Extent of Repeal
12 & 13 Geo. 5. c. 54.	The Milk and Dairies (Amendment) Act, 1922.	Section four. In section five, subsection (2). Section eight. In section nine, subsection (3). Section thirteen.
18 & 19 Geo. 5. c. 31.	The Food and Drugs (Adulteration) Act, 1928.	The whole Act.
19 & 20 Geo. 5. c. 25.	The Local Government (Scotland) Act, 1929.	In Part I of Schedule I, paragraphs 3, 7, 9, 11, 13, 20 and 26. In Part II of Schedule I, paragraphs 1 and 4.
19 & 20 Geo. 5. c. 32.	The Artificial Cream Act, 1929.	The whole Act.
22 & 23 Geo. 5. c. 28.	The Public Health (Cleansing of Shell-fish) Act, 1932.	The whole Act.
1 Edw. 8. & 1 Geo. 6. c. 67.	The Factories Act, 1937.	In section one hundred and fifty-seven, subsection (1). Part I of the Third Schedule.
1 & 2 Geo. 6. c. 56.	The Food and Drugs Act, 1938.	The whole Act.
—	The Defence (Sale of Food) Regulations, 1943.	The whole Regulations.
—	The Transfer of Functions (Food and Drugs) (Scotland) Order, 1949.	The whole Order.

Table of Statutes referred to in this Act

Short Title	Session and Chapter
Public Health (Scotland) Act, 1897	60 & 61 Vict. c. 38.
Licensing (Scotland) Act, 1903	3 Edw. 7. c. 25.
Milk and Dairies (Scotland) Act, 1914 ...	4 & 5 Geo. 5. c. 46.
Milk and Dairies (Amendment) Act, 1922 ...	12 & 13 Geo. 5. c. 54.
Sale of Food (Weights and Measures) Act, 1926	16 & 17 Geo. 5. c. 63.
Road and Rail Traffic Act, 1933	23 & 24 Geo. 5. c. 53.
House of Commons Disqualification (Declaration of Law) Act, 1935	25 & 26 Geo. 5. c. 38.
Private Legislation Procedure (Scotland) Act, 1936.	26 Geo. 5. & 1 Edw. 8. c. 52.
Pharmacy and Medicines Act, 1941	4 & 5 Geo. 6. c. 42.
Public Health (Scotland) Act, 1945	9 & 10 Geo. 6. c. 15.
Statutory Orders (Special Procedure) Act, 1945	9 & 10 Geo. 6. c. 18.
Statutory Instruments Act, 1946	9 & 10 Geo. 6. c. 36.
National Health Service (Scotland) Act, 1947	10 & 11 Geo. 6. c. 27.
Acquisition of Land (Authorisation Procedure) (Scotland) Act, 1947	10 & 11 Geo. 6. c. 42
Local Government (Scotland) Act, 1947 ...	10 & 11 Geo. 6. c. 43
Milk (Special Designations) Act, 1949 ...	12, 13 & 14 Geo. 6. c. 34.
Patents Act, 1949	12, 13 & 14 Geo. 6. c. 87.
Diseases of Animals Act, 1950	14 Geo. 6. c. 36.
Dangerous Drugs Act, 1951	14 & 15 Geo. 6. c. 48.
Customs and Excise Act, 1952	15 & 16 Geo. 6. & 1 Eliz. 2. c. 44.
Slaughterhouses Act, 1954	2 & 3 Eliz. 2. c. 42.
Summary Jurisdiction (Scotland) Act, 1954 ...	2 & 3 Eliz. 2. c. 48.

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