

CHAPTER 18:08

DAIRY ACT

Acts 28/1937, 29/1952, 14/1962 (s. 2), 61/1966 (s. 72), 12/1973 (s. 270), 29/1976, 17/1977, 37/1977 (s. 8), 10/1997 (s. 31) 22/2001 (s. 4); R.G.N.s 637/1963, 214/1964, 217/1970, 378/1972.

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SCHEDULE

Matters in respect of which Minister may make regulations

AN ACT to consolidate and amend the laws relating to the regulation and control of the dairy industry; to ensure that dairy produce is pure, wholesome and unadulterated; and to provide for matters incidental to the foregoing.

[Date of commencement: 1st January, 1938.]

PART I

PRELIMINARY

1 Short title

This Act may be cited as the Dairy Act [*Chapter 18:08*].

2 Interpretation

(1) In this Act—

“area of a local authority” means the area of the local authority concerned in terms of the Urban Councils Act [*Chapter 29:15*] or the Rural District Councils Act [*Chapter 29:13*] as the case may be;

[Definition amended by section 31 of Act 10 of 1997]

“brand”, in relation to any article, when used as a verb, means the placing on such article of any mark, representation, designation or description and, when used as a noun, means any mark, representation, designation or description appearing upon or used in connection with any dairy produce;

“butter” means the food product commonly known as butter which is derived from milk;

“butter fat” or “milk fat” means the pure fat of milk;

“casein” means the protein material precipitated in skim milk by means of—

- (a) acid, either added to such milk or formed therein by souring; or
- (b) the addition of rennet or any other suitable enzyme;

“cheese” means the substance usually known as cheese, containing no fat derived otherwise than from milk;

“cheese factory” means, subject to subsection (2), any premises used for the manufacture of cheese;

“Chief Dairy Officer” means the Chief Dairy Officer appointed in terms of section *thirty-two*;

“condensed milk” means—

- (a) milk which has been concentrated by evaporation of a portion of its water content; or

- (b) a product similar to that referred to in paragraph (a) made by the reconstitution of milk powder with water and additionally, or alternatively, milk;
with or without the addition of sugar;
- “cream” means that portion of milk rich in milk fat which has been separated from milk;
- “cream depot” means, subject to subsection (2), any place or premises where milk or cream is collected or deposited for the purpose of weighing, sampling, grading or treatment pending consignment to a creamery;
- “creamery” means, subject to subsection (2), any premises used for the manufacture of butter;
- “creamery butter” means butter manufactured in a registered creamery;
- “cultured milk” means milk which—
- (a) has been fermented by the addition of micro-organisms; and
 - (b) may contain other harmless foods or harmless—
 - (i) flavours; or
 - (ii) colouring matter; or
 - (iii) stabilizing agents;
 or any two or more of the foregoing;
- “dairy factory” means any premises used for the manufacture of dairy produce, but does not include a cheese factory, condensed milk factory, cream depot, creamery, dried milk factory, ice-cream factory or processed cheese factory;
- “dairy officer” means any person appointed as a dairy officer in terms of section *thirty-two*;
- “dairy premises” means any premises occupied and used for the production, storage, supply, sale or treatment of dairy produce but does not include premises—
- (a) where, in the course of a business, food is prepared and supplied for immediate consumption on the premises; or
 - (b) used as a club, garage, shop or place of amusement or entertainment;
- “dairy produce” means artificial cream, artificial ice-cream, butter, butter-oil, casein, cheese, cheese spread, condensed milk, cream, dried milk, frozen dairy confection, ghee, ice-cream, low butterfat ice-cream, low fat cheese spread, malted milk, milk, milk-ice, processed cheese, recombined cream or whey and includes any other product which—
- (a) contains milk or a constituent of milk; and
 - (b) is declared in terms of subsection (5) to be dairy produce;
- “dairy vessel” means any receptacle, vessel, utensil, measure or apparatus or any other thing whatsoever which is used for the collection, keeping, storage, preparation, conveyance, measuring, delivery or distribution of dairy produce, and includes any lid, cover, stopper or other loose part likely or liable to come in contact with any such receptacle, vessel, utensil, measure, apparatus or other thing in use as aforesaid;
- “dried milk” means the dry substance produced by the desiccation of milk;
- “dried milk factory” means any premises used for the manufacture of dried milk;
- “farm butter” means any butter made elsewhere than in a registered creamery;
- “farm butter dairy” means any place other than a registered creamery where butter is made for sale;
- “farm cheese dairy” means any place other than a registered cheese factory where cheese is made for sale;
- “farm dairy” means dairy premises—
- (a) which are situated on an agricultural holding, farm or plot; and
 - (b) in which milk or cream is produced for the purpose of sale;
- “grade”, when used as a verb, means to classify dairy produce according to quality and, when used as a noun, means the class, according to quality, of any dairy produce;
- “ice-cream factory” means any premises used for the manufacture of artificial ice-cream, frozen dairy confection, ice-cream, low butterfat ice-cream or milk-ice for sale but does not include premises—
- (a) where, in the course of a business, food is prepared and supplied for immediate consumption on the premises; or
 - (b) used as clubs, schools, shops or places of amusement or entertainment;
- “inspector” means a person who is an inspector by virtue of the provisions of section *thirty-three*;
- “local authority” means—
- (a) any municipal council or town council;
 - (b) any local board or rural district council that is declared by the Minister, by notice in the Gazette, to be a local authority for the purposes of this Act;

[Definition amended by section 31 of Act 10 of 1997]

- “milk” means every form, kind or variety of milk, whether derived from an ass, cow, ewe, goat, mare or any other female mammal, other than a human being, and includes—
- (a) buttermilk, cultured milk, filled milk, recombined milk, skim milk or standardized milk; and

- (b) any form, kind or variety of milk declared in terms of subsection (5) to be milk;
- “milk dairy” means premises used for receiving, processing, packaging, storing and distributing milk for sale;
- “milk depot” means premises used solely for the storage and distribution of milk and dairy products—
- (a) received in sealed containers; and
 - (b) distributed from such premises in the sealed containers in which they were received;
- “Minister” means the Minister of Agriculture or any other Minister to whom the President may, from time to time, assign the administration of this Act;
- “Ministry” means the Ministry for which the Minister is responsible;
- “package” means anything in which a single unit of dairy produce is contained or enclosed;
- “Part II registration certificate” means a Part II registration certificate issued in terms of subsection (2) of section *three*;
- “Part IV registration certificate” means a Part IV registration certificate issued in terms of section *thirty*;
- “processed cheese” or “cheese spread” means the product obtained by the comminuting, mixing or blending, and the subjecting to treatment by heat, of one or more quantities of cheese of the same or different grades, varieties or makes, with or without the addition of other harmless foods or harmless—
- (a) colouring matter; or
 - (b) emulsifying agents; or
 - (c) flavours; or
 - (d) preservatives;
- or of any two or more of the foregoing;
- “processed cheese factory” means any premises used for the manufacture of processed cheese or cheese spread;
- “registration certificate” means a Part II registration certificate or a Part IV registration certificate;
- “sell” includes to offer, advertise, keep, expose, transmit, convey, deliver or prepare for sale and to exchange or dispose of for any consideration whatever.
- (2) For the purposes of this Act, no premises shall be regarded as a creamery, cream depot or cheese factory unless the owner or occupier thereof uses thereat milk or cream supplied by or procured or purchased from another person, or unless the owner or occupier thereof is a co-operative society, co-operative company or a company registered under any law governing the registration of companies, or a syndicate, partnership or other association of three or more persons.
- (3) The mass or quantity of any green cheese required for the purpose of any provision of this Act shall be determined—
- (a) in the case of pressed cheese, by measuring its mass as soon as possible after its removal from the press; and
 - (b) in the case of any other cheese, by measuring its mass before its removal to a ripening room.
- (4) Every sale of dairy produce to a consumer of the article sold shall be deemed to be a retail sale and every other sale shall be deemed to be wholesale.
- (5) The Minister may, by statutory instrument, declare—
- (a) any produce containing milk or a constituent of milk, other than a product already referred to by name in the definition of “dairy produce” in subsection (1), to be dairy produce;
 - (b) any form, kind or variety of milk, other than a form, kind or variety of milk already referred to by name in the definition of “milk” in subsection (1), to be milk;
- for the purposes of this Act.

PART II

CREAM DEPOTS, CREAMERIES AND FACTORIES

3 Registration of premises

- (1) No person shall use any premises as—
- (a) a cream depot; or
 - (b) a creamery; or
 - (c) a cheese factory; or
 - (d) a processed cheese factory; or
 - (e) a condensed milk factory; or
 - (f) a dried milk factory;
 - (g) a dairy factory;
- unless he holds a Part II registration certificate authorizing him to use such premises for such purpose.

(2) A Part II registration certificate shall be issued by the Chief Dairy Officer and shall expire on the 31st December next following the date of issue but may, on the application of the holder, be renewed by the Chief Dairy Officer from year to year:

Provided that, if the holder of a Part II registration certificate has applied before the 31st December for the renewal of the Part II registration certificate, it shall remain in full force and effect until he has been notified by the Chief Dairy Officer that his application has been granted or refused.

(3) The Chief Dairy Officer may, on the issue or renewal of a Part II registration certificate, impose such conditions as he may think fit.

(4) Application for the issue of a Part II registration certificate shall be made to the Chief Dairy Officer and the applicant shall furnish such information relevant to his application as the Chief Dairy Officer may require.

4 Grounds for refusal to issue certificate

The Chief Dairy Officer may refuse to issue a Part II registration certificate on any of the following grounds—

- (a) that in the opinion of the Chief Dairy Officer the issue of the Part II registration certificate would not be in the interests of the dairy industry of Zimbabwe;
- (b) that the premises concerned do not comply with the requirements prescribed in respect of the class of premises for which the Part II registration certificate is required;
- (c) that, subject to subsection (2) of section 24 of the Regional, Town and Country Planning Act [*Chapter 29:12*], the activity to be carried on in, or the siting of, the premises concerned would be in contravention of any approved scheme, operative regional plan, operative master plan or operative local plan as defined in that Act;
- (d) in the case of premises within the area of a local authority, that the premises concerned do not comply with the building by-laws of the local authority;
- (e) that the applicant has during the period of twelve months immediately preceding the date of his application been convicted under this Act for three or more separate offences committed in or in connection with the premises for which the Part II registration certificate is required or in connection with any business carried on in such premises.

5 Grounds for refusal to renew certificate

The Chief Dairy Officer may refuse to renew any previously issued Part II registration certificate on any of the following grounds—

- (a) that the premises to which the Part II registration certificate relates are no longer being used for the purpose for which the Part II registration certificate was originally issued;
- (b) that the premises concerned do not comply with the requirements prescribed in respect of the class of premises for which such renewal is required;
- (c) that the applicant has during the period of twelve months immediately preceding the date of his application been convicted under this Act for three or more separate offences committed in or in connection with the premises for which the Part II registration certificate is required or in connection with any business carried on in such premises.

6 Appeals

A person whose application for the issue or renewal of a Part II registration certificate has been refused or granted subject to conditions may appeal against such refusal or conditions, as the case may be, to the Minister, whose decision shall be final.

7 Registration number to be branded on all dairy produce

(1) Every Part II registration certificate shall specify a registration number relating to the premises, the use whereof is authorized by such Part II registration certificate, and upon the issue of such Part II registration certificate such premises shall be deemed to be registered under this Act.

(2) A person to whom a Part II registration certificate has been issued shall—

- (a) have the exclusive right to use the registration number specified therein for the purpose of designating; and
- (b) brand in the prescribed manner the registration number referred to in paragraph (a) on all packages containing;

dairy produce manufactured by him at the premises to which the Part II registration certificate relates.

8 Certificates of proficiency in butter or cheese making

(1) No holder of a Part II registration certificate for a creamery or a cheese factory shall allow butter or cheese to be made on his registered premises unless there is working on such premises when such butter or cheese is made at least one person who holds a valid certificate of proficiency in butter making or cheese making, as the case may be, issued in terms of subsection (2).

(2) The Chief Dairy Officer shall, at the request of any person, cause him to be examined at such time and place as the Chief Dairy Officer may determine by at least two dairy officers jointly as to his knowledge of butter making or cheese making, and if at such examination he satisfies those dairy officers that he has a sufficient theoretical and practical knowledge of butter making or cheese making, as the case may be, the Chief Dairy Officer shall issue to him a certificate of proficiency in butter making or cheese making, as the case may be, which shall be valid for a period of three years as from the date of its issue.

9 Grading and testing of cream in creameries

(1) Any person who has purchased any cream for the purpose of converting it into butter in a creamery shall, within three working hours after delivery of such cream to him, grade it or cause it to be graded in accordance with regulations into one or other of four classes, to be described as first grade, second grade, third grade and below grade, respectively.

(2) Any person purchasing cream for the purpose of converting it into butter in a creamery shall take or cause to be taken a sample therefrom and test it or cause it to be tested as to its butter fat content in the prescribed manner.

(3) The quantity of any cream subjected to any test in terms of subsection (2) shall be determined by mass and not by volume.

(4) All cream below grade delivered at any creamery or cream depot shall be dealt with in the prescribed manner.

10 Testing of milk in factories

Whenever the owner of a cheese factory, condensed milk factory or dried milk factory has purchased milk for use therein, on the basis of its butter fat content, he shall sample, measure the mass of and test such milk in the prescribed manner.

11 Certificates of proficiency in grading or testing cream or milk

(1) Subject to subsection (2), no person shall grade or test any cream or test any milk as to the butter fat content for the purposes of section *nine* or *ten* unless he holds a valid certificate of proficiency for such grading or testing issued to him in terms of subsection (4).

(2) A dairy officer may give temporary permission to grade or test cream or to test milk to any person who—

(a) has not yet obtained a certificate of proficiency referred to in subsection (1); but

(b) is, in the opinion of the dairy officer, capable of such grading or testing:

Provided that such permission shall not extend beyond the first opportunity for examining such person in terms of subsection (3).

(3) The Chief Dairy Officer shall, at the request of any person, cause him to be examined by one or two dairy officers as to his knowledge of grading or testing cream or of testing milk at such time and place as the Chief Dairy Officer may decide.

(4) If, on an examination referred to in subsection (3), the person examined satisfies the dairy officer or dairy officers concerned that he has a sufficient knowledge of grading or testing cream or of testing milk, the Chief Dairy Officer shall issue to him a certificate of proficiency which shall be valid for a period of three years:

Provided that the Chief Dairy Officer may cancel any such certificate at any time before the expiry of such period if he is satisfied, after such inquiry as he may think necessary, that the holder of such certificate—

(a) has not, during the period of twelve months immediately preceding such cancellation, been engaged in the grading or testing to which such certificate refers; or

(b) has become incompetent to perform, or is negligent or unreliable in, the grading or testing referred to in paragraph (a); or

(c) is, otherwise than in the respect described in paragraph (a) or (b), not a fit and proper person to hold such certificate.

12 Particulars to be furnished to Chief Dairy Officer

The owner of a creamery in which butter is manufactured from cream purchased on the basis of its butterfat content shall, within a period of three months after the end of each financial year of such creamery, prepare and submit to the Chief Dairy Officer a statement showing the mass, to the nearest ten grams, of butter made from each kilogram of butterfat used in the manufacture of butter in such creamery during the period of twelve months immediately preceding the end of such financial year.

PART III

SALE OF DAIRY PRODUCE

13 Incorrect statements on dairy produce prohibited

No person shall place upon any dairy produce or upon any package containing dairy produce any incorrect information as to the grade or quality of such produce or the place where, the time when or the person by whom it was made or any information or representation which is misleading in any way whatsoever.

14 Cases in which “grade” may be used

No person shall use the word “grade” in connection with any dairy produce other than the following—

- (a) dairy produce which has been graded and branded according to grade by a dairy officer;
- (b) butter and cheese which bears the word in compliance with the requirements of this Act;
- (c) milk or cream received at or in transit to a cream depot, creamery or factory, which has been graded by a dairy officer or a person holding a certificate of proficiency issued in terms of subsection (4) of section *eleven* in the testing or grading of such milk or cream;
- (d) milk or cream which is of a certified grade in accordance with regulations.

15 False marks on produce not made in registered factory

No person shall sell any dairy produce manufactured outside a registered creamery or registered cheese factory if upon such dairy produce or upon the wrapper, package or box containing it there appear words or marks stating or implying that such dairy produce has been manufactured in a registered creamery or registered cheese factory.

16 Packing of imported dairy produce

No person shall sell any dairy produce which has been imported into Zimbabwe unless—

- (a) the name of the country of origin of such dairy produce is clearly branded thereon or on every box, package or wrapper containing it; and
- (b) in the case of butter or cheese which is—
 - (i) exposed or offered for sale; and
 - (ii) to be sold by the piece so that such brand is thereby destroyed or obliterated;there is placed on such butter or cheese a printed card showing distinctly in such plainly visible capital letters as may be prescribed—
 - A. the country of origin thereof; and
 - B. in the case of cheese, the variety thereof;and
- (c) the word “Zimbabwe” or any mark or word implying or stating that such dairy produce was manufactured or produced in Zimbabwe does not appear on, or on any box, package or wrapper containing, such dairy produce.

17 Butter to be sold in packages

No person shall—

- (a) sell any butter; or
- (b) deliver to a purchaser any butter sold by him;

unless it is contained in a closed package which complies with the requirements of this Act in respect of—

- (i) a package containing butter of the class concerned; and
- (ii) dairy produce generally.

18 Imported butter

(1) A package containing imported butter shall—

- (a) if such butter has a mass of five hundred grams or less, be the same package as that in which such butter was imported; and
- (b) not bear a brand or name—
 - (i) under which any butter made in Zimbabwe is commonly sold; or
 - (ii) which is likely to induce any person to believe that such butter was made in Zimbabwe;and

(c) bear on the outside thereof the word “butter” and the words “first grade”, “second grade” or “third grade”, according to the reputed quality of the imported butter contained in such package:

Provided that the words “first grade”, “second grade” or “third grade”, as the case may be, may be replaced by such other words, relating to the grade of such butter, as may be prescribed.

(2) Each word referred to in paragraph (c) of subsection (1) shall be printed in such plainly visible capital letters as may be prescribed.

19 Creamery butter

(1) A package containing creamery butter shall bear on the outside thereof—

(a) the words “creamery butter” and the words “first grade”, “second grade” or “third grade”, according to the reputed quality of the creamery butter contained in such package:

Provided that the words “first grade”, “second grade” or “third grade”, as the case may be, may be replaced by such other words relating to the grade of the creamery butter as may be prescribed;

(b) the name, address and registered number of the creamery in which the creamery butter was made.

(2) Each word referred to in subsection (1) shall be printed in such plainly visible capital letters as may be prescribed.

20 Farm butter

A package containing farm butter shall bear on the outside thereof—

- (a) the words “farm butter”; and
- (b) the name and address of the producer of the farm butter;

in such plainly visible letters as may be prescribed.

21 Creamery butter and imported butter to be graded officially before sale

No person shall sell any creamery butter or imported butter until a dairy officer has—

- (a) examined and graded the creamery butter or imported butter; and
- (b) if necessary, branded the creamery butter or imported butter according to grade.

22 Grading of hard-pressed cheese

(1) All cheddar cheese and such other varieties of cheese as may be prescribed shall be graded and branded according to grade by a dairy officer, either at the place where it was made or at any other suitable place approved by the Chief Dairy Officer, and no person shall sell any such cheese until it has been so graded and branded.

(2) No person shall expose for sale by retail any cheese referred to in subsection (1), whether cut into segments or not, unless there is displayed on it a label bearing the words “first grade” or “second grade” or “third grade” or “below grade”, in accordance with the grade branded on such cheese in terms of that subsection, in such plainly visible printed capital letters as may be prescribed.

(3) Whenever any person sells by retail any quantity of cheese referred to in subsection (1), he shall before delivering it to the purchaser thereof pack the quantity so sold in a wrapper which shall itself bear or have affixed thereto a label bearing—

- (a) the words “first grade cheese”, “second grade cheese”, “third grade cheese” or “below grade cheese”, in accordance with the grade branded in terms of that subsection on the cheese from which such quantity was taken:

Provided that the words “first grade cheese”, “second grade cheese”, “third grade cheese” or “below grade cheese”, as the case may be, may be replaced by such other words, relating to the grade of such cheese, as may be prescribed;

and

- (b) the name and address of such seller; and
- (c) the variety of such cheese;

in such plainly visible printed capital letters as may be prescribed.

23 Powers of dairy officers for grading and testing

(1) Any dairy officer may at any reasonable time—

- (a) enter upon any place whatever, where there is any dairy produce, and examine and grade such produce in whatever receptacle or package it may be contained and without payment take so much thereof as he may reasonably require for the purpose of grading or testing such dairy produce and may in his discretion notify any person who has an interest in such examination of the result thereof; and
- (b) examine all books and documents relating to any premises registered under this Act, and may further require any person in possession of any book or document relating to the manufacture, purchase, sale or storage of any dairy produce to produce such book or document to him and may examine any such book or document and make a copy thereof or an extract therefrom.

(2) Whenever a dairy officer intends to examine any consignment, parcel or lot of butter or cheese for the purpose of grading or testing, he shall, before commencing such examination, indicate to the owner or person having the control or management of the premises in which such butter or cheese is stored the particular consignment, parcel or lot of butter or cheese, as the case may be, which it is his intention to examine, and thereafter no person shall, without the permission of the dairy officer, remove from such premises such consignment, parcel or lot of butter or cheese or any part thereof until the dairy officer has completed his examination of such butter or cheese:

Provided that no such consignment, parcel or lot of butter or cheese shall be thus kept under the control of a dairy officer for a period of more than forty-eight hours, except in the case of an appeal to the Chief Dairy Officer in terms of section *twenty-four*, in which case the period may be extended until a final decision has been reached.

24 Regrading of creamery or imported butter in cases

(1) Whenever a dairy officer has—

- (a) examined any creamery butter or imported butter contained in any box, case or other container bearing a particular churning mark; and
- (b) found that the box, case or container referred to in paragraph (a) contains butter of a grade below that indicated thereon or on any package contained therein;

he may—

- (i) brand in the prescribed manner all the boxes, cases or other containers bearing the same churning mark which are on the premises where the creamery butter or imported butter concerned was examined; and
 - (ii) prohibit the removal or sale from the place wherein it is stored of creamery butter or imported butter contained in any box, case or other container branded in terms of subparagraph (i) until—
 - A. it has, under the supervision of a dairy officer, been removed from the box, case, package or other container whereon is indicated the inappropriate grade and placed in a box, case, package or other container whereon is indicated the appropriate grade; or
 - B. the indication of the inappropriate grade on such box, case, package or other container has been obliterated and replaced by an indication of the appropriate grade;

of such creamery butter or imported butter.
- (2) If the owner of creamery butter or imported butter referred to in subsection (1) informs the Chief Dairy Officer in writing that he does not accept the finding of the dairy officer concerned, the Chief Dairy Officer shall cause such butter to be examined by another dairy officer.
- (3) If the two dairy officers referred to in subsection (2) disagree, the question in issue shall be determined by the Chief Dairy Officer, whose decision shall be final.
- (4) Whenever the finding of the first of the two dairy officers referred to in subsection (2) is upheld by—
- (a) the second of such dairy officers; or
 - (b) the Chief Dairy Officer;
- the owner of the creamery butter or imported butter concerned shall pay to the Minister all costs necessarily entailed by—
- (i) the examination referred to in subsection (2); and
 - (ii) any determination referred to in subsection (3).
- (5) For the purposes of this section, the examination of one package of butter from any box, case or other container containing such packages shall be deemed to constitute an examination of the whole contents of such box, case or other container.

25 Regrading of creamery or imported butter not packed in cases

Whenever a dairy officer has on examination found that not less than ten *per centum* of the packages of creamery butter or imported butter forming any consignment, parcel or lot which is not contained in a box, case or other container, contain butter of a grade below that indicated thereon, he may brand all the packages forming such consignment, parcel or lot (other than any package actually found at such examination to contain butter of a grade correctly indicated thereon) in the prescribed manner.

26 Regrading of cheese

If, in the opinion of a dairy officer, the grade indicated on a cheese does not correctly represent the quality of the cheese, he may—

- (a) cancel the grade mark and brand the appropriate grade thereon; and
- (b) brand on the cheese the word “regraded” and the date of the regrading.

PART IV

REGISTRATION OF DAIRIES, ICE-CREAM FACTORIES AND MILK DEPOTS

27 Dairies, depots and ice-cream factories to be registered

- (1) No person shall use any premises as—
- (a) a farm butter dairy; or
 - (b) a farm cheese dairy; or
 - (c) a farm dairy; or
 - (d) an ice-cream factory; or
 - (e) a milk dairy; or
 - (f) a milk depot;
- unless he holds a Part IV registration certificate which—
- (i) has been issued in respect of the premises; and
 - (ii) is not suspended in terms of subsection (5) of section *twenty-eight*.
- (2) Subject to this section, if the premises referred to in subsection (1) are—
- (a) situated within the area of a local authority, registration thereof shall be effected with the local authority; or
 - (b) situated outside the area of a local authority, registration thereof shall be effected with the Chief Dairy Officer.
- (3) This section shall not come into operation in respect of any farm dairies—
- (a) which are situated outside; and

(b) from which no cream or milk is supplied for consumption as cream or whole milk within; the area of a local authority until such date as may be fixed by the Minister by statutory instrument.

(4) The Minister may, in the exercise of the powers conferred on him by subsection (3), fix different dates for different parts of Zimbabwe.

(5) Notwithstanding anything in subsection (2) and subject to subsection (6), a local authority which was, immediately before the 10th September, 1976, a registering authority in respect of all milk dairies as defined in subsection (1) of section *two* immediately before such date—

(a) which were situated outside; and

(b) from which milk or cream was supplied for consumption as whole milk or cream within; the area of such local authority shall be and shall, with effect from the 10th September, 1976, be deemed to have been the registering authority in respect of farm dairies—

(i) which are situated outside; and

(ii) from which milk or cream is supplied for consumption as whole milk or cream within; the area of such local authority.

(6) The Minister may at any time, by statutory instrument, declare that a local authority referred to in subsection (5) shall cease, with effect from such date as may be specified in such statutory instrument, to be a registering authority in respect of farm dairies referred to in that subsection:

Provided that, not less than thirty days before making such declaration, the Minister shall give such local authority notice in writing of his intention to do so.

(7) The Minister may at any time, by statutory instrument, declare that with effect from such date as may be specified in such statutory instrument all powers conferred and duties imposed by or in terms of this Part on a local authority which is a registering authority and on its officers shall be suspended for such period as may be specified in such statutory instrument or until such suspension is withdrawn by statutory instrument:

Provided that—

(i) not less than thirty days before making such declaration, the Minister shall give such local authority notice in writing of his intention to do so;

(ii) the Minister shall not make such declaration in respect of premises which are—

(a) referred to in subsection (1); and

(b) within the area of such local authority;

unless he is satisfied, after due inquiry and on consideration of a report made to him by the Secretary of the Ministry responsible for health, that such local authority is not exercising the necessary control and adequately enforcing the provisions of this Part within such area.

(8) During the period in which a suspension in terms of subsection (7) is in force—

(a) the Chief Dairy Officer shall exercise the powers and perform the duties of a registering authority within the area and in respect of the premises concerned; and

(b) the powers and duties of inspectors exercisable and performable by officers of the local authority concerned shall be transferred to and exercised and performed, respectively, by such duly qualified members of the Public Service as the Minister may appoint for the purpose.

28 Method of registration and inspection of premises

(1) Application for registration shall be made in the prescribed manner to the proper registering authority, who shall arrange for the premises of the applicant to be inspected by an inspector and may issue a Part IV registration certificate if the premises comply with the regulations for the time being applicable to the particular class of business and premises for which registration is desired.

(2) If the inspector referred to in subsection (1) is not satisfied that the requirements of the regulations referred to in that subsection are being complied with, he shall issue to the applicant for registration a notice in writing, stating what alterations, additional equipment or other requirements are necessary before registration of the premises can be effected, and may further, if he is satisfied that by so doing there would be no detriment to health, authorize by notice in writing the use of the premises as a milk dairy, milk depot, farm butter dairy, farm cheese dairy, farm dairy or ice-cream factory, as the case may be, for such period as he considers necessary to enable the applicant to effect such alterations, to procure and install such additional equipment or to carry out such other requirements as the inspector may specify.

(3) The purpose for which the premises of the applicant may be used in terms of subsection (2) shall be clearly stated in the notice issued in terms of that subsection and a copy of such notice shall be sent to the proper registering authority.

(4) If, at any time subsequent to registration and before the expiry of the Part IV registration certificate concerned, an inspector finds that any registered premises do not comply with the regulations for the time being applicable to the particular class of business and premises for which they are registered, the inspector may issue an order in writing, addressed to the holder of the Part IV registration certificate concerned, requiring that the defect shall be remedied to his satisfaction within a specified time.

(5) If a defect referred to in subsection (3) is not remedied to the satisfaction of the inspector concerned within the time specified by him, such inspector shall report the circumstances to the proper registering authority, which may then direct that the Part IV registration certificate concerned be suspended for such period as it thinks fit.

(6) In all cases where registration or renewal of registration is refused or a Part IV registration certificate is suspended the proper registering authority shall forthwith notify in writing to the applicant or holder of the Part IV registration certificate the reasons for such refusal or suspension, and any person aggrieved thereby shall have the right to appeal against such refusal or suspension to a senior magistrate in the province in which the premises are situated.

(7) On an appeal referred to in subsection (6), the senior magistrate concerned may, after making such inquiries as he thinks necessary, confirm, vary or reverse the decision of the registering authority concerned and make an order accordingly.

(8) A Part IV registration certificate shall be valid for a period of two years from its date of issue:

Provided that, if a Part IV registration certificate is suspended in terms of subsection (5), such period shall be extended by the length of the period of suspension.

(9) If the holder of a Part IV registration certificate—

(a) the period of validity of which has not yet expired; and

(b) which is not suspended in terms of subsection (5);

applies for the Part IV registration certificate to be renewed, the Part IV registration certificate shall be deemed to remain valid until such holder has been notified by the proper registering authority that his application has been granted or refused.

(10) If an application referred to in subsection (6) is refused and the applicant concerned appeals against such refusal, the Part IV registration certificate concerned shall be deemed to remain valid until such appeal has lapsed or been disposed of or withdrawn.

(11) Nothing in this section shall be construed to limit the powers which may be conferred on any inspector by regulations.

PART V

REGULATIONS

29 Regulations

(1) The Minister may by regulation prescribe all matters which—

(a) by this Act are required or permitted to be prescribed; or

(b) in his opinion, are necessary or convenient to be prescribed for—

(i) carrying out or giving effect to this Act; or

(ii) safeguarding the public health in respect of dairy produce.

(2) In the exercise of the powers conferred on him by subsection (1), the Minister may provide for all or any of the matters set out in the Schedule.

30 Application of regulations

If any milk or cream which is supplied for consumption as whole milk or cream within the area of a local authority is produced from any dairy premises situated outside the area of that local authority, the dairy premises from which such milk or cream is produced shall be subject to the regulations which govern dairy premises within the area to which such milk or cream is supplied, and registration of such premises under this Act may be refused or suspended on the same grounds as those on which registration may be refused or suspended in the case of dairy premises situated within such area.

31 Regulations may prescribe penalties

Any regulation may prescribe a penalty for any contravention thereof and may prescribe different penalties in the case of successive contraventions, but no such penalty shall exceed level six:

Provided that in the case of a continuing offence there may be prescribed a further penalty which shall not exceed level one for each day during which the offence continues.

[Section as amended by section 4 of Act 22 of 2001]

PART VI

ADMINISTRATION

32 Dairy officers

Subject to section *thirty-four* and, if the person to be appointed is a member of the Public Service, the laws relating to the Public Service, the Minister may appoint a Chief Dairy Officer and officers of the Ministry and other persons to be dairy officers for the purposes of this Act.

33 Inspectors

(1) Subject to section *thirty-four* and, in the case of a person who is a member of the Public Service, the laws relating to the Public Service the following persons shall be inspectors for the purposes of this Act—

- (a) throughout Zimbabwe, the Secretary of the Ministry responsible for health, who shall generally supervise and control all other inspectors in the performance of their duties and the exercise of their powers under this Act in relation to the safeguarding of health; and
- (b) throughout Zimbabwe, except within the area of any local authority which employs a full-time medical officer of health, all Government medical officers and all duly appointed dairy officers and such other officers of the Ministry or the Ministry responsible for health as may be appointed by the Minister; and
- (c) within the area of any local authority and in respect of any premises situated outside its area for which such local authority is the registering authority under this Act, the medical officer of health of such local authority and such other persons as may, with the approval of the Secretary of the Ministry responsible for health, be appointed for the purpose by such local authority.

(2) Inspectors may be of differing grades and may by regulation be given differing duties and powers in accordance with such grades.

34 Limitations on appointment of inspectors and dairy officers

(1) No person shall hold an appointment as inspector or dairy officer under this Act—

- (a) unless he possesses the qualifications prescribed for such appointment; or
- (b) if he is engaged, directly or indirectly, or has any pecuniary interest in any trade or business connected with dairy produce.

(2) The appointment of every inspector and dairy officer shall be in writing and transmitted to and held by him.

35 Powers of entry and inspection

(1) Any inspector and any dairy officer may at all reasonable times—

- (a) enter and inspect any dairy premises or premises which are believed on reasonable grounds to be dairy premises; and
- (b) inspect and take samples of any dairy produce found in or on any premises referred to in paragraph (a); and
- (c) require any person upon premises referred to in paragraph (a)—
 - (i) to disclose all information at his disposal; and
 - (ii) to produce any book, statement or record or copy thereof or extract therefrom; that may relate in any way to the production, storage, supply, sale or treatment of dairy produce; and
- (d) make copies of or take extracts from any book, statement or record referred to in paragraph (c).

(2) The powers of entry and inspection conferred by this section shall not be exercised except with the consent of the owner or person in charge of the premises concerned, or where there are reasonable grounds for believing that it is necessary to exercise them—

- (a) in the interests of public health; or
- (b) for the prevention, investigation or detection of an offence under this Act or for the obtaining of evidence relating to such an offence.

[Section substituted by section 31 of Act 10 of 1997]

36 Appointment of pathologists, bacteriologists and analysts and admissibility in evidence of their certificates

(1) The Minister responsible for health may appoint pathologists, bacteriologists and analysts to carry out microscopical, bacteriological and analytical examinations under or for the purposes of this Act.

(2) Any person appointed in terms of subsection (1) shall furnish a certificate signed by him of the results of any examination—

- (a) referred to in that subsection; and
- (b) carried out by him.

(3) In any proceedings against any person for a contravention of any provision of this Act, any certificate furnished in terms of subsection (2) by the person who made the examination concerned for the purpose of ascertaining any matter relevant to such proceedings shall be admissible in evidence on its mere production by any person and shall be proof of such matter unless the contrary is proved:

Provided that—

- (i) the court in which any such certificate is adduced in evidence may, in its discretion, cause such second-mentioned person to be summoned to give oral evidence in such proceedings or may cause written interrogatories to be submitted to him for reply, and such interrogatories and any reply thereto purporting to be a reply from such second-mentioned person shall likewise be admissible in evidence in such proceedings;

- (ii) at the request of the accused, made not less than seven days before the trial, such second-mentioned person shall be summoned to give oral evidence.

37 Co-operation between local authorities and the Secretary of the Ministry responsible for health and between inspectors of different areas

(1) It shall be the duty of every local authority to assist and co-operate with the Secretary of the Ministry responsible for health in carrying out the provisions of this Act relating to the safeguarding of health and it shall likewise be the duty of every inspector outside the area of a local authority to assist and co-operate with such local authority in carrying out the provisions of this Act in its area.

(2) Any inspector of an area within which dairy produce from any dairy premises situated outside that area is being sold may, by notice in writing, require any inspector of the area within which such dairy premises are situated to examine such premises and to take samples of the milk or other dairy produce at such premises or in the course of transit from such premises to the area of the first-mentioned inspector, and it shall be the duty of the inspector so notified as soon as practicable to make such examination or to take such samples and to forward them for analytical, bacteriological or microscopical examination to the inspector who gave him the notice.

PART VII

OFFENCES AND PENALTIES

38 Offences in respect of unregistered premises, registration numbers and registered marks

(1) Any person who in contravention of this Act uses any premises as a cream depot, creamery, cheese factory, processed cheese factory, dried milk factory, condensed milk factory, milk dairy, dairy factory, milk depot, farm dairy, farm butter dairy, farm cheese dairy or ice-cream factory, unless he holds a registration certificate in respect thereof, shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Section as amended by section 4 of Act 22 of 2001]

(2) Any person who—

- (a) uses in respect of premises, whether registered or not under this Act, for the purpose of designating dairy produce manufactured at such premises, any registered number which has not been allotted to him under this Act; or

(b) marks, brands or labels any dairy produce in any manner not permitted under this Act;

shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Section as amended by section 4 of Act 22 of 2001]

39 Offence of obstructing or failing to carry out orders of inspector

Any person who—

- (a) fails to give or refuses access to any inspector or dairy officer lawfully requesting entrance to any land or premises; or
- (b) obstructs, hinders or intimidates an inspector or any other person authorized under this Act to carry out or perform a power or duty in the exercise of such a power or duty; or
- (c) when required under this Act to give information to an inspector or other person aforesaid, fails so to give information which he may be lawfully required to give, or, when giving any information for the purposes of any provisions of this Act, gives false or misleading information, knowing it to be false or misleading; or
- (d) refuses to deliver to any person, at his request, for examination, grading, sampling, testing or marking, any book, document or article in his possession or custody, which such person is by virtue of this Act empowered to examine, grade, sample, test or mark; or
- (e) when required to carry out any written order given by an inspector or dairy officer under this Act, fails to carry out the terms of such order within the period prescribed thereby or by the inspector or dairy officer; or
- (f) fails to give any notice which under this Act it is his duty to give;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Section as amended by section 4 of Act 22 of 2001]

40 Obliterating or counterfeiting marks

Any person who—

- (a) obliterates, defaces or alters the mark of an inspector or dairy officer on dairy produce which has been inspected under this Act or on any package containing such produce; or
- (b) counterfeits any mark referred to in paragraph (a), or without lawful authority places upon any dairy produce, or package containing dairy produce, the mark of an inspector or dairy officer, or the mark of a manufacturer or packer, or

- (c) puts into any package marked after inspection under this Act or empties or partly empties any such package in order to put into it any dairy produce, whether of the same or any other kind, which was not contained therein at the time of inspection; or
- (d) uses for the purposes of packing dairy produce any package previously used for that purpose without effacing all previous marks thereon;

shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Section as amended by section 4 of Act 22 of 2001]

41 Offences by employees

Any person who, being in the employment of any manufacturer or packer or consignor of dairy produce—

- (a) hires or lends the marks or marking instruments of his employer to any person; or
- (b) connives at or is privy to any fraudulent act in respect of marks or marking instruments referred to in paragraph (a).

shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Section as amended by section 4 of Act 22 of 2001]

42 Penalty where not otherwise provided

Any person who is guilty of any contravention of this Act or of default in complying with any requirement of this Act or any prohibition, direction or order issued in terms of this Act with which it is his duty to comply, for which contravention or default no penalty is expressly provided, shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Section as amended by section 4 of Act 22 of 2001]

PART VIII

GENERAL

43 Burden of proof as to knowledge of infection

In any legal proceedings under this Act relating to any disease or to any article or thing alleged to have been exposed to or contaminated with the infection of such disease, whenever it is in issue in the proceedings that the accused or defendant knew that he or any other person or animal was infected with such disease, or that such article or thing had been so exposed or was so contaminated, he shall be deemed to have had such knowledge if it is proved that by the exercise of ordinary care he could have had such knowledge, unless he satisfies the court to the contrary.

44 Presumptions relating to dairy produce

(1) If dairy produce is found in or on any premises, place, vehicle, vessel or aircraft used for the manufacture for sale or the sale of dairy produce, such dairy produce shall be deemed to be dairy produce intended for—

- (a) manufacture for sale; or
- (b) sale;

as the case may be, unless the contrary is proved.

(2) If dairy produce is sold or kept for sale, it shall be deemed to be sold or kept for sale for human consumption, unless the contrary is proved.

(3) Any copy of or extract from any book or document referred to in paragraph (b) of subsection (1) of section *twenty-three* certified as true and correct by the dairy officer who made such copy or took such extract shall be—

- (a) deemed to be a true and correct copy or extract; and
- (b) admissible in evidence on its mere production by any person as proof of the entry to which it relates;

unless the contrary is proved.

(4) If it is proved that a substance is capable of entry into or of being used in the composition or preparation of or as a vehicle for the preparation of dairy produce for human consumption, it shall be presumed, unless the contrary is proved, that the substance was intended for such entry or use.

(5) Any quantity of dairy produce in or on any premises, place, vehicle, vessel or aircraft at the time a sample thereof is taken in terms of this Act shall, unless the contrary is proved, be deemed to possess the same properties as such sample.

(6) In the case of dairy produce which is contained in a sealed package, the person who appears from such package to have manufactured or imported such dairy produce or to have enclosed such dairy produce in such package shall, unless the contrary is proved, be deemed to have manufactured, imported or enclosed, as the case may be, such dairy produce.

45 Defect in form not to invalidate notice or order

No defect in the form of any notice given or order made under this Act shall invalidate or render unlawful the administrative action concerned or be a ground for exception to any legal proceedings which may be taken in the matter to which such notice or order relates, if the requirements thereof are substantially and intelligibly set forth.

46 Service of notice

(1) Whenever in terms of this Act any notice, order or other document is required to be given to any person, the notice, order or other document shall be deemed to be sufficiently served—

(a) if sent by registered post addressed to him at his last known place of abode or left thereat with—

(i) him personally; or

(ii) some inmate thereof who is apparently over the age of sixteen years;

or

(b) in the case of a notice, order or other document required to be given to an owner or occupier of land or premises whose abode, after inquiry, is unknown, if posted up in some conspicuous place on such land or premises.

(2) It shall not be necessary in any order, notice or other document given to an owner or occupier of land or premises to name him but such order, notice or other document shall describe him as the owner or occupier of such land or premises.

47 Provisions of this Act in relation to other laws

Nothing in this Act shall be construed as in any way repealing or affecting any enactment relating to public health, to the adulteration of articles of food or to animals' diseases, and this Act shall be construed as being in addition to and not in substitution for any such enactment.

SCHEDULE (Section 29 (2))

MATTERS IN RESPECT OF WHICH MINISTER MAY MAKE REGULATIONS

1. The qualifications, powers and duties of dairy officers, inspectors and other persons appointed to exercise powers and perform duties in terms of this Act, and the information which the owner or occupier of any dairy premises or the owner or possessor of any dairy vessel shall furnish, and the assistance which such owner, occupier or possessor, as the case may be, shall render to any such person in the performance of his duties.
2. The manner in which premises and numbers shall be registered in terms of this Act.
3. The character, cleansing, drainage, lighting, site, structure, ventilation and water supply of any dairy premises and ensuring the cleanliness of dairy vessels.
4. The equipment of any dairy premises and the apparatus, appliances, instruments, machinery and utensils to be used therein.
5. The construction, equipment and cleanliness of any vehicle used for the transport of dairy produce in bulk in a tank or tanks forming part of or permanently attached to such vehicle.
6. The bulk handling of dairy produce.
7. The method of cleansing, handling, storing and treating dairy vessels and ensuring that they are maintained in such a condition as to minimize or prevent the contamination of dairy produce.
8. The cleansing in or on dairy premises of bottles, boxes, containers or packets in which food or drink other than dairy produce has been held.
9. The production, storage, supply or sale at or from dairy premises of food or drink other than dairy produce.
10. The composition and standards of any substance which may be used in the manufacture or treatment of any dairy produce and the conditions of its sale and use.
11. The composition, patterns and standards of articles used in examining or testing dairy produce, the testing and marking of such articles, and the conditions on which such articles may be purchased or sold.
12. The nature and quality of the various packages for dairy produce.
13. The form of any brand or stamp to be used in connection with the branding or grading of any dairy produce in terms of this Act and the manner of branding or labelling dairy produce and the packages, vessels or wrappers containing dairy produce.
14. The inspection of dairy premises and dairy vessels.
15. The inspection of any kind of dairy produce, and the removal or detention pending analysis, examination or inquiry of dairy produce suspected of being contaminated, infected, unfit for human consumption or unwholesome or of failing to comply with prescribed standards of cleanliness, composition, quality or wholesomeness, and the seizure and destruction, disposal or treatment so as not to endanger human health of any dairy produce, which as a result of such analysis, examination or inquiry is found to be contaminated, infected, unfit for human consumption or unwholesome or of failing to comply with prescribed standards of cleanliness, composition, quality or wholesomeness.

[Paragraph amended by section 31 of Act 10 of 1997]

16. The compulsory medical examination of any person connected with or employed in the performance of any kind of dairy duties, and the compulsory notification of contagious or infectious disease in any such person.
17. The prohibition of the employment in the performance of any kind of dairy duties of any person who has been proved to be a carrier of enteric or typhoid fever or any other infectious disease.
18. The duties of the occupiers and owners of dairy premises in connection with the occurrence of disease or sickness amongst persons resident in or about their premises or employed by them in the performance of any kind of dairy work.
19. The veterinary inspection of dairy cattle, the duties of owners of dairy cattle in connection with the occurrence of disease or sickness amongst their dairy cattle and the prohibition of the distribution, sale or use of the milk or dairy produce made from the milk of any cow which—
 - (a) has given tubercular milk; or
 - (b) is or appears to be suffering from tuberculosis, indurated udder, chronic disease of the udder or any other disease whatsoever which is likely to endanger human health.
20. The control and inspection of foodstuffs and grazing grounds used for dairy purposes and the prohibition of the use for dairy cattle of foodstuffs and grazing grounds likely to endanger human health.
21. The furnishing by occupiers and owners of dairy premises of the names and addresses of their customers and suppliers when, in the opinion of an inspector having the prescribed authority, such information is pertinent to the control and investigation of disease or sickness.
22. The closing, when there is reason to believe that dairy produce derived or supplied from any dairy premises has conveyed or is liable to convey any disease likely to endanger human health, of such dairy premises or the exclusion therefrom of any animal or person or such treatment of the dairy produce derived therefrom before its distribution, sale or use as may be ordered by an inspector.
23. The fixing of standards of cleanliness, composition, quality and wholesomeness of any type of dairy produce, the prohibition or regulation of the abstraction therefrom or the addition thereto of any substance and the destruction or other disposal or the prevention of the distribution, sale or use of any dairy produce which has been proved not to comply with such standards, prohibition or regulation.
[Paragraph amended by section 31 of Act 10 of 1997]
24. The cooling of dairy produce, the manner in which special treatment, such as pasteurization, shall be performed, the conditions of production, storage, handling, treatment, conveyance and delivery of dairy produce and the securing of the identification of the source of any dairy produce.
25. The conditions on which and the manner in which samples shall be taken for analysis, examination or inspection for any purpose relevant to this Act and the mode of dealing with or disposing of such samples.
26. The authorizing of the use in connection with the sale of milk of special designations, such as “certified milk”, the conditions subject to which milk may be sold under such designations and the prohibition of the use of such designations in connection with the sale of milk in respect of which such conditions are not complied with.
27. The examination of candidates for certificates in the grading and testing of dairy produce and the duties of holders of such certificates.
28. The methods of ascertaining the mass of, grading, sampling and testing dairy produce and the manner in which the results thereof shall be recorded.
29. The fixing of the charges which may be made for any grading or testing in terms of this Act.
30. The content and layout of application forms, certificates of analysis or examination, marks, notices, registers, registration certificates, reports and all other books or documents whatever to be used for the purposes of this Act.