
STATUTORY INSTRUMENTS

1989 No. 846

The Food (Northern Ireland) Order 1989

PART III

ADMINISTRATION AND ENFORCEMENT

Sampling and analysis

Public analysts

36.—(1) Every district council shall appoint in accordance with the provisions of this Article one or more than one person (in this Order referred to as “public analysts”) to be analysts of food and drugs within the district of the council.

(2) A person shall not be appointed a public analyst unless he possesses—

- (a) such qualifications as may be prescribed; or
- (b) such other qualifications as the Department may approve.

(3) A person who is engaged directly or indirectly in any trade or business connected with the sale of food or drugs in any district shall not be appointed public analyst for that district.

(4) A district council shall pay to a public analyst such remuneration as may be agreed upon by the council and the analyst, and that remuneration may be expressed to be payable—

- (a) in addition to any fees received by the analyst under this Order; or
- (b) on condition that any fees received by the analyst under this Order are paid over by him to the council.

(5) A district council which appoints only one public analyst may appoint also a deputy to act during any vacancy in the office of public analyst, or during the absence or incapacity of the holder of the office, and the provisions of paragraphs (2) to (4) shall apply in relation to a deputy public analyst as they apply in relation to a public analyst.

Facilities for examination of food and drugs

37. A district council may provide facilities for bacteriological and other examinations of samples of food and drugs.

Powers of sampling

38.—(1) An authorised officer of a district council may exercise such powers of procuring samples for analysis, or for bacteriological or other examination, as are conferred upon him by this Article, and any such officer is in this Order referred to as a “sampling officer”.

(2) A sampling officer may purchase samples of any food or of any substance capable of being used in the preparation of food.

- (3) Subject to the provisions of this Article, a sampling officer may take a sample of any food, or of any substance capable of being used in the preparation of food, which—
- (a) appears to him to be intended for sale for human consumption; or
 - (b) appears to him to have been sold for human consumption; or
 - (c) is found by him on or in any premises, stall, vehicle or place other than premises which he is authorised to enter for the purposes of the execution of this Order.
- (4) A sampling officer shall not, without the consent of the purchaser,—
- (a) take a sample of any food or substance (other than milk) which appears to him to have been sold by retail, either while the food or substance is in the course of delivery to the purchaser, or at any time after delivery to the purchaser;
 - (b) take a sample of milk which appears to him to have been sold by retail at any time after the milk has been delivered to the purchaser.
- (5) Any power of an authorised officer to procure samples of milk may be exercised at a place outside the district of the council by which that authorised officer was appointed, if the district council for the district within which the place is situated has consented to samples of milk being procured within its district by officers of the first-mentioned council.
- (6) For the purposes of this Order any sample procured in accordance with paragraph (5) shall be deemed to have been procured within the district for which the officer in question acts.
- (7) A district council shall not unreasonably withhold its consent for the purposes of paragraph (5), and any question as to the reasonableness of withholding that consent shall be referred to and determined by the Department.

Right to have samples analysed

- 39.**—(1) If a sampling officer who has procured a sample of any food or substance considers that it should be analysed, he shall submit it to be analysed by the public analyst for the district in which the sample was, or is deemed to have been, procured.
- (2) A person, other than a sampling officer, who has purchased any food, or any substance capable of being used in the preparation of food, may submit a sample of it to be analysed by the public analyst for the district in which the purchase was made.
- (3) The public analyst shall analyse as soon as practicable any sample submitted to him in pursuance of this Article but may, where the sample is submitted by a person other than an officer of the district council, demand in advance the payment of such fee as may be fixed by the council.
- (4) If—
- (a) the office of public analyst for a district is vacant; or
 - (b) the public analyst determines that he is for any reason unable to perform an effective analysis;
- the sample shall be submitted or, as the case may be, sent by the public analyst, to such person as the Department may approve, and that person, if he consents to analyse the sample, shall do so upon payment to him of such sum as may be agreed upon.
- (5) A public analyst, or a person approved by the Department for the purposes of paragraph (4), who has analysed a sample shall give to the person who submitted the sample a certificate, in such form as may be prescribed, specifying the result of the analysis.
- (6) A certificate given under paragraph (5) shall be signed by the public analyst or person approved by the Department for the purposes of paragraph (4), but the analysis may be made by any person acting under the direction of that analyst or approved person.

(7) Where a sample procured by a sampling officer has been analysed by a public analyst or a person approved by the Department for the purposes of paragraph (4), any person to whom a part of the sample was given in accordance with provisions of this Order shall be entitled, on payment of a fee of 5p to the district council by whose officer the sample was procured, to be supplied with a copy of the certificate given under paragraph (5).

Disposal of samples taken for analysis

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

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

- (a) where the sample was purchased by the sampling officer, he shall give the part to the vendor;
- (b) where the sample was of goods consigned from outside Northern Ireland and was taken by the sampling officer before delivery to the consignee, he shall give the part to the consignee;
- (c) where the sample was taken by the sampling officer with the consent of a purchaser by retail, not being a sample taken as mentioned in sub-paragraph (b), he shall give the part to the vendor;
- (d) where the sample was of milk taken by the sampling officer otherwise than as mentioned in sub-paragraphs (a) to (c), he shall give the part to the person who caused the milk to be placed in the container from which the sample was taken;
- (e) where the sample was taken in transit by the sampling officer, otherwise than as mentioned in sub-paragraphs (a) to (d), he shall give the part to the consignor;
- (f) where sub-paragraphs (a) to (e) do not apply, the sampling officer shall give the part to the person appearing to be the owner of the food or substance;

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

(3) Of the remaining parts of the sample, the sampling officer shall, unless he decides not to have an analysis made, submit one for analysis in accordance with Article 39, and retain the other for future comparison.

(4) If it appears to a sampling officer that any food or substance of which he has procured a sample for the purpose of analysis by a public analyst was manufactured or put into its wrapper or container by a person (not being a person to whom one part of the sample is required to be given under this Article) having his name and an address in the United Kingdom displayed on the wrapper or container, the officer shall, unless he decides not to have an analysis made, within three days of procuring the sample send to that person a notice informing him—

- (a) that the sample has been procured by the officer; and
- (b) where the sample was taken or, as the case may be, from whom it was purchased.

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

- (a) if the name and address (being an address in Northern Ireland) of a person stated to be the proprietor of the machine appears on that machine, to that person;
- (b) in any other case, to the occupier of the premises on which the machine stands or to which it is affixed.

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

(7) The provisions of paragraphs (1), (2), (3), (5) and (6) shall apply to the purchase of samples by any person who is neither a sampling officer nor a person having the powers of a sampling officer as they apply in relation to the purchase of samples by a sampling officer; and references to a sampling officer shall be construed accordingly.

Special provisions as to sampling of milk otherwise than by sampling officers

41.—(1) Where a sample of milk is procured, otherwise than by a sampling officer, from a purveyor of milk, that purveyor shall, if required to do so by the person by whom the sample was procured, state the name and address of the seller or consignor from whom he received the milk.

(2) Within sixty hours after the sample was procured from the purveyor he may, subject to paragraphs (3) and (4), serve on the district council within whose district the sample was procured a notice stating—

- (a) the name and address of the seller or consignor from whom he received the milk; and
- (b) the time and place of delivery to himself of milk from a corresponding milking;

and requesting the council to take immediate steps to procure, as soon as practicable, a sample of milk from a corresponding milking in the course of transit or delivery to himself from the seller or consignor.

(3) If a sample of milk from a corresponding milking—

- (a) has been procured since the procuring of the sample from the purveyor; or
- (b) has been procured within twenty-four hours prior to the sample being procured from the purveyor;

it shall not be necessary for the district council to procure another sample in accordance with the notice served under paragraph (2).

(4) The purveyor shall not have the right to require that a sample of milk from a corresponding milking shall be procured if the milk from which the sample was procured from the purveyor was taken from a mixture of milk produced on more than one farm.

(5) If—

- (a) the purveyor has served on the district council a notice under paragraph (2); and
- (b) the council has, in a case not falling within paragraph (3) or paragraph (4), omitted to procure in accordance with paragraph (2) a sample of milk from the seller or consignor in the course of transit or delivery;

a prosecution under this Order shall not be brought against the purveyor in respect of the sample procured from him.

(6) Any sample procured in accordance with paragraph (2) in the course of transit or delivery shall be submitted for analysis to the person to whom the sample procured from the purveyor is or was submitted.

(7) If a prosecution is brought against the purveyor, a copy of the certificate of the result of the analysis of every sample procured in accordance with paragraph (2) in the course of transit or delivery shall be furnished to him, and every such certificate or copy shall, subject to the provisions of Article 54, be admissible as evidence on any question whether the milk sold by the purveyor was sold by the purveyor in the same state as it was when he purchased it.

(8) The district council within whose district the sample was procured from the purveyor may, instead of, or in addition to, bringing a prosecution against the purveyor, bring a prosecution against the seller or consignor.

(9) If a sample of milk of cows kept on any premises is procured in course of transit or delivery from those premises, the occupier of those premises may, within sixty hours after the sample was procured, serve on the district council by whose officer the sample was procured a notice requesting the council to take immediate steps to procure, as soon as practicable, a sample of milk from a corresponding milking of the cows and thereupon—

- (a) paragraphs (3) to (7) shall, so far as applicable, apply with any necessary modifications; and
- (b) the person procuring the sample of milk from a corresponding milking of the cows shall be empowered to take any such steps at the premises on which the cows are kept as may be necessary to satisfy him that the sample is a fair sample of the milk of the cows when properly and fully milked.

(10) It shall be a defence for a person charged with an offence under this Order, or under regulations made under this Order, in respect of a sample of milk taken, otherwise than by a sampling officer, after the milk had left the possession of the person charged to prove that the container from which the sample was taken was effectively closed and sealed at the time when it left his possession, but had been opened before the person by whom the sample was taken had access to it.

Special provisions as to sampling of milk by sampling officers

42.—(1) Where a sample of milk is procured by a sampling officer from a purveyor of milk, that purveyor shall, if required to do so by the sampling officer, state—

- (a) the name and address of the seller or consignor from whom he received the milk;
- (b) the time and place of delivery to him by the seller or consignor of milk from a corresponding milking.

(2) Subject to paragraph (3), the district council by whose officer the sample was procured shall not bring a prosecution under this Order against the purveyor in respect of the sample procured from him unless the council has within—

- (a) twenty-four hours prior to the sample being procured from the purveyor; or
- (b) one hundred and twenty hours after the sample was procured from the purveyor;

procured a sample of milk from a corresponding milking in the course of transit or delivery to the purveyor from the seller or consignor.

(3) It shall not be necessary for the district council to procure a sample of milk from a corresponding milking if the milk from which the sample was procured from the purveyor was taken from a mixture of milk produced on more than one farm.

(4) Any sample procured in accordance with paragraph (2) in the course of transit or delivery shall be submitted for analysis to the person to whom the sample procured from the purveyor is or was submitted.

(5) If a prosecution is brought against the purveyor, a copy of the certificate of the result of the analysis of every sample procured in accordance with paragraph (2) in the course of transit or delivery shall be furnished to him, and every such certificate or copy shall, subject to the provisions of Article 54, be admissible as evidence on any question whether the milk sold by the purveyor was sold by the purveyor in the same state as it was when he purchased it.

(6) The district council by whose officer the sample was procured from the purveyor may, instead of, or in addition to, bringing a prosecution against the purveyor, bring a prosecution against the seller or consignor.

(7) If a sample of milk of cows kept on any premises is procured in course of transit or delivery from those premises, the occupier of those premises may, within sixty hours after the sample was procured, serve on the district council by whose officer the sample was procured a notice requesting the council to take immediate steps to procure, as soon as practicable, a sample of milk from a corresponding milking of the cows and thereupon—

- (a) paragraphs (2) to (5) shall, so far as applicable, apply with any necessary modifications; and
- (b) the sampling officer procuring the sample of milk from a corresponding milking of the cows shall be empowered to take any such steps at the premises on which the cows are kept as may be necessary to satisfy him that the sample is a fair sample of the milk of the cows when properly and fully milked.

(8) It shall be a defence for a person charged with an offence under this Order, or under regulations made under this Order, in respect of a sample of milk taken by a sampling officer after the milk had left the possession of the person charged to prove that the container from which the sample was taken was effectively closed and sealed at the time when it left his possession, but had been opened before the sampling officer had access to it.

Power of Department to have foods analysed and examined

43.—(1) In relation to any matter appearing to the Department to affect the general interests of consumers, the Department may direct an officer of the Department authorised in writing to procure samples of any food specified in that authorisation, and thereupon the officer shall have all the powers of a sampling officer, and this Order shall apply as if he were a sampling officer.

(2) In relation to any matter appearing to the Department of Agriculture to affect the general interests of consumers of cream or ice-cream, that Department may exercise the powers conferred upon the Department by paragraph (1), and the provisions of this Order shall have effect accordingly.

(3) Any fee payable for the analysis of a sample procured in accordance with the provisions of this Article shall be payable by the Department or, as the case may be, the Department of Agriculture, out of moneys appropriated by Measure.

Provision for cases in which division into parts is impracticable

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

- (a) is not reasonably practicable; or
- (b) might affect the composition or impede the proper analysis of the contents;

the provisions of Article 40 with respect to the division of samples into parts shall be deemed to be complied with if the person procuring the sample divides the containers into three lots and deals with each lot as if it were a part in the manner provided by that Article; and references in this Order to a part of a sample shall be construed accordingly.

Examination by district councils of food not for sale

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

(2) Subject to the provisions of Article 33, where any food examined in pursuance of paragraph (1) is found to be unfit for human consumption, the district council may, with the consent of the person referred to in that paragraph, arrange for the disposal of the food.

Quarterly reports of analysts

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

(2) Every district council shall transmit to the Department, at such times as the Department may direct, a copy of each quarterly report received by it from a public analyst, together with details of any action taken in each case.