
STATUTORY INSTRUMENTS

1989 No. 846

The Food (Northern Ireland) Order 1989

PART II

GENERAL PROVISIONS AS TO FOOD

Composition and labelling of food

Offences as to preparation and sale of injurious foods

3.—(1) A person who—

- (a) adds any substance to food,
- (b) uses any substance as an ingredient in the preparation of food,
- (c) abstracts any constituent from food, or
- (d) subjects food to any other process or treatment,

so as (in any such case) to render the food injurious to health, with intent that the food shall be sold for human consumption in that state, shall be guilty of an offence.

(2) A person who—

- (a) sells for human consumption, or
- (b) offers, exposes or advertises for sale for human consumption or has in his possession for the purpose of sale for human consumption,

any food rendered injurious to health by means of any operation described in paragraph (1) shall, subject to paragraphs (3) and (4), be guilty of an offence.

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

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

General protection for purchasers of food

4.—(1) A person who sells to the prejudice of the purchaser any food which is not—

- (a) of the nature, or
- (b) of the substance, or
- (c) of the quality,

of the food demanded by the purchaser, shall, subject to Article 5, be guilty of an offence.

(2) In paragraph (1) the reference to sale shall be construed as a reference to sale for human consumption; and in any prosecution under that paragraph it shall not be a defence to allege that the purchaser was not prejudiced because he bought for analysis or examination.

Defences available in proceedings under Article 4

5.—(1) In any prosecution under Article 4 for an offence consisting of the sale of food—

- (a) to which any substance has been added, or
- (b) in the preparation of which any substance has been used as an ingredient, or
- (c) from which any constituent has been abstracted, or
- (d) which has been subjected to any other process or treatment,

other than food thereby rendered injurious to health, it shall be a defence to prove—

- (i) that the operation in question was not carried out fraudulently; and
- (ii) that the article was sold with a notice attached to it of adequate size, distinctly and legibly printed and conspicuously visible, stating explicitly the nature of the operation, or was sold in a wrapper or container displaying such a notice.

(2) In any prosecution under Article 4 for an offence alleged to have been committed by the sale of an article containing extraneous matter, it shall be a defence for the person charged to prove that the presence of that matter was an unavoidable consequence of the process of collection or preparation.

(3) In any prosecution under Article 4 for an offence alleged to have been committed by the sale of diluted spirit, being whisky, brandy, rum or gin, it shall be a defence for the person charged to prove—

- (a) that the spirit in question was diluted with water only; and
- (b) that its alcoholic strength by volume was not lower than 37.2 per cent.

Regulations as to composition of food, etc.

6.—(1) Subject to paragraph (4), the Department may, so far as it appears to the Department to be necessary or expedient in the interests of the public health or otherwise for the protection of the public or to be called for by any Community obligation, make regulations for any of the following purposes—

- (a) for requiring, prohibiting or regulating the addition of any specified substance, or any substance of any specified class, to food intended for sale for human consumption or any class of such food, or the use of any such substance as an ingredient in the preparation of such food, and generally for regulating the composition of such food;
- (b) for requiring, prohibiting or regulating the use of any process or treatment in the preparation of any food intended for sale for human consumption, or any class of such food;
- (c) for prohibiting or regulating the sale, possession for sale, offer or exposure for sale, consignment or delivery of food which does not comply with any of the regulations, or in relation to which an offence under the regulations has been committed or would have been committed if any relevant act or omission had taken place in Northern Ireland;
- (d) for prohibiting or regulating the sale, possession for sale, or offer, exposure or advertisement for sale, of any specified substance, or of any substance of any specified class, with a view to its use in the preparation of food for human consumption, and the possession of any such substance for use in the preparation of food intended for sale for human consumption.

(2) In the exercise of the functions conferred by this Article the Department shall have regard to the desirability of restricting, so far as practicable, the use of substances of no nutritional value as foods or as ingredients of foods.

(3) Regulations made under this Article may apply to cream and separated milk, and to any food containing milk, but otherwise shall not apply to milk.

(4) Regulations under this Article which apply to cream or ice-cream shall be made by the Department with the concurrence of the Department of Agriculture.

(5) Regulations made under this Article may provide that, where any food is certified by a public analyst as being food to which the regulations apply so far as they are made under paragraph (1)(c), that food may be treated for the purposes of Article 11 as being unfit for human consumption.

(6) Nothing in any regulations made under this Article shall be taken as prejudicing the generality of the powers conferred by Article 11.

Power of Department to obtain particulars of ingredients

7.—(1) For the purpose of enabling the Department to exercise the functions conferred by Article 6, the Department may by order require every person who, at the date of the order or at any subsequent time, carries on a business which includes the production or use of substances of any class specified in the order to furnish to the Department, within such time as may be so specified, such particulars as may be so specified of the composition and use of any such substance sold in the course of that business for use in the preparation of food for human consumption or used for that purpose in the course of that business.

(2) Without prejudice to the generality of paragraph (1), an order made under that paragraph may require the following particulars to be furnished in respect of any substance—

- (a) particulars of the composition and chemical formula of the substance;
- (b) particulars of the manner in which the substance is used or proposed to be used in the preparation of food;
- (c) particulars of any investigations or inquiries carried out by or to the knowledge of the person carrying on the business in question, for the purpose of determining whether and to what extent the substance, or any product formed when the substance is used as mentioned above, is injurious to, or in any other way affects, health;
- (d) particulars of any investigations or inquiries carried out by or to the knowledge of the person carrying on the business in question for the purpose of determining the cumulative effect on the health of a person consuming such substance in ordinary quantities.

(3) Particulars furnished in accordance with an order under this Article, or information relating to any individual business obtained by means of such particulars, shall not, without the previous consent in writing of the person carrying on the business in question, be disclosed except—

- (a) in accordance with directions of the Department, so far as may be necessary for the purposes of Article 6 or of any corresponding enactment for the time being in force in England and Wales or Scotland; or
- (b) for the purposes of any prosecution for an offence under the order or of any report of such prosecution;

and no such disclosure shall be regarded as publication of the information.

(4) A person who discloses any particulars or information in contravention of paragraph (3) shall be guilty of an offence.

(5) An order made under this Article shall be subject to negative resolution.

Labels and advertisements describing food incorrectly

8.—(1) A person who gives with any food sold by him, or displays with any food exposed by him for sale, a label, whether attached to or printed on the wrapper or container or not, which—

- (a) falsely describes that food; or
- (b) is calculated to mislead as to its nature, substance or quality;

shall be guilty of an offence, unless he proves that he did not know, and could not with reasonable diligence have ascertained, that the label was of such a character as mentioned above.

(2) Subject to paragraph (4), a person who publishes, or is a party to the publication of, an advertisement (not being such a label so given or displayed by him as described in paragraph (1)) which—

- (a) falsely describes any food; or
- (b) is calculated to mislead as to its nature, substance or quality;

shall be guilty of an offence; and in any prosecution under this paragraph against the manufacturer or producer of the food, it shall rest on the accused to prove that he did not publish, and was not a party to the publication of, the advertisement.

(3) For the purposes of this Article, a label or advertisement which is calculated to mislead as to the nutritional or dietary value of any food is calculated to mislead as to the quality of the food.

(4) In any prosecution under paragraph (2) it shall be a defence for the accused to prove either—

- (a) that he did not know, and could not with reasonable diligence have ascertained, that the advertisement was of such a character as is described in that paragraph; or
- (b) that, being a person whose business it is to publish, or arrange for the publication of, advertisements, he received the advertisement for publication in the ordinary course of business and did not himself make, or cause to be made, any material alteration in the substance of that advertisement.

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

(6) In this Article references to sale shall be construed as references to sale for human consumption.

Regulations as to labelling and description of food

9.—(1) Without prejudice to the provisions of Article 8 the Department may, subject to paragraph (4), make regulations for imposing requirements as to, and otherwise regulating—

- (a) the labelling, marking or advertising of food intended for sale for human consumption, and
- (b) the descriptions which may be applied to such food.

(2) Regulations made under this Article—

- (a) shall not make provision in relation to the labelling and marking of food in respect to weight, measure and number;
- (b) may make provision for any purpose authorised by Article 6(1)(c) in the case of regulations under that Article.

(3) Regulations made under this Article may apply to cream and separated milk, and to any food containing milk, but shall not otherwise apply to milk.

(4) Regulations under this Article which apply to cream or ice-cream shall be made by the Department with the concurrence of the Department of Agriculture.

Food unfit for human consumption

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

10.—(1) Subject to the provisions of this Article, any person who—

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

(b) deposits with, or consigns to, any person for the purpose of sale or of preparation for sale; any food intended for, but unfit for, human consumption shall be guilty of an offence.

(2) Subject to paragraph (3), where food in respect of which an offence under paragraph (1)(a) has been committed was sold to the offender by some other person, that person also shall be guilty of an offence.

(3) Where a person is charged with an offence under paragraph (1)(b) or under paragraph (2) it shall be a defence for him to prove—

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

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

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

Examination and seizure of suspected food

11.—(1) An authorised officer of a district council may—

(a) at all reasonable times examine any food intended for human consumption which has been sold, or is offered or exposed for sale, or is in the possession of, or has been deposited with or consigned to, any person for the purpose of sale or of preparation for sale; and

(b) if it appears to him to be unfit for human consumption, seize it and remove it in order to have it dealt with by a justice of the peace.

(2) An officer who seizes any food under paragraph (1) shall inform the person in whose possession the food was found of his intention to have it dealt with by a justice of the peace, and any person who under Article 10 might be liable to a prosecution in respect of the food shall, if he attends before the justice upon the application for its condemnation, be entitled to be heard and call witnesses.

(3) If it appears to a justice of the peace that any food brought before him, whether seized under the provisions of this Article or liable to be so seized, is unfit for human consumption, he shall condemn it and order it to be destroyed or to be so disposed of as to prevent it from being used for human consumption.

(4) Any order made under paragraph (3) shall be sufficient evidence of the unfitness for human consumption of the food in question in any prosecution under this Order.

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

Food offered as prizes, etc.

12.—(1) Articles 10 and 11 shall apply—

- (a) in relation to any food which is intended for human consumption and is offered as a prize or reward or given away in connection with any entertainment to which the public are admitted, whether on payment of money or not, as if that food were, or had been, exposed for sale by each person concerned in the organisation of the entertainment;
- (b) in relation to any food which is intended for human consumption and is offered as a prize or reward or given away for the purpose of advertisement, or in furtherance of any trade or business, as if that food were, or had been, exposed for sale by the person offering or giving away the food;
- (c) in relation to any food which is intended for human consumption and is exposed or deposited in any premises for the purpose of being so offered or given away as mentioned above, as if that food were, or had been, exposed for sale by the occupier of the premises.

(2) In this Article the expression “entertainment” includes any social gathering, amusement, exhibition, performance, game, sport or trial of skill.

Power to examine food in course of transit

13.—(1) If an authorised officer of a district council has reason to suspect that any vehicle or container contains any food—

- (a) which is intended for sale for human consumption, or
- (b) which is in the course of delivery after sale for human consumption,

he may examine the contents of the vehicle or of the container.

(2) For the purpose of any examination under paragraph (1) the officer may, if necessary, detain the vehicle or the container.

(3) If the officer finds any food which appears to him to be intended for, but unfit for, human consumption, he may deal with it as food falling under Article 11(1) and paragraphs (2) to (5) of that Article shall apply accordingly.

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

Products of knackeries

14.—(1) A person who sells, or offers or exposes for sale, or has in his possession for the purpose of sale or of preparation for sale, for human consumption—

- (a) any part of, or product derived wholly or partly from, an animal which has been slaughtered in a knackery or of which the carcase has been brought into a knackery;
- (b) any part brought into a knackery of the carcase of an animal, or any product derived wholly or partly from that part,

shall be guilty of an offence.

(2) In this Article “knackery” means any premises used in connection with the business of slaughtering animals the flesh of which is not intended for human consumption, or of flaying, cutting up or processing the carcasses of such animals.

Hygiene

Regulations as to food hygiene

15.—(1) The Department may make such regulations as appear to it to be expedient for securing the observance of sanitary and cleanly conditions and practices in connection with—

- (a) the sale of food for human consumption; or
- (b) the preparation, transport, storage, packaging, wrapping, exposure for sale, service or delivery of food intended for sale or sold for human consumption;

or otherwise for the protection of the public health in connection with those matters.

(2) Without prejudice to the generality of paragraph (1), regulations made by the Department under this Article may make provision—

- (a) for imposing requirements to secure the prevention of the occurrence of disease through the contamination of food by persons engaged in a food business;
- (b) for imposing requirements as to the construction, layout, drainage, equipment, maintenance, cleanliness, ventilation, lighting, water supply, and use of premises in, at or from which food is sold, or offered, exposed, stored or prepared for sale, for human consumption (including any parts of such premises in which apparatus, equipment, containers or utensils are cleansed or in which refuse is disposed of or stored);
- (c) for imposing requirements as to the provision, maintenance and cleanliness of sanitary and washing facilities in connection with such premises, the disposal of refuse and the maintenance and cleanliness of apparatus, equipment, furnishings, containers or utensils used in such premises, and in particular for imposing requirements that every sanitary convenience situated in such premises shall be supplied with water through a suitable flushing appliance;
- (d) for prohibiting or regulating the use of any specified materials, or of materials of any specified class, in the manufacture of apparatus, equipment, containers or utensils designed for use in the preparation of food for human consumption, and the sale of apparatus, equipment, containers or utensils designed for such use and containing any specified materials or materials of any specified class;
- (e) for prohibiting spitting on premises where food is sold or offered, exposed, stored or prepared for sale for human consumption (including any parts of such premises in which apparatus, equipment, containers or utensils are cleansed);
- (f) for imposing requirements as to the clothing worn by persons in such premises;
- (g) for securing the inspection of animals intended for slaughter and of carcasses for the purpose of ascertaining whether meat intended for sale for human consumption is fit for human consumption, for securing the marking of such carcasses, and for prohibiting the sale of such meat where the animals or, as the case may be, the carcasses have not been so inspected;
- (h) for requiring the staining or sterilisation in accordance with the regulations of meat which is unfit for human consumption, or which is derived from animals slaughtered in knackeries or from carcasses brought into knackeries or which, though not unfit for human consumption, is not intended for human consumption;
- (i) for regulating generally the treatment and disposal of such meat and of any food unfit for human consumption;
- (j) for prohibiting or regulating, or enabling district councils to prohibit or regulate, the sale for human consumption or the offer, exposure or distribution for sale for human

consumption, of shell-fish taken from beds or other layings for the time being designated under the regulations.

(3) In paragraph (2) “animals” includes poultry.

(4) Without prejudice to the foregoing provisions of this Article or Article 72, any such regulations imposing requirements in respect of premises may—

- (a) impose responsibility for compliance with those requirements on the occupier of the premises and, in the case of requirements of a structural character, on any owner of the premises who either lets them for use for a purpose to which the regulations apply or permits them to be so used after notice from the district council;
- (b) provide, subject to such limitations and safeguards as may be specified, for conferring, in relation to particular premises, exemptions from the operation of specified provisions contained in regulations made for the purposes of paragraph (2)(b) or (c) while there is in force a certificate of the district council to the effect that compliance with those provisions cannot reasonably be required with respect to the premises or any activities carried on in them.

(5) If any person who has incurred, or is about to incur, expenditure in securing that the requirements of regulations made under this Article, being requirements of a structural character, are complied with in respect of any premises owned or occupied by him claims that the whole or any part of the expenditure ought to be borne by any other person having an interest in the premises, he may apply to the county court.

(6) On an application under paragraph (5) the court may make such order concerning the expenditure or its apportionment as appears to the court, having regard to all the circumstances of the case, including the terms of any contract between the parties, to be just and equitable; and any order made under this paragraph may direct that any such contract shall cease to have effect in so far as it is inconsistent with the terms of the order.

(7) The Department may make regulations imposing, to such extent as it may think fit, in respect of vehicles, stalls, and places other than premises any requirement which could be imposed under the provisions of this Article in respect of premises.

(8) The Department may take such steps as appear to it to be expedient for publishing codes of practice in connection with matters which may be made the subject of regulations under this Article, for the purpose of giving advice and guidance to persons responsible for compliance with such regulations.

Power of court to disqualify person for carrying on a food business

16.—(1) The provisions of this Article shall have effect where a person is prosecuted by a district council for an offence under regulations made under Article 15 in respect of—

- (a) any premises used for the purposes of a food business; or
- (b) any food business carried on at those premises.

(2) If the district council has, not less than twenty-one days before the date of the hearing, given the person against whom the prosecution is brought notice of its intention to apply for an order under this Article to be made against him, and if the person is convicted of the offence, the court, having regard to—

- (a) the gravity of the offence; or
- (b) the unsatisfactory nature of the premises, where the offence is committed in respect of premises; or
- (c) any offences against regulations made under Article 15 of which the person has previously been convicted;

may, on the application of the district council, make an order—

- (i) disqualifying the person for using those premises for the purposes of a food business; or
- (ii) disqualifying the person for using those premises for the purposes of any food business specified in the order.

(3) Subject to paragraph (5), an order made under this Article shall remain in force—

- (a) where it is made on the ground of the unsuitability of premises because the requirements of regulations made under Article 15 have not been complied with, until it is revoked by the court;
- (b) where it is made on any other ground, for such period not exceeding two years as may be specified in the order.

(4) A person shall be guilty of an offence if—

- (a) while he is subject to an order of the kind referred to in paragraph (2)(i), he uses the premises specified in the order for the purposes of a food business, or participates in the management of a food business carried on at the premises so specified;
- (b) while he is subject to an order of the kind referred to in paragraph (2)(ii), he uses the premises specified in the order for the purposes of any food business specified in the order, or participates in the management of any such business carried on at the premises so specified.

(5) A person subject to an order made under this Article may apply to the court to revoke the order; but where such an application is refused by the court, a further application under this paragraph shall not be entertained if made within three months after the date of the refusal.

(6) On any such application the court may, if it thinks proper having regard to all the circumstances of the case, including in particular—

- (a) the person's conduct subsequent to the conviction, and
- (b) any improvement in the state of any premises specified in the order,

grant the application.

(7) Where a conviction for an offence against any regulation made under Article 15 is quashed, the court quashing the conviction shall also revoke any order made under this Article in consequence of that conviction.

(8) Without prejudice to the provisions of paragraph (7), a person aggrieved by an order made under this Article may appeal against that order to the county court.

(9) Nothing in this Article shall apply to—

- (a) any premises used for the purposes of a business in respect of which a licence is in force under the Milk (Northern Ireland) Order 1983(1); or
- (b) any premises in respect of which a licence is in force under the Slaughter-houses Act (Northern Ireland) 1953(2).

Byelaws as to handling and sale of food

17.—(1) A district council may make byelaws for securing the observance of sanitary and cleanly conditions and practices—

- (a) in connection with the handling, wrapping and delivery of food sold or intended for sale for human consumption, and

(1) 1983 NI 2

(2) 1953 c. 21 (N.I.)

(b) in connection with the sale or exposure for sale in the open air of food intended for human consumption.

(2) In so far as any byelaws made under this Order conflict with regulations made under this Part, the regulations shall prevail.

Registration and licensing

Registration of manufacturers of, and traders in, ice-cream

18.—(1) A person shall not use any premises for—

- (a) the manufacture of ice-cream for the purpose of sale for human consumption;
- (b) the storage of ice-cream intended for sale for human consumption;
- (c) the sale of ice-cream for human consumption;

unless those premises are registered for that purpose by the district council.

(2) A person who uses any premises in contravention of paragraph (1) shall be guilty of an offence.

(3) An application for registration under this Article in respect of any premises shall—

- (a) be made by the person who proposes to use the premises;
- (b) contain such information in relation to those premises as the district council may require;
- (c) where the application is in respect of premises not yet erected, or of premises to be reconstructed, be accompanied by plans showing the proposed works.

(4) Subject to the provisions of this Article, the district council shall, on an application for registration under this Article being duly made by a person in respect of any premises—

- (a) register those premises; and
- (b) issue to that person, upon payment of a fee of 10p or such other amount as may be prescribed, a certificate of registration.

(5) Where an application is made for registration under this Article, or where premises are registered under this Article, and it appears to the district council—

- (a) that the requirements of regulations in force under Article 15 are not complied with in connection with the business carried on at the registered premises, or in connection with the registered premises, or, as the case may be, in connection with the premises specified in the application; or
- (b) that the premises or any part of them are otherwise unsuitable (having regard to considerations of hygiene and in particular to the situation, construction or condition of the premises, or to any activities carried on in them) for use for the purpose or purposes specified in the application, or for which they are used, as the case may be;

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

(6) A district council shall not refuse, cancel or vary any registration under this Article unless—

- (a) the council has served on the applicant or the occupier of the premises a notice of its proposal so to do for reasons specified in the notice, stating the place and time, not being less than twenty-one days after the date of the service of the notice, at which the council will take the matter into consideration, and informing him that he may appear (and be represented, if he so desires, by counsel or solicitor) before the council, with any witnesses he desires to call, at that place and time to show cause why the council should not proceed with the proposal; and
- (b) the applicant or occupier fails to show cause to the satisfaction of the council.

(7) If—

- (a) the district council refuses, cancels or varies a registration under this Article; and
- (b) the applicant or the occupier requests the council for a statement of the reasons for its decision;

the council shall, within forty-eight hours of receiving the request, give the applicant or occupier such a statement, and that statement shall contain a reference to the rights of appeal conferred by paragraph (8).

(8) A person aggrieved by a decision of a district council under this Article to refuse, cancel or vary any registration may appeal to a court of summary jurisdiction.

(9) A register kept by a district council under this Article shall be open to public inspection free of charge at all reasonable hours.

(10) The occupier of premises registered under this Article shall keep the certificate of registration fixed in a conspicuous place in those premises.

(11) Upon any change in the occupation of premises registered under this Article the incoming occupier shall, within fourteen days of that change, give notice of that change to the district council.

(12) Any person who fails to comply with the provisions of paragraph (10) or paragraph (11) shall be guilty of an offence.

(13) Nothing in Article 16 shall apply in relation to any premises registered under this Article.

Extension to other food businesses of provisions relating to registration, etc.

19.—(1) The Department may—

- (a) by regulations prescribe that persons intending to use any premises for the purposes of any food business specified in those regulations shall give notice to the district council of that intention;
- (b) by order apply, with or without modifications, the provisions of Article 18 to any food business specified in the order.

(2) An order made under paragraph (1)(b) shall be subject to affirmative resolution.

Licensing of vehicles, etc.

20.—(1) Subject to the provisions of this Article, the Department may make regulations providing—

- (a) for the issue by district councils of licences in respect of the use of vehicles, stalls or places other than premises, for the preparation, exposure or offer for sale, or sale, of food for human consumption; and
- (b) for prohibiting the use for any such purpose of any such vehicle, stall or place except in accordance with a licence issued under the regulations.

(2) Regulations made under this Article may provide for the refusal or cancellation of a licence under the regulations, either wholly or in respect of a part of the business for which the licence is applied for or is held—

- (a) where the requirements of regulations in force under Article 15 are not complied with in relation to that business; or
- (b) where the applicant or holder is unable, or has failed, to comply, in relation to that business, with any byelaws in force under Article 17;

and such regulations shall make provision for—

- (i) affording to persons aggrieved by any such refusal or cancellation an opportunity to make representations to the district council;
- (ii) giving to such persons a right of appeal from the decision of the district council to a court of summary jurisdiction.

Control of food premises

Interpretation (Articles 22 to 26)

21.—(1) In Articles 22 to 26—

“closure order” means an order made under Article 22(1);

“emergency order” means an order made under Article 23(1);

“food” and “food business” have the meanings assigned to them by the Food Hygiene (General) Regulations (Northern Ireland) 1964⁽³⁾;

“food hygiene regulations” means regulations made under Article 15;

“interested person” has the meaning given in Article 24(2);

“owner” means, in relation to premises which are not a stall or vehicle, any person who receives or is entitled to receive, whether on his own account or as agent or trustee for another, a rack rent, or who, if the premises were let at a rack rent, would so receive or be entitled to receive that rent;

“premises” includes any stall, vehicle or place to which food hygiene regulations apply.

(2) In paragraph (1), in the definition of “owner”, “rack rent” means a rent which is not less than two-thirds of the net annual value shown in the valuation list for the purposes of the Rates (Northern Ireland) Order 1977⁽⁴⁾.

Closure of premises

22.—(1) Where a person is convicted of an offence against the food hygiene regulations and the offence includes the carrying on of a food business at any insanitary premises or at any premises the condition, situation, or construction of which is such that food is exposed to the risk of contamination, if the court is satisfied that—

- (a) the premises continue or are likely to continue to be used for the purposes of a food business; and
- (b) the condition, situation or construction of the premises continues or is likely to continue to be such that the carrying on of a food business at those premises would be dangerous to health,

the court may, on the application of a district council and subject to paragraph (2), make an order prohibiting the use of those premises for the purposes of a food business and specifying the measures which the court considers necessary to comply with the food hygiene regulations; and the order shall continue in effect until the district council certifies under paragraph (4) that the specified measures have been carried out.

(2) A closure order shall not be made unless the district council has, not less than fourteen days before the hearing of the application, given notice in writing of its intention to apply for such an order to—

- (a) the person accused of the offence; and

⁽³⁾ S.R. & O. (N.I.) 1964 No. 129

⁽⁴⁾ 1977 NI 28

- (b) the owner of the premises (unless the district council is unable after reasonable inquiry to ascertain his identity), if he is not the person accused of the offence.
- (3) In any notice in writing under paragraph (2) the district council shall specify the measures which, in its opinion, should be taken to remove any danger to health.
- (4) Any person who wishes to carry on a food business at any premises with respect to which a closure order is in force may apply to the district council which, if satisfied that the measures specified by the court have been carried out, shall issue to the applicant a certificate to that effect within fourteen days.
- (5) A person who contravenes a closure order shall be guilty of an offence.

Emergency order for closure of premises

23.—(1) Where a person is prosecuted by a district council for an offence described in Article 22(1), and the district council applies for an order under this Article, the court may, if satisfied—

- (a) by evidence tendered by the district council, and
- (b) after hearing any evidence submitted by the accused and the owner of the premises if he is not also the accused,

that the use of the premises for the purposes of a food business involves an imminent risk of danger to health, make an order prohibiting, either absolutely or subject to conditions, the use of the premises for those purposes; and the order shall continue in effect until the determination of the proceedings relating to the offence or the issue of a certificate by the district council under paragraph (5), whichever is the sooner.

(2) An emergency order shall not be made unless the district council has, not less than three days before the hearing of the application, given notice in writing of its intention to apply for such an order to—

- (a) the accused, and
- (b) the owner of the premises (unless the district council is unable after reasonable inquiry to ascertain his identity), if he is not the accused.

(3) A notice under paragraph (2) shall specify the measures which the district council considers should be taken to remove the risk of danger to health.

(4) The district council shall serve a copy of an emergency order as soon as practicable after the order has been made on the persons referred to in paragraph (2).

(5) Any person who wishes to carry on a food business at any premises with respect to which an emergency order is in force, may apply to the district council which, if satisfied that there is no longer any risk of danger to health, shall issue to the applicant a certificate to that effect within fourteen days.

(6) A person who contravenes an emergency order shall be guilty of an offence.

Compensation

24.—(1) If at the trial of a person for an offence described in Article 22 (1), the court, on the application of an interested person,—

- (a) determines that at the date of any emergency order the use of the premises did not involve imminent risk of danger to health; and
- (b) is satisfied that loss has been occasioned by the emergency order,

the court may order the district council to pay to that person compensation of such amount as the court thinks proper.

- (2) In paragraph (1) and in Article 25(3), “interested person” means—
- (a) the person accused of an offence described in Article 22(1);
 - (b) the owner of the premises;
 - (c) any person (not falling within sub-paragraph (a) or (b)) who at the time when the emergency order was made was carrying on a food business at those premises.

Appeals

- 25.**—(1) Where an application for a closure order is granted,—
- (a) the person convicted of an offence described in Article 22(1); and
 - (b) the owner of the premises, if he is not that person,

may appeal to the county court.

(2) Where an application for a closure order is refused, the district council may appeal to the county court.

(3) Where an application for an order under Article 24(1) for the payment of compensation is granted or refused—

- (a) the district council; or
- (b) any interested person who applied for the payment of compensation under that Article in respect of that order,

may appeal to the county court.

(4) Where a person applies for a certificate under Article 22(4) or 23(5) and the district council refuses or fails to give it, the applicant may appeal to a court of summary jurisdiction.

(5) On an appeal under paragraph (4), the court may, if satisfied that it is proper to do so, direct the district council to give the appropriate certificate.

Saving for certain licensed uses of premises

26. Neither a closure order nor an emergency order shall have effect in respect of the use of any premises to the extent that there is a licence in force under—

- (a) the Milk (Northern Ireland) Order 1983⁽⁵⁾; or
- (b) the Slaughter-houses Act (Northern Ireland) 1953⁽⁶⁾,

in respect of that use of the premises.

Special provisions as to certain foods

Regulations as to milk

27.—(1) The Department may, to prevent danger to health from the supply or sale of infected milk, make such regulations as appear to the Department to be expedient—

- (a) for requiring the treatment before it is supplied or sold of milk which is infected or suspected of being infected;
- (b) for prohibiting the supply or sale of milk which is infected or suspected of being infected;
- (c) for prohibiting the use of milk which is infected or suspected of being infected in the manufacture of products for sale for human consumption;

(5) 1983 NI 2
(6) 1953 c. 21 (N.I.)

(d) for authorising the payment by district councils of compensation to any person for damage or loss sustained by him by reason of any prohibition or restriction imposed by regulations made under this Article on the supply, sale or use of milk which is infected or suspected of being infected.

(2) The Department may, where no express provision is made by this Order, make regulations for prohibiting or restricting—

(a) the addition of any substance to milk, or the abstraction from milk of fat or any other constituent;

(b) the supply or sale of milk to which any such addition, or from which any such abstraction, has been made, or which has been otherwise artificially treated.

(3) Regulations made under paragraph (2) shall not apply in relation to cream in so far as they are made for any purpose for which regulations relating to cream may be made under Article 6.

(4) The Department may, with the approval of the Department of Finance and Personnel, repay out of moneys appropriated by Measure such part, not exceeding three-quarters, as the Department may with such approval determine of any sums paid by a district council by way of compensation to any person for any damage or loss sustained by him by reason of any prohibition or restriction imposed by regulations made under paragraph (1) on the sale, supply or use of milk which is infected or suspected of being infected.

(5) In this Article “milk” means milk intended for supply or sale or supplied or sold for human consumption, or intended for manufacture into products for sale for human consumption.

Prohibition of sale of milk from diseased cows

28.—(1) A person who—

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

(b) uses in the manufacture of products for sale for human consumption;

the milk of any cow which to his knowledge has given tuberculous milk, or is suffering from emaciation due to tuberculosis, or from tuberculosis of the udder or any other disease of cows to which this Article applies, shall be guilty of an offence.

(2) In any prosecution under this Article, the defendant shall be deemed to have known that a cow had given tuberculous milk, or was so suffering as mentioned in paragraph (1), if he could with ordinary care have ascertained the fact.

(3) The diseases of cows to which this Article applies are those listed in Schedule 1 and any other disease to which the provisions of this Article are extended by regulations made by the Department for that purpose.

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

29.—(1) Subject to paragraph (3), a person who—

(a) adds any water or colouring matter, or any dried or condensed milk or liquid reconstituted from it, to milk intended for sale for human consumption; or

(b) adds any separated milk, or mixture of cream and separated milk, to unseparated milk intended for sale for human consumption; or

(c) sells, or offers or exposes for sale, or has in his possession for the purpose of sale, for human consumption, any milk to which any addition has been made in contravention of the provisions of this paragraph,

shall be guilty of an offence.

(2) A person who sells, or offers or exposes for sale, or has in his possession for the purpose of sale, as milk any liquid in the making of which any separated milk or any dried or condensed milk has been used, shall be guilty of an offence.

(3) The prohibitions contained in paragraph (1)(a) and (c), in so far as they relate to the adding of any water to milk or the sale, offering or exposure for sale or possession of milk to which water has been added shall not apply in any case where water is added to milk in the course of any process of direct heat treatment by steam authorised under the Marketing of Milk Products Act (Northern Ireland) 1958(7) or the Milk (Northern Ireland) Order 1983(8) (whichever is applicable), where the process is conducted in accordance with regulations made in that behalf by the Department of Agriculture under that Act or, as the case may be, that Order.

(4) For the purposes of paragraph (1)(c), a person shall be deemed to retain the possession of milk which is deposited in any place for collection until it is actually collected; but nothing in this paragraph shall be taken as prejudicing the defence available under Article 41(10) or, as the case may be, under Article 42(8), to a person charged with an offence in respect of a sample of milk taken after the milk has left his possession.

Cream substitutes

30.—(1) Subject to the provisions of this Article, a person who sells, or offers or exposes for sale, for human consumption—

- (a) any substance which resembles cream in appearance, but is not cream; or
- (b) any article of food containing such a substance;

under a description or designation which includes the word “cream” (whether or not as part of a composite word), shall be guilty of an offence.

(2) Paragraph (1) shall not apply to the sale, or offer or exposure for sale—

- (a) of any substance being reconstituted or imitation cream as defined by this Article or of any article containing such a substance, under a description or designation which identifies the substance as such, or
- (b) of any substance under a description or designation which indicates that the substance is not for use as, or as a substitute for, cream.

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

(4) In this Article—

“reconstituted cream” means a substance which, not being cream, resembles cream in appearance and contains no ingredient not derived from milk, except—

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

“imitation cream” means a substance which, not being cream or reconstituted cream, resembles cream in appearance and is produced by emulsifying edible oils or fats with water, either by themselves, or with other substances not prohibited by regulations made for the purposes of this Article under Article 6, nor added in quantities so prohibited.

(7) 1958 c. 31 (N.I.)

(8) 1983 NI 2

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

31.—(1) A person who sells, or offers or exposes for sale, or has in his possession for the purpose of sale, any horseflesh for human consumption elsewhere than in premises or in a stall, vehicle or place other than premises over or on which there is at all times displayed in a conspicuous position a notice in legible letters not less than four inches in height stating that horseflesh is sold there, shall be guilty of an offence.

(2) A person who supplies horseflesh for human consumption to a purchaser who has not asked to be supplied with horseflesh, or who has asked to be supplied with some compound article of food not ordinarily made of horseflesh, shall be guilty of an offence.

(3) If any horseflesh is exposed for sale elsewhere than in premises or in a stall, vehicle or place other than premises distinguished in accordance with paragraph (1) without anything to show that it was not intended for sale for human consumption, the onus of proving that it was not so intended shall rest upon the person exposing it for sale.

(4) In this Article—

“horseflesh” means the flesh of horses, asses and mules, and includes any such flesh whether cooked or uncooked and whether alone, or accompanied by, or mixed with, any other substance; and

“flesh” includes any part of any such animal.

Cold stores

Power to provide cold stores

32. A district council may provide a cold store for the storage and preservation of meat and other articles of food, and may make charges in respect of the use of any such store.

Food poisoning

Provisions as to suspected food

33.—(1) If a chief administrative medical officer of a Health and Social Services Board has reasonable ground for suspecting that any food is likely to cause food poisoning, he may give notice to the person in charge of that food that, until his investigations are completed—

(a) the food, or any specified portion of it, is not to be used for human consumption, and

(b) either is not to be removed, or is not to be removed except to some place specified in the notice.

(2) A person who uses or removes any food in contravention of the requirements of a notice given under paragraph (1) shall be guilty of an offence.

(3) If, as a result of his investigations, the chief administrative medical officer is satisfied that the food in question, or any portion of it, is likely to cause food poisoning, he may deal with it as food falling within paragraph (1) of Article 11 and paragraphs (2) and (3) of that Article shall apply accordingly; but, if he is satisfied that it may safely be used for human consumption he shall forthwith withdraw his notice.

(4) If a notice given under paragraph (1) is withdrawn by the chief administrative medical officer, or if the justice of the peace before whom any food is brought under this Article refuses to condemn it, the Health and Social Services Board shall compensate the owner of the food to which the notice related for any depreciation in its value resulting from the action taken by the chief administrative medical officer.

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(5) For the purposes of paragraph (4) the value of any food shall not be assessed at a sum exceeding the cost incurred by the owner in making or purchasing it.

(6) Any function of the chief administrative medical officer of a Health and Social Services Board under this Article may be exercised by such other medical officer of the board as the chief administrative medical officer may authorise in writing in that behalf.

(7) In this Article—

“food poisoning” includes any disease transmissible by food;

“Health and Social Services Board” means a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972⁽⁹⁾.

⁽⁹⁾ 1972 NI 14