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STATUTORY INSTRUMENTS

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**1989 No. 846**

**The Food (Northern Ireland) Order 1989**

**PART IV**

**PROCEDURE AND EVIDENCE**

*Legal proceedings and evidence*

**Offences**

- 51.**—(1) A person guilty of an offence under Article 7(4) shall be liable—
- (a) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both, and
  - (b) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months or to both.
- (2) A person guilty of an offence under Article 18(12) shall be liable on summary conviction to a fine not exceeding level 1 on the standard scale.
- (3) A person guilty of an offence under Article 22(5), 23(6), 33(2), 50(1) or 50(4) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) A person guilty of an offence under Article 47(6) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale or to imprisonment for a term not exceeding three months or to both.
- (5) A person guilty of an offence under this Order, other than the offences mentioned in paragraphs (1) to (4), shall be liable—
- (a) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both, and
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (6) An offence under—
- (a) a regulation made under this Order, other than an offence which by virtue of the regulations is punishable on conviction on indictment or on summary conviction; and
  - (b) an order made under Article 7,
- shall be punishable on summary conviction only.

**Prosecutions**

- 52.**—(1) A prosecution for an offence under this Order or regulations made under it which is punishable on conviction on indictment or on summary conviction shall not be begun after the expiration of—
- (a) three years from the commission of the offence; or
  - (b) one year from its discovery by the complainant,

whichever is the earlier.

(2) Where a sample has been procured under this Order, a prosecution in respect of the article or substance sampled shall not be begun—

- (a) where the sample was of milk, after the expiration of the period of twenty-eight days beginning with the date on which the sample was procured;
- (b) where the sample was not of milk, after the expiration of the period of two months beginning with the date on which the sample was procured;

unless the justice of the peace before whom the complaint is made, on being satisfied on oath that having regard to the circumstances of the particular case it was not practicable to make the complaint at an earlier date, gives a certificate to that effect.

(3) Where a certificate issued under paragraph (2) relates to a prosecution in respect of a sample of milk, that prosecution shall not in any case be begun after the expiration of the period of forty-two days beginning with the date on which the sample was procured.

(4) Where a sample has been procured under this Order, any prosecution in respect of the article or substance sampled shall, subject to paragraphs (5) and (6), be brought before a court having jurisdiction in the place where the sample was procured.

(5) Where a sample procured within the district of one district council is for the purposes of this Order deemed to have been procured within the district of another, a prosecution may be brought either before the court having jurisdiction in any part of the district within which the sample was procured, or before a court having jurisdiction in any part of the district within which the sample is deemed to have been procured.

(6) Where an article or a substance sampled under this Order was sold and actually delivered to the purchaser, a prosecution may be brought before a court having jurisdiction at the place of delivery.

(7) Any prosecution under this Order or any regulations made under it in respect of an article or substance which has been sampled shall not be heard or determined earlier than fourteen days after the date of service of the summons, and in any such proceedings a copy of—

- (a) any certificate of analysis obtained on behalf of the prosecutor; and
- (b) any certificate given by a justice of the peace under paragraph (2);

shall be served with the summons.

(8) In any prosecution under this Order or any regulations made under it, where a sample has been procured in such circumstances that its division into parts is required by this Order, the part of the sample retained by the person who procured it shall be produced at the hearing.

(9) Notwithstanding paragraph (1), a person is not liable to be prosecuted for an offence under this Order or regulations made under it which was committed before 6th January 1987.

### **Institution of proceedings by the Department**

53.—(1) Without prejudice to the provisions of this Order relating to its enforcement, the Department may, where it is of opinion that the general interests of consumers are affected, prosecute for offences under Article 3, 4 or 8, and for offences under any regulations made under Articles 6 and 9.

(2) Without prejudice to the provisions of this Order relating to its enforcement, the Department of Agriculture may, where it is of opinion that the general interests of consumers of cream or ice-cream are affected, prosecute for offences under any regulations made under Articles 6 and 9, so far as those regulations relate to cream or ice-cream.

## Evidence of analysis

54.—(1) In any prosecution under this Order or any regulations made under it, the production by one of the parties of—

- (a) a document purporting to be a certificate of a public analyst in the form prescribed under Article 39(5); or
- (b) a document supplied to him by the other party as being a copy of such a certificate,

shall be sufficient evidence of the facts stated in the document, unless, where the document is of the kind described in sub-paragraph (a), the other party requires that the analyst shall be called as a witness.

(2) In any prosecution under this Order or any regulations made under it, if a defendant intends—

- (a) to produce a certificate of a public analyst; or
- (b) under paragraph (1) to require that a public analyst shall be called as a witness;

notice of that intention, together, in a case arising under sub-paragraph (a), with a copy of the certificate, shall be given to the other party at least three clear days before the date of the hearing, and, if this requirement is not complied with, the court may, if it thinks fit, adjourn the hearing on such terms as it thinks proper.

(3) In paragraphs (1) and (2), references to a public analyst include—

- (a) references to a person approved by the Department under Article 39(4); and
- (b) references to a public analyst within the meaning of the Food and Drugs (Scotland) Act 1956(1) and the Food Act 1984(2).

(4) Regulations made under Article 6 or Article 9 may prescribe a method of analysis for the purpose of ascertaining the presence in, or absence from, any food of any substance specified in the regulations, or the quantity of any such substance which is present in any food.

(5) In any prosecution—

- (a) for a contravention of any regulations made under Article 6 or Article 9; or
- (b) for an offence under Article 4 or Article 8;

in respect of any food alleged to contain, or not to contain, any substance specified in those regulations, or any particular quantity of such a substance, evidence of an analysis carried out by the method prescribed by those regulations shall be preferred to evidence of any other analysis or test.

## Presumptions

55.—(1) For the purposes of this Order and any regulations or byelaws made under it—

- (a) any article 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 intended for sale, for human consumption;
- (b) any article commonly used for human consumption which is found on premises or on any vehicle, stall or place other than premises used for the preparation, storage, or sale of that article shall be presumed, until the contrary is proved, to be intended for sale for human consumption;
- (c) any article commonly used for the manufacture of products for human consumption which is found on premises or on any vehicle, stall or place other than premises used for the preparation, storage, or sale of those products shall be presumed, until the contrary is proved, to be intended for manufacturing products for sale for human consumption;

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(1) 1956 c. 30

(2) 1984 c. 30

- (d) any substance capable of being used in the composition or preparation of any article commonly used for human consumption which is found on premises or on any vehicle, stall or place other than premises on which that article is prepared shall, until the contrary is proved, be presumed to be intended for such use.

(2) The Department may make regulations for determining what deficiency in any of the normal constituents of milk, or what proportion of water, in a sample shall for the purposes of this Order raise a presumption, until the contrary is proved, that the article sampled is not genuine milk.

### **Power of court to require analysis by Government Chemist**

**56.**—(1) The court before which any prosecution is brought under this Order or any regulations made under it may, if the court thinks fit, and upon the request of either party shall, cause the part of any sample produced before the court under Article 52(8) to be sent to the Government Chemist, who shall—

- (a) make an analysis, and
- (b) transmit to the court a certificate of its result,

and the costs of the analysis shall be paid by the complainant or the defendant as the court may order.

(2) If, in a case where an appeal is brought, action has not been taken under paragraph (1), the provisions of that paragraph shall apply also in relation to the court by which the appeal is heard.

(3) Any certificate of the results of an analysis transmitted by the Government Chemist under this Article shall be signed by or on behalf of the Government Chemist, but the analysis may be made by any person acting under the direction of the person by whom the certificate is signed.

(4) Any certificate of the results of an analysis transmitted by the Government Chemist under this Article shall be evidence of the facts stated in it unless any party to the prosecution requires that the person by whom it is signed shall be called as a witness.

### **Contravention due to default of some other person**

**57.**—(1) Where a contravention of any provision of this Order or of any regulation, order or byelaw made under it, for which any person is liable to a penalty was due to an act or default of any other person, then, whether or not a prosecution is brought against the first-mentioned person, that other person may be charged with and convicted of the contravention and shall be liable on conviction to the same punishment as might have been imposed on the first-mentioned person if he had been convicted of the contravention.

(2) Where a person who is charged with a contravention of this Order, or of any regulation, order or byelaw made under it, proves to the satisfaction of the court that he has used all due diligence to secure that the provision in question was complied with and that the contravention was due to the act or default of some other person, the first-mentioned person shall be acquitted of the contravention.

### **Conditions under which warranty may be pleaded as defence**

**58.**—(1) Subject to the provisions of this Article, in any prosecution for an offence under this Order or any regulations made under it, being an offence consisting of selling, or offering, exposing or advertising for sale, or having in possession for the purpose of sale, any article or substance, it shall be a defence for the defendant to prove—

- (a) that he purchased it as being an article or substance which could lawfully be sold or otherwise dealt with as mentioned above, or, as the case may be, could lawfully be so sold or dealt with under the name or description or for the purpose under or for which he sold or dealt with it, and with a written warranty to that effect; and

- (b) that he had no reason to believe at the time of the commission of the alleged offence that it was otherwise; and
  - (c) that it was then in the same state as when he purchased it.
- (2) A warranty shall be a defence in a prosecution under this Order or any regulations made under it only if—
- (a) the defendant—
    - (i) has, within seven days, or such longer period as the court may allow, of the service of the summons, sent to the prosecutor a copy of the warranty with a notice stating that he intends to rely on it and specifying the name and address of the person from whom he received it; and
    - (ii) has also sent a like notice of his intention to that person; and
  - (b) where the warranty was given by a person resident outside the United Kingdom the defendant proves that he had taken reasonable steps to ascertain, and did in fact believe in, the accuracy of the statement contained in the warranty; and
  - (c) where the prosecution is in respect of a sample of milk procured from him otherwise than by a sampling officer, the defendant either—
    - (i) has within sixty hours after the sample was procured served such a notice as is mentioned in Article 41(2); or
    - (ii) not having served such a notice, proves that he had reasonable cause to believe that such a notice would have been of no effect by reason of the fact that the milk in question was a mixture of milk produced on more than one farm.
- (3) Where the defendant is a servant of the person who purchased the article or substance under a warranty, he shall be entitled to rely on the provisions of this Article in the same way as his employer would have been entitled to do if he had been the defendant.
- (4) The person by whom the warranty is alleged to have been given shall be entitled to appear at the hearing and to give evidence, and the court may, if it thinks fit, adjourn the hearing to enable him to do so.
- (5) For the purposes of this Article and Article 59, a name or description entered in an invoice shall be deemed to be a written warranty that the article or substance to which the entry refers can be sold or otherwise dealt with under that name or description by any person without contravening any of the provisions of this Order or of regulations made under it.

### **Offences in relation to warranties and certificates of analysis**

**59.**—(1) A defendant who in any prosecution under this Order or any regulations made under it wilfully applies to any article or substance a warranty or certificate of analysis given in relation to any other article or substance shall be guilty of an offence.

(2) A person who, in respect of any article or substance sold by him, being an article or substance in respect of which a warranty might be pleaded under Article 58, gives to the purchaser a false warranty in writing, shall be guilty of an offence, unless he proves that when he gave the warranty he had reason to believe that the statements or descriptions contained in the warranty were accurate.

(3) Where the defendant in a prosecution under this Order or any regulations made under it relies successfully on a warranty given to him or to his employer, any prosecution under paragraph (2) in respect of the warranty may be brought either—

- (a) before a court having jurisdiction in the place where a sample of the article or substance to which the warranty relates was procured, or
- (b) before a court having jurisdiction in the place where the warranty was given.

### *Compensation*

#### **Disputes as to compensation under Part II**

**60.**—(1) Where by Part II, except Article 24, provision is made for the payment of compensation to any person, any dispute arising as to the fact of damage or loss, or as to the amount of compensation, shall, subject to paragraph (2), be determined by a single arbitrator appointed by agreement between the parties, or, in default of agreement, by the head of the Department; and the provisions of the Arbitration Act (Northern Ireland) 1937(3) shall apply accordingly.

(2) If the compensation claimed does not exceed—

- (a) £50, all questions as to the fact of damage or loss, liability to pay compensation and the amount of compensation may on the application of either party be determined by, and any compensation may be recovered before, a court of summary jurisdiction;
- (b) £300, all questions referred to in sub-paragraph (a) may on the application of either party be determined by, and any compensation may be recovered before, a county court.

### *Appeals against decisions of district councils*

#### **Right to carry on business pending appeal**

**61.**—(1) Where—

- (a) a decision of a district council under this Order or under any regulations made under it, refusing, cancelling, suspending, or revoking, registration or a licence; or
- (b) a decision of a court of summary jurisdiction on appeal against any such decision;

makes it unlawful for a person—

- (i) to carry on any business which he, or his immediate predecessor in the business, was lawfully carrying on at the date when the decision of the council was given; or
- (ii) to use any premises for any purpose for which he, or his immediate predecessor in the business, was lawfully using those premises at the date when the decision of the council was given;

that person may carry on that business and use those premises for that purpose until the time for appealing has expired, and, if an appeal is lodged, until the appeal has been disposed of or abandoned or has failed for want of prosecution.

(2) Paragraph (1) shall apply also where an order of a court made under Article 16 makes it unlawful for a person to use any premises for the purpose of a business carried on at those premises immediately before the making of that order.

### *Continuation of licences*

#### **Temporary continuance of licence on death**

**62.** Where a person who holds a licence under any regulations made under this Order dies, the licence shall, unless previously revoked or cancelled, enure for the benefit of his personal representative, or of his widow or any other member of his family, until the expiration of—

- (a) two months from his death; or
- (b) such longer period as the licensing authority may allow.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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