

Zambia

Food and Drugs Act, 1972

Chapter 303

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Food and Drugs Act, 1972

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Zambia

Food and Drugs Act, 1972

Chapter 303

Commenced on 1 December 1972

[This is the version of this document at 31 December 1996.]

[Repealed by [Food Safety Act, 2019 \(Act 7 of 2019\)](#) on 6 March 2020]

[22 of 1972; 13 of 1994]

An Act to protect the public against health hazards and fraud in the sale and use of food, drugs, cosmetics and medical devices; and to provide for matters incidental thereto or connected therewith.

Part I – Preliminary

1. Short title

This Act may be cited as the Food and Drugs Act.

2. Interpretation

In this Act, unless the context otherwise requires—

"**advertisement**" includes any representation by any means whatsoever for the purpose of promoting directly or indirectly the sale or disposal of any food, drug, cosmetic or device;

"**article**" includes—

- (a) any food, drug, cosmetic or device and any labelling or advertising materials in respect thereof; or
- (b) anything used for the preparation, preservation, packing or storing of any food, drug, cosmetic or device;

"**authorised officer**" means a Medical Officer of Health, a Health Inspector, or any suitably qualified person authorised in writing by the Minister or by a local authority with the approval of the Minister for the purposes of this Act, and—

- (a) for the purpose of taking of samples under sections twenty-four and twenty-six and sending them to a public analyst, and for receiving reports thereof under section twenty-five, includes a police officer of or above the rank of Assistant Inspector and an officer of the Department of Customs and Excise authorised in that behalf by the Controller of Customs and Excise;
- (b) for the purpose of exercising control in respect of drugs, cosmetics or devices, includes an inspector as defined in the Dangerous Drugs Act; and

[Cap. 302]

- (c) for the purpose of any proceedings under section thirty, includes the principal officer as defined in the Local Government Act;

[Cap. 281]

"**Board**" means the Food and Drugs Board established by section twenty-two;

"**cosmetic**" includes any substance or mixture of substances manufactured, sold or represented for use in cleansing, improving or altering the complexion, skin, hair, eyes, teeth or nails, and includes deodorants and perfumes;

"device" means any instrument, apparatus or contrivance, including components, parts and accessories thereof, manufactured, sold or represented for use in the diagnosis, treatment, mitigation or prevention of a disease, disorder or abnormal physical state, or the symptoms thereof, in man or animal;

"drug" includes—

- (a) any substance included in any publication mentioned in the Schedule; and
- (b) any substance or mixture of substances prepared, sold or represented for use in—
 - (i) the diagnosis, treatment, mitigation or prevention of a disease, disorder or abnormal physical state, or the symptoms thereof, in man or animal; or
 - (ii) restoring, correcting or modifying organic functions in man or animal;

"food" includes any article manufactured, sold or represented for use as food or drink for human consumption, chewing gum, and any ingredient of such food, drink or chewing gum;

"Health Inspector" has the meaning assigned to it in the Public Health Act;

[Cap. 295]

"insanitary conditions" means such conditions or circumstances as might cause contamination of a food, a drug or a cosmetic with dirt or filth or might render the same injurious or dangerous to health;

"label" includes any tag, brand, mark, pictorial or other descriptive matter, written, printed, stencilled, marked, embossed or impressed on, or attached to or included in, belonging to, or accompanying any food, drug, cosmetic or device;

"local authority" means—

- (a) a municipal council; or
- (b) a township council; or
- (c) a rural council; or

"Medical Officer of Health" has the meaning assigned to it in the Public Health Act;

[Cap. 295]

"municipal council", "District Council" and "township council" have the meanings assigned respectively thereto in section two of the Local Government Act;

[Cap. 281]

"package" includes anything in which any food, drug, cosmetic or device is wholly or partly placed or packed, and includes any basket, pail, tray or receptacle of any kind, whether open or closed;

"premises" includes—

- (a) any building or tent or other structures, permanent or otherwise, together with the land on which the same is situated and any adjoining land used in connection therewith, and includes any vehicle, conveyance or vessel; and
- (b) for the purpose of section twenty-four, a reference to premises shall be deemed to include reference to any street, open space or place of public resort, bicycle or other vehicle used for the preparation, preservation, packaging, storage or conveyance of any article;

"preparation" includes manufacture and any form of treatment, and "prepare" shall be construed accordingly;

"public analyst" means a person appointed by the Minister, or by a local authority with the approval of the Minister, to act as an analyst for the purposes of this Act;

"**sell**" includes offer, advertise, keep, expose, transmit, convey, deliver or prepare for sale or exchange, dispose of for any consideration whatsoever, or transmit, convey or deliver in pursuance of a sale, exchange or disposal as aforesaid;

"**ship**" includes any boat or craft;

"**subordinate court**" means a subordinate court constituted under the Subordinate Courts Act;

[Cap. 28]

"**substance**" includes liquid and gas.

Part II – General provisions

A. Food

3. Prohibition against sale of poisonous, unwholesome or adulterated food

Any person who sells any food that—

- (a) has in or upon it any poisonous or harmful substance; or
- (b) consists in whole or in part of any filthy, putrid, rotten, decomposed or diseased substance or foreign matter, or is otherwise unfit for human consumption; or
- (c) is adulterated;

shall be guilty of an offence.

4. Deception

Any person who labels, packages, treats, processes, sells or advertises any food in a manner that is false, misleading or deceptive as regards its character, nature, value, substance, quality, composition, merit or safety, or in contravention of any regulations made under this Act, shall be guilty of an offence.

5. Standards of foods

Where a standard has been prescribed for any food, any person who labels, packages, sells or advertises any food which does not comply with that standard, in such a manner that it is likely to be mistaken for food of the prescribed standard, shall be guilty of an offence.

6. Prohibition against sale of food not of the nature, substance or quality demanded

Any person who sells to the prejudice of the purchaser any food which is not of the nature, or is not of the substance, or is not of the quality, of the article demanded by the purchaser, shall be guilty of an offence.

7. Sale and preparation of food under insanitary conditions

Any person who sells, prepares, packages or stores for sale any food under insanitary conditions shall be guilty of an offence.

B. Drugs

8. Prohibited sale of drugs

Any person who sells any drug that—

- (a) is adulterated; or
- (b) consists in whole or in part of any filthy, putrid, rotten, decomposed or diseased substance or foreign matter;

shall be guilty of an offence.

9. Deception

Any person who labels, packages, treats, processes, sells or advertises any drug in a manner that is false, misleading or deceptive as regards its character, constitution, value, potency, quality, composition, merit or safety, or in contravention of any regulations made under this Act, shall be guilty of an offence.

10. Standards of drugs

- (1) Where a standard has been prescribed for a drug, any person who labels, packages, sells or advertises any substance in such a manner that it is likely to be mistaken for that drug shall be guilty of an offence unless the substance is the drug in question and complies with the prescribed standard.
- (2) Where a standard has not been prescribed for a drug but a standard for the drug is contained in any of the publications specified in the Schedule, any person who labels, packages, sells or advertises any other substance or article in such manner that it is likely to be mistaken for such drug shall be guilty of an offence.
- (3) Any person who labels, packages, sells or advertises any drug for which no standard has been prescribed or for which no standard is contained in any of the publications specified in the Schedule, shall be guilty of an offence unless such drug—
 - (a) is in accordance with the professed standard under which it is labelled, packaged, sold or advertised; and
 - (b) does not resemble, in a manner likely to deceive, any drug for which a standard has been prescribed or which is contained in any of the publications specified in the Schedule.

11. Prohibition against sale of drugs not of the nature, substance or quality demanded

Any person who sells to the prejudice of the purchaser any drug which is not of the nature, or is not of the substance, or is not of the quality, of the article demanded by the purchaser, shall be guilty of an offence.

12. Sale and preparation of drugs under insanitary conditions

Any person who sells, prepares, packages or stores for sale any drug under insanitary conditions shall be guilty of an offence.

C. Cosmetics

13. Prohibited sale of cosmetics

Any person who sells any cosmetic that—

- (a) has in or upon it any substance that may cause injury to the health of the user when the cosmetic is used—
 - (i) according to the direction on the label of or accompanying such cosmetic; or
 - (ii) for such purposes and by such methods of use as are customary or usual therefor; or
 - (b) consists in whole or in part of any filthy, rotten, decomposed or diseased substance or of any injurious foreign matter; or
 - (c) was prepared, preserved, packed or stored under insanitary conditions;
- shall be guilty of an offence.

14. Standards of cosmetics

Where a standard has been prescribed for a cosmetic, any person who labels, packages, sells or advertises any article in such a manner that it is likely to be mistaken for a cosmetic of the prescribed standard shall be guilty of an offence unless the article complies with the prescribed standard.

15. Sale and preparation of cosmetics under insanitary conditions

Any person who sells, prepares, packages or stores for sale any cosmetic under insanitary conditions shall be guilty of an offence.

D. Devices

16. Prohibited sale of devices

Any person who sells any device that, when used according to directions on the label or contained in a separate document delivered with the device or under such conditions as are customary or usual, may cause injury to the health of the purchaser or user thereof shall be guilty of an offence.

17. Deception

Any person who labels, packages, treats, processes, sells or advertises any device in a manner that is false, misleading or deceptive as regards its character, value, composition, merit or safety, or in contravention of any regulations made under this Act, shall be guilty of an offence.

18. Standards of devices

Where a standard has been prescribed for a device, any person who labels, packages, sells or advertises any article in such a manner that it is likely to be mistaken for that device shall be guilty of an offence unless the article complies with the prescribed standard.

19. Sale and preparation of devices under insanitary conditions

Any person who sells, prepares, packages, or stores for sale any device under insanitary conditions shall be guilty of an offence.

Part III – Importation and warranty

20. Importation

- (1) Subject to the provisions of subsection (2), the importation of any article which does not comply with the provisions of this Act is hereby prohibited.
- (2) Where an article sought to be imported into Zambia would, if sold in Zambia, constitute a contravention of this Act, the article may be imported into Zambia for the purposes of satisfactorily relabelling or reconditioning the same so that the provisions of this Act are complied with and, where such relabelling or reconditioning is not carried out within three months of the importation, such article shall be exported by the importer within a further period of one month or such other period as the Minister may determine and, where it is not so exported, it shall be forfeited and disposed of as the Minister may direct.

21. Warranty

- (1) No manufacturer or distributor of, or dealer in, any article shall sell such article to any vendor unless he gives a warranty in writing in the prescribed form about the nature and quality of such article to the vendor.
- (2) If any person contravenes the provisions of subsection (1) or gives a warranty which is false, he shall be guilty of an offence.

Part IV – Administration and enforcement

22. Food and Drugs Board

- (1) The Minister shall, as soon as may be after the commencement of this Act, constitute a Board called the Food and Drugs Board to advise the Minister on matters arising out of the administration of this Act and to carry out such other functions as may be assigned to it under this Act.
- (2) The Board shall consist of the following members:
 - (a) the Permanent Secretary, Ministry of Health, *ex officio*, who shall be the chairman;
 - (b) the Secretary-General of the National Council for Scientific Research, *ex officio*;
 - (c) the Chief Health Inspector employed in the Ministry of Health, *ex officio*;
 - (d) the Chief Pharmacist employed in the Ministry of Health, *ex officio*;
 - (e) one public analyst nominated by the Minister;
 - (f) one member representing the National Food and Nutrition Commission established under section three of the National Food and Nutrition Commission Act, and nominated by the Commission;

[Cap. 308]

 - (g) one member nominated by the Minister from amongst the Medical Officers of Health employed by local authorities;
 - (h) one member who is a person connected with or dealing in the food industry nominated by the Minister;
 - (i) one member nominated by the Minister from amongst persons who are members of the Pharmaceutical Society of Zambia; and
 - (j) one member of the Zambian Bureau of Standards Board nominated by the said Board

- (3) A member of the Board who is not an *ex officio* member shall, unless his office becomes vacant earlier by resignation, death or otherwise, be entitled to hold office for three years and shall be eligible for renomination.
- (4) The quorum of the Board shall be five.
- (5) The Board may invite any person to attend any particular meeting for the purpose of assisting or advising the Board, but no such person shall have any right to vote at such meeting.
- (6) The Board may appoint one or more committees of the Board consisting of such number of persons, whether members of the Board or not, as it may deem necessary to assist it in the exercise of its functions, provided that the Board shall not delegate any of the powers conferred upon it under this Act to any such committee.
- (7) The Board may, subject to any written direction of the Minister, regulate its own procedure and the transactions of its business as well as the work and procedure of the committees appointed by it.
- (8) The Minister may appoint a public officer as secretary to the Board, who shall be the Chief Executive Officer of the Board, and it shall be his duty to assist the Board in all respects and in such manner as the Board may from time to time require in the discharge of its functions and the carrying out of its activities under this Act.

23. Regulations

- (1) Subject to the provisions of subsection (2), the Minister may, after consultation with the Board, by statutory instrument, make regulations—
 - (a) declaring that any food or drug or class of food or drugs is adulterated if any prescribed substance or class of substance is present therein or has been added thereto or extracted or omitted therefrom;
 - (b) respecting—
 - (i) the labelling and packing and the offering, exposing and advertising for sale of food, drugs, cosmetics and devices;
 - (ii) the size, dimensions and other specifications of packages of food, drugs, cosmetics and devices;
 - (iii) the sale or the conditions of sale of any food, drug, cosmetic or device; and
 - (iv) the use of any substance as an ingredient in any food, drug, cosmetic or device, to prevent the consumer or purchaser thereof from being deceived or misled as to its quality, quantity, character, value, composition, effect, merit or safety or to prevent injury to the health of the consumer or purchaser;
 - (c) prescribing standards of composition, strength, potency, purity, quality or other property of any food, drug, cosmetic or device;
 - (d) respecting the importation or exportation of food, drugs, cosmetics and devices in order to ensure compliance with this Act;
 - (e) respecting the method of preparation, preserving, packing, storing, conveying and testing of any food, drug, cosmetic or device in the interests of, or for the prevention of injury to, the health of the consumer, user or purchaser;
 - (f) respecting the carriage of goods subject to the provisions of this Act, including the licensing of vehicles used in such carriage;
 - (g) requiring persons who sell food, drugs, cosmetics or devices to maintain such books and records as the Board considers necessary for the proper enforcement and administration of this Act;

- (h) requiring manufacturers of any drugs to submit test portions of any batch of such drugs;
 - (i) providing for the analysis or examination of food, drugs, cosmetics or devices for the purposes of this Act or for any other purpose and prescribing a tariff of fees to be paid for such analysis and prescribing methods of analysis;
 - (j) providing for the taking of samples of any article for the purposes of this Act or for any other purposes;
 - (k) exempting any food, drug, cosmetic or device from all or any of the provisions of this Act and prescribing the conditions of such exemption; and
 - (l) prescribing anything which is to be or which may be prescribed under this Act.
- (2) Where the Board deems it advisable that any regulations under subsection (1) should be published as a draft thereof with a view to inviting the comments of the public thereon, no such regulations shall be made unless a draft thereof has been published in the *Gazette* not less than fourteen days before the regulations are made.
- (3) Where any regulations made under this Act or under the Public Health Act prohibit or restrict the addition of any ingredient or material to any food, the addition of such ingredient or material, if made in contravention of such regulations, shall, for the purposes of this Act, be deemed to render the food injurious to health.
- [*Cap. 237*]
- (4) Where any regulations made under this Act or under the Public Health Act prescribe the composition of any article of food intended for sale, or prohibit or restrict the addition of any ingredient or material to any such article, the purchaser of such article shall, unless the contrary is proved, be deemed, for the purposes of this section, to have demanded an article complying with the provisions of such regulations as regards the presence or amount of any constituent, ingredient or material specified in the said regulations.
- [*Cap. 295*]
- (5) The Minister may, by statutory instrument, after consultation with the Board, make regulations generally for carrying out any of the purposes or provisions of this Act.

24. Powers of authorised officers

- (1) An authorised officer may, at any hour reasonable for the proper performance of his duty—
- (a) enter any premises where he believes any article to which this Act applies is prepared, preserved, packaged, stored or conveyed, examine any such article and take samples thereof, and examine anything that he believes is used or capable of being used for such preparation, preservation, packaging, storing or conveying;
 - (b) stop or search or detain any aircraft, ship or vehicle in which he believes on reasonable grounds that any article subject to the provisions of this Act is being conveyed and examine any such article and take samples thereof for the purposes of this Act;
 - (c) open and examine any receptacle or package which he believes contains any article to which this Act applies;
 - (d) examine any books, documents or other records found in any premises mentioned in paragraph (a) that he believes contain any information relevant to the enforcement of this Act with respect to any article to which this Act applies and make copies thereof or take extracts therefrom; and
 - (e) seize and detain for such time as may be necessary any article by means of or in relation to which he believes any provision of this Act has been contravened.

- (2) An authorised officer acting under this section shall, if so required, produce his authority.
- (3) Any owner, occupier or person in charge of any premises entered by an authorised officer pursuant to subsection (1) (a), or any person found therein, who does not give to the authorised officer all reasonable assistance in his power and furnish him with such information as he may reasonably require, shall be guilty of an offence.
- (4) Any person who obstructs or impedes any authorised officer in the course of his duties, or prevents or attempts to prevent the execution by the authorised officer of his duty under this Act, shall be guilty of an offence.
- (5) Any person who knowingly makes any false or misleading statement, either verbally or in writing, to any authorised officer engaged in carrying out his duties under this Act shall be guilty of an offence.
- (6) An authorised officer shall release any article seized by him under this Act when he is satisfied that all the provisions of this Act with respect thereto have been complied with.
- (7) Where an authorised officer has seized an article under this Act and the owner thereof or the person in whose possession the article was at the time of seizure consents to the destruction thereof, the article may be destroyed or otherwise disposed of as the authorised officer may direct; if the owner or the person does not consent to the destruction of the article, the authorised officer may apply to a subordinate court for the destruction or disposal of such article and the subordinate court may make such order as it may deem fit.
- (8) Where any article has been seized under the provisions of subsection (1) (e) and the owner thereof has been convicted of an offence under this Act, the article may be destroyed or otherwise disposed of as the court may direct.
- (9) Any person who removes, alters or interferes in any way with any article seized under this Act, without the authority of an authorised officer, shall be guilty of an offence.
- (10) Any article seized under this Act may, at the option of an authorised officer, be kept or stored in the premises where it was seized or may, at the direction of an authorised officer, be removed to any other proper place.
- (11) An authorised officer may submit any article seized by him or any sample therefrom or any sample taken by him to a public analyst for analysis or examination.

25. Appointment and duties of public analyst

- (1) No person shall be appointed to be a public analyst for any area in which he is engaged directly or indirectly in any trade or business connected with the sale of food, drugs, cosmetics and devices.
- (2) A public analyst shall as soon as practicable analyse or examine any sample sent to him in pursuance of this Act and shall give the authorised officer a certificate specifying the result of the analysis or examination, and such certificate shall be in such form as may be prescribed by the Minister on the advice of the Board.

26. Power of Director of Medical Services

The Director of Medical Services may, in relation to any matter appearing to him to affect the general interests of the consumer, direct a public officer to procure for analysis samples of any food, drug, device and cosmetic, and thereupon that officer shall have all the powers of an authorised officer under this Act, and this Act shall apply as if the officer were an authorised officer.

27. Duty of local authority to enforce Act

- (1) It shall be the duty of every local authority to exercise such powers as are conferred upon it and in particular to direct its officers to procure samples for analysis.

- (2) If the Minister is of the opinion that a local authority has failed to execute or enforce any of the provisions of this Act in relation to any article and that its failure affects the general interests of the consumer, the Minister may by order empower an officer to execute and enforce those provisions or to procure the execution and enforcement thereof in relation to any article mentioned in the order.
- (3) The expenses incurred as a result of any order under subsection (2) shall be recoverable by the Minister from the local authority and the amount so recovered shall be treated as expenses incurred by the local authority under this Act.

28. Power of Minister to obtain particulars of certain food or drug ingredients

- (1) The Minister may direct any person who at the date of the direction or at any subsequent time carries on a business which includes the production, importation or use of any substances to which this Act applies to furnish to him, within such time as may be specified in such direction, such particulars, as may be so specified, of the composition and use of any such substance sold or for sale in the course of that business or used in the preparation of food or drugs.
- (2) Without prejudice to the generality of subsection (1), a direction 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 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 investigation, 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 the substance in ordinary quantities.
- (3) No particulars furnished in accordance with a direction 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 by any person except in due discharge of his duties under this Act, and any person who discloses any such particulars or information in contravention of this subsection shall be guilty of an offence.

Part V – Legal proceedings

29. Power of court to order licence to be cancelled and articles to be disposed of

- (1) On the conviction of any person for any offence under this Act, the court may, in addition to any other penalty which it may lawfully impose, cancel any licence issued to such person under any written law.
- (2) Where a person has been convicted of an offence under this Act, the court may order that any article by means of or in relation to which the offence was committed, or anything of a similar nature belonging to or in the possession of the convicted person or found with such article, be forfeited, and, upon such order being made, such articles and things may be disposed of as the court may direct.

30. Prosecution

- (1) Where a public analyst, having analysed or examined any article to which this Act applies, has given his certificate and from that certificate it appears that an offence under this Act has been committed, an authorised officer may take proceedings under this Act before any subordinate court

having jurisdiction in the place where the article sold was actually delivered to the purchaser or the sample thereof taken.

- (2) In any proceedings under this Act, the contents of any package appearing to be intact and in the original state of packing by the manufacturer thereof, shall be deemed, unless the contrary is proved, to be an article of the description specified on the label.

31. Penalties

- (1) In any prosecution under this Act, the summons shall state the particulars of the offence or offences alleged and also the name of the prosecuting officer and shall not be made returnable before fourteen days from the date on which it is served.
- (2) A person found guilty of an offence under this Act for which no special penalty is provided shall be liable on conviction—
 - (a) in the case of a first offence, to a fine not exceeding one thousand penalty units or to imprisonment for a term not exceeding three months, or to both;
 - (b) in the case of a subsequent offence, to a fine not exceeding two thousand penalty units or to imprisonment for a term not exceeding six months, or to both;

[As amended by Act [No. 13 of 1994](#)]

32. Certificates of analysis and presumptions

In any proceedings under this Act—

- (a) a certificate of analysis purporting to be signed by a public analyst shall be accepted as *prima facie* evidence of the facts stated therein, provided that—
 - (i) the party against whom it is produced may require the attendance of the public analyst for the purposes of cross-examination; and
 - (ii) no such certificate of a public analyst shall be received in evidence unless the party intending to produce it has, before the trial, given the party against whom it is intended to be produced reasonable notice of such intention together with a copy of the certificate;
- (b) evidence that the package contains any article to which this Act applies, bore a name, address or registered mark of the person by whom it was manufactured or packed shall be *prima facie* evidence that such article was manufactured or packed, as the case may be, by that person;
- (c) any substance 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;
- (d) any substance commonly used for human consumption which is found on premises used for the preparation, storage or sale of that substance, and any substance commonly used in the manufacture of products for human consumption which is found on 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;
- (e) any substance capable of being used in the composition or preparation of any substance commonly used for human consumption which is found on premises on which that substance is prepared shall, until the contrary is proved, be presumed to be intended for such use.

33. Saving of other written laws

The provisions of this Act shall be in addition to and not in derogation of the provisions of any other written law.

34. Minister's power to amend Schedule

The Minister may, by statutory order, amend the Schedule.

Schedule (Sections 2 and 10)**Publications**

The current editions of:

Name	Abbreviation
Pharmacopoeia Internationalis	(Ph.I.)
The British Pharmacopoeia	(B.P.)
The Pharmacopoeia of the United States of America	(U.S.P.)
Codex Francais	(Codex)
The Canadian Formulary	(C.F.)
The British Pharmaceutical Codex	(B.P.C.)
The National Formulary	(N.F.)
The British Veterinary Codex	(B.Vet.C.)