

3 GEO. VI. No. 22, 1939. *Margarine Acts Amendment Act.*

LAW SOCIETY.

See SUPREME COURT.

LEAD POISONING, MOUNT ISA.

See LABOUR (WORKERS' COMPENSATION).

MACKAY HARBOUR BOARD.

See HARBOURS.

MAIN ROADS.

See ROADS.

MARGARINE.

An Act to Amend "The Margarine Acts, 1910 to 1931," in certain particulars, and for other purposes.

[ASSENTED TO 1ST DECEMBER, 1939.]

3 GEO. VI.
No. 22.
THE
MARGARINE
ACTS
AMENDMENT
ACT OF
1939.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. (1.) This Act may be cited as "*The Margarine Acts Amendment Act of 1939*" and shall be read as one with *"*The Margarine Acts, 1910 to 1931*," herein referred to as the Principal Act. Short title.

The Principal Act and this Act may be collectively cited as "*The Margarine Acts, 1910 to 1939*." Collective title.

(2.) This Act shall come into force on a date to be proclaimed by the Governor in Council by Proclamation published in the *Gazette*. Commencement of Act.

Amendments of the Principal Act.

2. Section three of the Principal Act is amended as follows:— Amendment of s. 3.

(a) A new definition "Agent" is inserted before the definition "Analyst," namely:—

" "Agent"—Any person who on behalf of another person who prepares, manufactures, and/or packs margarine, takes delivery of or controls, manages, or directs the delivery of margarine for the purposes of sale or disposal otherwise than by sale." Agent.

* 1 Geo. V. No. 9 and amending Act, *supra*, pages 2035 *et seq.*

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(b) A new definition "Australia" is inserted after the definition "Analyst," namely:—

Australia.

" "Australia"—New South Wales, Victoria, Queensland, South Australia, Western Australia, Tasmania, the Northern Territory, and the Federal Capital Territory."

(c) The definition "Factory" is repealed and the following new definition is inserted in lieu thereof, namely:—

Factory.

" "Factory"—Any place where margarine is prepared, manufactured, and/or packed: the term includes any place used in connection with the preparation, manufacture, and/or packing of margarine."

(d) In the definition "Minister" the words "and Stock" are inserted after the word "Agriculture."

(e) The words "and also includes the occupier" are added to the definition "Owner."

(f) The words "and the term "pack" and derivatives of that term shall have a corresponding inclusive meaning" are added to the definition "Package."

(g) A new definition "Place" is inserted after the definition "Package," namely:—

Place.

" "Place"—Includes any house, shop, warehouse, structure, building, ship, barge, boat, vehicle, car, aeroplane, station, wharf, shed, or any land or premises whatsoever and wheresoever situated."

(h) A new definition "Sale" is inserted after the definition "Regulations," namely:—

Sale.

" "Sale" (with its derivatives)—Includes barter, and also includes offering or attempting to sell, or receiving for sale, or having in possession for sale, or exposing for sale, or sending, forwarding, or delivering for sale, or causing, or suffering, or permitting, or allowing to be sold or offered or exposed for sale."

(i) The definition "Shop" is repealed and the following new definition is inserted in lieu thereof, namely:—

Shop.

" "Shop"—Any place in or upon which margarine is sold by retail: the term does not include a "factory" as herein defined."

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(j) The following new definition "Table Margarine" is inserted after the definition "Shop," namely :—

" "Table Margarine"—Any margarine prepared or manufactured wholly or in part from any fats or oils mentioned in the definition of the term "Margarine" which, or the products containing which, have been imported into Australia: the term does not include any margarine prepared or manufactured wholly from any such fats or oils which have been derived from a source within Australia." ^{Table Margarine.}

(k) The following new definitions "Under Secretary" and "Wholesaler" are inserted after the definition "This Act," namely :—

" "Under Secretary"—The Under Secretary, ^{Under Secretary.} Department of Agriculture and Stock: the term includes any person for the time being discharging the duties of that office;

" "Wholesaler"—Any importer or wholesale seller ^{Wholesaler.} who is primarily responsible for putting on the market in Queensland any margarine: the term does not include any person licensed under this Act as a manufacturer."

3. In subsection one of section five the figures and word "1904 to 1905" are repealed and the words and figures " "1920 to 1938," or any Act amending or in substitution for such Acts" are inserted in lieu of the figures and word so repealed. ^{Amendment of s. 5.}

4. Section six of the Principal Act is hereby repealed and the following new sections numbered six, 6A, 6B, and 6C are inserted in lieu thereof, ^{Repeal of s. 6 and new ss. 6, 6A, 6B, and 6c.} namely :—

" [6.] (1.) Every owner of a factory shall register and at all times keep registered under this Act in his own name such factory. ^{Registration of factory.}

Where the factory is occupied by a person other than the owner of the land upon which it is situated, the term "owner" refers to both such owner and occupier, but such factory shall be registered in the name of the occupier.

(2.) In all cases application for the registration or renewal of registration of any place as a factory shall be made by the occupier in the prescribed manner accompanied by the prescribed fee, and shall be so made to the Under Secretary.

Every certificate of registration or renewal of registration of a factory shall be issued under the hand of the Under Secretary.

(3.) No person shall—

- (a) Use or suffer or permit to be used any place as a factory unless such place is at the time registered under this Act as a factory ;
- (b) Prepare, manufacture, and/or pack, or commence to prepare, manufacture, and/or pack, any margarine in or upon any place unless such place is at the time registered under this Act as a factory in his name ;
- (c) Suffer any place registered under this Act in his name as a factory or any part thereof to be used by any other person for the purpose of preparing, manufacturing, and/or packing margarine ;
- (d) Without the consent in writing of the Minister first obtained, sell or let or agree to sell or let or part with the possession of any place registered under this Act as a factory in his name or any part thereof, or share with any person the occupancy or use of any such place or any part thereof.

(4.) When any person ceases to use any place for the preparation, manufacture, and/or packing of margarine he shall, within fourteen days, so notify in writing to the Under Secretary in the manner prescribed, and thereupon the registration of such place as a factory shall be transferred or cancelled.

(5.) Any person who contravenes or fails to comply with any provision of this section shall be liable to a penalty of not more than fifty pounds and, in addition, to a daily penalty of not more than twenty pounds for each and every day during which such offence is continued after a conviction therefor.

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[6A.] (1.) No person shall prepare, manufacture, and/or pack any margarine at any time when he is not licensed under this Act so to do, and no person licensed under this Act to prepare, manufacture, and/or pack margarine shall store margarine in or upon any place unless such place is registered under this Act as a factory.

Manufacturers of margarine to be licensed.

Any person contravening any provision of this subsection shall be liable to a penalty of not more than one hundred pounds and, in addition, liable to a daily penalty of not more than twenty pounds for each and every day during which such offence is continued after a conviction therefor.

For the purposes of this subsection an agent shall be deemed to prepare, manufacture, and/or pack any margarine in respect of which he acts as agent.

(2.) In all cases, application for a license or the renewal of a license to prepare, manufacture, and/or pack margarine shall be made by the applicant for such license or renewal thereof in the prescribed manner accompanied by the prescribed fee, and shall be so made to the Under Secretary.

Every license or renewal of a license to prepare, manufacture, and/or pack margarine shall be issued under the hand of the Under Secretary.

[6B.] The Minister may at his absolute discretion direct the Under Secretary—

Powers of Minister respecting registration or license.

(a) To refuse to grant a license under section 6A hereof or registration under section six hereof or any renewal of any such license or registration; or

(b) To cancel any such license or registration or any renewal of any such license or registration,

and the Under Secretary shall give effect to any such direction, and from and after the date of a notification in the *Gazette* of the cancellation of a registration or license the place or person concerned shall be deemed to be not registered or, as the case may be, not licensed under this Act.

[6c.] (1.) The Minister may from time to time determine the maximum quantity of table margarine which each and every person licensed under this Act to prepare, manufacture, and/or pack margarine may prepare, manufacture, and/or pack, or in respect of which any person may act as agent, and a different

Quota.

maximum quantity may be so determined with respect to different persons preparing, manufacturing, and/or packing, or, as the case may be, acting as agents with respect to margarine.

The Minister may from time to time modify any maximum quantity so determined by him.

In determining such maximum quantity with respect to any person regard shall be had to the actual quantity of margarine which the Minister is satisfied was prepared, manufactured, and/or packed by him or in respect of which the Minister is satisfied such person acted as agent during the financial year ended on the thirtieth day of June, one thousand nine hundred and thirty-nine, but in no case shall such determination or any modification thereof fix in respect of any person a maximum quantity less in amount than the quantity to which the Minister is to have such regard.

A determination made by the Minister under this section shall continue in force until modified by a like determination.

(2.) For the purposes of this section the Minister shall have power to require every person who manufactures, prepares, and/or packs margarine, or who is an agent, to deliver to him at any time and from time to time a return of all table margarine prepared, manufactured, and/or packed by such person, or in respect of which such person was an agent, during such period as may be specified by the Minister.

(3.) Every determination or modification of a determination made by the Minister under this section shall be published in the *Gazette* and, upon being so published, shall have the same effect as if it were enacted in this Act and shall be judicially noticed, and shall not be questioned in any proceedings whatsoever.

(4.) Any person who prepares, manufactures, and/or packs or, as the case may be, acts as agent in respect of a greater quantity of table margarine than the maximum quantity fixed by the Minister in his case shall be guilty of an offence and liable to a penalty of not more than one hundred pounds.

(5.) Every person who fails to deliver to the Minister a return required by him under this section or who delivers any such return which is false in a material particular shall be guilty of an offence and liable to a penalty of not more than one hundred pounds."

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5. Section seven of the Principal Act is amended as follows :— ^{Amendment of s. 7.}

(a) In subsection one thereof the word “unlawful” is repealed and the words “an offence” are inserted in lieu of such repealed word, and the words “by the Minister” are repealed, and the following paragraphs are added to the said subsection, namely :—

“In all cases, application for a license or the renewal of a license to sell margarine shall be made by the applicant for such license or renewal thereof in the prescribed manner accompanied by the prescribed fee, and shall be so made to the Under Secretary.

Every license or renewal of a license to sell margarine shall be issued under the hand of the Under Secretary.

Licenses to sell margarine shall be of two classes, namely, a wholesaler’s license and a license for a shop.”

(b) Paragraph (a) of subsection two thereof is repealed and the following new paragraph is inserted in lieu thereof, namely :—

“(a) Be for the wholesaler therein named or, as the case may be, for the owner of the shop and the shop therein named.”

(c) In subsection three thereof the words “the fee of ten shillings” are repealed and the words “the prescribed fee” are inserted in lieu of such repealed words, and the words “five shillings” are repealed and the words “one-half the prescribed fee” are inserted in lieu of such repealed words.

(d) The following new subsections four and five are added to the said section, namely :—

“(4.) Any wholesaler offending against this section shall be liable to a penalty of not more than one hundred pounds, and any other person so offending shall be liable to a penalty of not more than fifty pounds.

(5.) Nothing in this section shall require a person licensed to prepare, manufacture, and/or pack margarine to take out a license under this section to sell any margarine prepared, manufactured, and/or packed by him in or upon his registered factory.”

Amendment
of s. 8.

6. Section eight of the Principal Act is amended as follows :—

(a) In the first paragraph of subsection one thereof the words “registrations or” are inserted before the word “licenses,” and the words “the nearest clerk of petty sessions” are repealed and the words “the Under Secretary” are inserted in lieu thereof.

(b) In the second paragraph of the said subsection one the words “used by such factory” are repealed and the words “used by the licensee in whose name such factory is registered” are inserted in lieu thereof; the words “prepared or manufactured therein” wherever such words occur are repealed, and the words “prepared, manufactured, and/or packed in such factory” are inserted in lieu thereof, in each such case.

(c) In the third and last paragraph of the said subsection one the word “Minister” is repealed and the words “Under Secretary” are inserted in lieu thereof.

(d) Subsection two thereof is repealed.

Amendment
of s. 10.

7. Section ten of the Principal Act is amended as follows :—

(a) In the proviso to paragraph (b) of the said section the words “for a period of twelve months from the passing of **The Margarine Act Amendment Act of 1931*” are repealed.

(b) In paragraph (b1) of the said section the words and brackets “(for a period of twelve months from the passing of **The Margarine Act Amendment Act of 1931*”)” are repealed.

Repeal of
and new s.
11.

8. Section eleven of the Principal Act is repealed and the following new section is inserted in lieu thereof, namely :—

Inspection
of premises,
&c.

“ [11.] (1.) Subject to this Act, an inspector may at any time—

(i.) Enter, search, and inspect any place used or suspected to be used for the preparation, manufacture, and/or packing, or for the sale, of margarine, or used or suspected to be used for the preparation, manufacture, and/or packing or storing of any fats, oils, or other constituents, materials, or ingredients of

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margarine, and all utensils, machinery, apparatus, and works thereat or therein, and if he thinks fit take samples of any margarine or any fats, oils, or other constituents, materials, or ingredients found in or upon such place ;

- (ii.) Open or order to be opened any package which contains or is suspected to contain margarine or any such fats, oils, or materials, ingredients, or constituents as aforesaid for the purpose of inspection or taking samples of same or any of them.

(2.) The inspector may deliver or send any such sample as aforesaid to an analyst for examination and/or analysis, and the analyst shall upon receipt of the sample with all convenient speed examine and/or analyse the same and give a certificate of the result of the examination and/or analysis in the prescribed form.

(3.) If, upon examination and/or analysis, any margarine is found to be coloured in imitation of or so as to resemble butter, or to contain less than the prescribed percentage of starch and sesame oil, or to contain any butter, butter fat, or other constituent of milk contrary to this Act, such inspector shall by order and/or the prescribed condemnation mark condemn, seize, and/or remove such margarine.

(4.) If an inspector is satisfied that—

(a) Any margarine inspected by him is unfit for the food of man ; or

(b) Any margarine is being held or is being or has been removed or sold contrary to this Act,

he shall, by order and/or the prescribed condemnation mark condemn, seize, and/or remove the same.

Condemna-
tion.

(5.) All margarine which has been condemned shall be disposed of in manner prescribed.

(6.) The inspector shall, as soon as may be, make a report to the Minister of all such orders made by him.

(7.) An inspector may, in the course of his inspection of any place, inspect the books and accounts of the owner or apparent owner or person apparently in possession or charge of such place, and for the purposes

of such inspection the inspector may examine any books, accounts, and documents relating to such accounts, and may make and take away with him any extract from any book or copy of any such documents.

(8.) If any person obstructs an inspector in the exercise of his powers or the performance of his duties under this section, or without lawful excuse refuses to produce any book, account, document, writing, paper, or instrument in his possession or under his control, or to permit the making and taking away of any extract from any book or copy of any document, or to answer any question asked by the inspector for the purpose of the exercise of such powers or the performance of such duties or gives a false answer to any such question he shall be liable to a penalty of not less than two pounds or more than twenty pounds; and if any person after conviction for any such offence still refuses to produce any such book, account, document, paper, writing, or instrument, or to permit the making and taking away of any extract or copy, or to answer any such question he shall be liable to a further penalty not exceeding twenty pounds for each and every day during which such default continues."

New s. 14A.

9. The following new section 14A is inserted after section fourteen of the Principal Act, namely:—

When
margarine
to be sold
in pats.

"[14A.] (1.) No person shall sell retail any margarine except in pats of cube form containing not more than one pound avoirdupois net weight of margarine, and no person shall sell wholesale any margarine except in pats of cube form containing not more than one pound avoirdupois net weight of margarine.

(2.) No person shall sell any pat of margarine unless the word "Margarine" in letters of not less than the prescribed size set in the prescribed scroll is impressed upon the margarine contained in such pat in such a manner as to be clearly legible to the purchaser.

(3.) Any person offending against any provision of this section shall, except as hereinafter provided, be liable to a penalty of not more than fifty pounds.

(4.) This section shall not apply or extend to margarine sold to a person carrying on the business of baker, cake-maker, pastry-cook, or confectioner for use in his business."

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10. In paragraph (i.) of section fifteen the words ^{Amendment of s. 15.} "which has been inspected" are repealed.

11. The following new section numbered 18A is ^{New s. 18A.} inserted after section eighteen of the Principal Act, namely :—

"[18A.] The Under Secretary may from time to time ^{Duty to furnish returns.} by notice in writing served on him either personally or by post require any person who prepares, manufactures, and/or packs margarine to furnish the said Under Secretary in writing with a list of every oil, fat, and other ingredient used by him in such preparation, manufacture, and/or packing, which list shall specify the nature and quantity of every such oil, fat, or other ingredient and the name and address of the person from whom it was obtained.

Every such notice shall specify the time within which and the period for which the list is to be furnished to the Under Secretary and may require the list to be verified by a statutory declaration.

Any person who in any particular fails to comply with a notice under this section or who furnishes any such list which is false in a material particular shall be liable to a penalty not exceeding one hundred pounds.

This section shall not restrict the power of the Governor in Council to make regulations for securing information as to margarine or the oils, fats, and other constituents, materials, and ingredients used for the preparation or manufacture of margarine."

12. Section nineteen of the Principal Act is ^{Amendment of s. 19.} amended as follows :—

(a) All words in the first paragraph thereof from and including the words "The Governor in Council" to and including the words "that is to say" are repealed and the following words are inserted in lieu thereof, namely :—

"The Governor in Council may from time to time make all such regulations as he deems necessary or convenient for the purpose of carrying this Act into execution.

Without limiting the generality of the foregoing provisions, regulations may be made for or with respect to all or any of the following matters, that is to say—".

(b) Sub-paragraphs (2) and (9) of the first paragraph thereof are repealed.

(c) The following new sub-paragraphs numbered (9) to (14) are inserted after sub-paragraph (8) of the first paragraph thereof, namely:—

“(9) The construction, ventilation, cleanliness, and/or sanitation of any place registered under this Act as a factory including the prohibition of insanitary methods or practices in respect of the preparation, manufacture, and/or packing of margarine;

(10) The terms, provisions, and conditions upon and subject to which any place may be registered under this Act as a factory, and/or any person may be licensed under this Act (which terms, provisions, and conditions may differ in respect of the different classes of licenses): the terms, provisions, and conditions upon and subject to which any such registration and/or license may be renewed or transferred: the period of any such registration or license or any renewal thereof: and forms of application for and of such registrations or licenses or any renewal or transfer thereof;

(11) Fees for registrations or licenses under this Act or for any renewal thereof (which fees may differ in respect of the different registrations, licenses, or classes of licenses concerned);

(12) Returns to be made by licensees or any class of licensees, the form of such returns, the times when they are to be made, the periods to which they are to relate, and the manner of verification thereof;

(13) All matters required or permitted by this Act to be prescribed;

(14) Penalties for breaches of the regulations but not exceeding in any case fifty pounds.”

(d) The two paragraphs of the said section next following sub-paragraph (9) of the first paragraph thereof (being the paragraphs commencing with the

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words "The Regulations may impose" and ending with the words "next ensuing session") are repealed and the following paragraphs are inserted in lieu thereof, namely:—

"All Regulations made or purporting to be made under this Act shall be published in the *Gazette* and shall upon such publication be of the same effect as if they were enacted in this Act and shall be judicially noticed, and shall not be questioned in any proceedings whatsoever.

Effect of
publication
in the
Gazette of
Regulations.

All Regulations shall be laid before Parliament within fourteen days after such publication if Parliament is in session; and if not, then within fourteen days after the commencement of the next session."

(e) In the last paragraph of the said section the words "either House of" are repealed.

13. In section twenty-one of the Principal Act the word "ten" is repealed and the word "fifty" is inserted in lieu thereof.

Amendment
of s. 21.

14. Section twenty-two of the Principal Act is repealed and the following new section twenty-two is inserted in lieu thereof, namely:—

Repeal of
and new s.
22.

"[22.] (1.) In any proceedings for an offence against this Act, or in any action which the Minister may institute or authorise to be instituted to enforce any civil right or remedy conferred upon him by this Act—

Evidence.

(i.) A certificate under the hand of the Under Secretary stating that any place was or was not, or is or is not, at the time mentioned therein registered under this Act as a factory or that any person named therein was or was not, or is or is not, at the time mentioned therein the holder of a license under this Act of the kind specified therein shall cast on the defendant the onus of proving the contrary, and shall be conclusive evidence of the fact or facts stated in such certificate unless the defendant proves the contrary;

(ii.) The averment that any person is or was an inspector, or that any margarine is or was for sale, or that any margarine is or was for or intended for the food of man shall cast

on the defendant the onus of proving the contrary and shall be conclusive evidence of the fact or facts averred unless the defendant proves the contrary.

(2.) Judicial notice shall be taken of the signature of the Under Secretary to every certificate mentioned in paragraph (i.) of subsection one of this section.

(3.) Subsection one of this section shall apply to any matter so certified to or averred although—

(i.) Evidence in support or rebuttal of the matter certified to or averred or of any other matter is given ; or

(ii.) The matter certified to or averred is a mixed question of law and fact, but in that case the averment shall be evidence of the fact only.

(4.) This section shall not lessen or affect any onus of proof otherwise falling on the defendant.

(5.) Where in any action or proceeding whatsoever it is material to prove that the Minister approved or did not approve of any act, matter, or thing then, and in every such case, a certificate signed by the Minister and stating that he approved or, as the case may be, did not approve of such act, matter, or thing shall be admissible in evidence in such action or proceeding and shall be conclusive evidence of the fact certified to therein.

Judicial notice shall be taken of the signature of the Minister to every such certificate.

This subsection shall be in aid of and not in derogation of any other provision of this section."

New s. 24.

15. The following new section numbered twenty-four is added after section twenty-three of the Principal Act, namely :—

Inter-
pretation
of Act.

"[24.] This Act shall be read and construed so as not to exceed the legislative power of the State to the extent that, where any enactment thereof would, but for this section, have been construed as being in excess of that power it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power."