
STATUTORY INSTRUMENTS

1989 No. 846

The Food (Northern Ireland) Order 1989

PART V

MISCELLANEOUS AND GENERAL

Application of this Order

Application to Crown

63.—(1) The Secretary of State may by order provide for the application to the Crown of such of the provisions of this Order and of any regulations or order made under this Order as may be specified in the order, with such exceptions, adaptations and modifications as may be so specified.

(2) Without prejudice to the generality of paragraph (1), an order made under this Article may make special provision for the enforcement of any provisions applied by the order, and where any such provision imposes a liability on a person by reason that he is—

- (a) the owner or occupier of premises; or
- (b) the owner of a business; or
- (c) the principal on whose behalf any transaction is carried out;

the order may make provision for determining, where the premises are occupied or owned, or the business is owned, by the Crown, or the transaction is carried out on behalf of the Crown, the person who is to be treated as so liable.

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

Application of Order for purposes of importation orders and regulations

64. The provisions of Schedule 2 shall apply for the purposes of the enforcement and execution of any order or regulation made under the Food Act 1984(1), and applying to Northern Ireland.

Provisions relating to district councils

Notices, etc., to be in writing; forms of notices, etc.

65.—(1) All notices, consents and other documents authorised or required by or under this Order to be given by a district council, and all notices and applications authorised or required by or under this Order to be made to, or to any officer of, a district council, shall be in writing.

(2) The form of any notice, certificate or other document to be used for any of the purposes of this Order shall be such as may be prescribed.

Proof of resolutions, etc.

66. In any proceedings under this Order or any regulations made under it a document purporting to be certified by the clerk of a district council as a copy of—

- (a) a resolution passed or order made by that council on a specified date; or
- (b) the appointment of, or any authorisation given to, an officer of that council on a specified date;

shall be evidence that that resolution, order, appointment or authorisation was duly passed, made or given by the council on that date.

Protection for officers acting in good faith

67.—(1) An officer of a district council shall not be personally liable in respect of any act done by him in the execution or purported execution of this Order and within the scope of his employment, if he did that act in the honest belief that his duty under this Order required or entitled him to do it.

(2) Nothing in paragraph (1) shall be construed as relieving a district council from any liability in respect of acts of their officers.

(3) Where—

- (a) an action has been brought against an officer of a district council in respect of an act done by him in execution or purported execution of this Order; and
- (b) the circumstances are such that he is not legally entitled to require the council to indemnify him;

the council may, nevertheless, indemnify him against the whole or a part of any damages and costs which he may have been ordered to pay or may have incurred, if it is satisfied that he honestly believed that—

- (i) the act complained of was within the scope of his employment; and
- (ii) his duty under the Order required or entitled him to do it.

(4) For the purposes of this Article—

- (a) a public analyst appointed by a district council, whether or not he is employed full-time; and
- (b) a person approved by the Department for the purposes of Article 39(4);

shall be treated as being an officer of the relevant district council.

Default of district councils

68.—(1) If the Department, after communication with a district council, is of opinion that the council has failed to exercise any of its functions under this Order, the Department may by order empower an officer of the Department to exercise, or procure the exercise of, that function.

(2) Any expenses incurred by the Department or by an officer of the Department under any order made under paragraph (1) shall, in the first instance, be defrayed out of moneys appropriated by Measure but—

- (a) the amount of those expenses as certified by the Department shall, on demand, be paid to the Department by the district council; and
- (b) any sum demanded under sub-paragraph (a) shall be recoverable by the Department from the district council as a civil debt due to the Crown.

(3) Nothing in this Article shall affect any other power exercisable by the Department with respect to defaults of district councils.

Miscellaneous

Powers under Order to be cumulative

69. All functions conferred by this Order shall be deemed to be in addition to, and not in derogation of, any other functions conferred by any enactment, law or custom, and, subject to any repeal effected by, or other express provision of, this Order, all such other functions may or, as the case may be, shall, be exercised in the same manner as if this Order had not been made.

Judges and justices of the peace not to be disqualified by liability to rates

70. A judge of any court or a justice of the peace shall not be disqualified from acting in cases arising under this Order by reason only of his being as one of several ratepayers, or as one of any other class of persons, liable in common with others to contribute to, or to be benefited by, any rate or fund out of which any expenses of a district council are to be defrayed.

Power of Department to hold inquiries and investigations

71. The Department may cause inquiries or investigations to be held in any case where it appears to the Department advisable to do so in connection with any matter arising under this Order.

Orders and regulations (general)

72.—(1) The Department may make regulations prescribing anything which is to be prescribed under this Order.

(2) Before making any regulations under this Order, and before making an order under Article 7 or Article 19, the Department shall, subject to paragraph (3), consult with such organisations as appear to the Department to be representative of interests substantially affected by the regulations or by the order.

(3) Paragraph (2) shall not apply in relation to the making of regulations which reproduce, without substantive modification, any provisions in force immediately before 10th December 1956.

(4) Regulations made under this Order may, without prejudice to the generality of the provisions under which they are made,—

- (a) modify for the purposes of the regulations any provisions of this Order relating to the procuring, analysis and examination of samples;
- (b) apply, as respects matters to be dealt with by the regulations, any provision in any Act or Measure (including this Order) dealing with the like matters, with the necessary modifications and adaptations;
- (c) provide for an appeal to a court of summary jurisdiction against any refusal or other decision of an authority by whom the regulations are to be enforced and executed, and for a further appeal to the county court from any decision of a court of summary jurisdiction on any such appeal;
- (d) authorise the making of charges for the purposes of the regulations, or for any services performed under them, and provide for the recovery of charges so made;
- (e) provide that an offence under the regulations shall be punishable on conviction on indictment or on summary conviction;
- (f) include provisions under which a person guilty of an offence under the regulations punishable on conviction on indictment or on summary conviction is liable on summary conviction to a fine not exceeding the statutory maximum or such less amount as may

be specified in the regulations and on conviction on indictment to either or both of the following—

- (i) a fine not exceeding an amount specified in the regulations, or of an indefinite amount;
 - (ii) imprisonment for a term not exceeding two years or such shorter term as may be specified in the regulations;
 - (g) include provisions under which a person guilty of an offence under the regulations which is punishable on summary conviction only is liable to a fine not exceeding level 5 on the standard scale or such other level as may be specified in the regulations;
 - (h) require persons carrying on any activity to which the regulations apply to keep and produce records and furnish returns;
 - (i) make such consequential, ancillary and incidental provisions as appear to the Department to be necessary or desirable.
- (5) Paragraph (4) other than sub-paragraphs (e) and (f) shall apply to an order made under Article 7 as it applies to regulations made under this Order.
- (6) Any regulations made under this Order shall be subject to negative resolution.

Regulations for purposes of Community provisions

73.—(1) The Department may, as respects any directly applicable Community provision relating to food for which, in its opinion, it is appropriate to make provision under this Order, by regulations make such provision as it considers necessary or expedient for the purpose of securing that the Community provision is administered, executed and enforced under this Order and may apply such of the provisions of this Order as may be specified in the regulations in relation to the Community provision with such modifications, if any, as may be so specified.

(2) For the purpose of complying with any Community obligation, or for conformity with any provision made for that purpose, the Department may by regulations make provision as to—

- (a) the manner of sampling any food specified in the regulations, and the manner in which samples are to be dealt with; and
 - (b) the method to be used in analysing, testing or examining samples of any food so specified;
- and regulations made by the Department for that purpose, or for conformity with any provision so made, may modify or exclude any provision of this Order relating to the procuring or analysis of, or dealing with, samples or to evidence of the results of an analysis or test.

Expenses of sampling officers

74. Any expense incurred under this Order by a sampling officer in procuring samples and causing samples to be analysed shall be defrayed by the authority whose officer he is.

Repeal or amendment of local enactments

75.—(1) The Department may, on the application of a district council, by order wholly or partially repeal or amend any local enactment which is in force in the district of that council, or in any part of its district, and which relates to the subject matter of this Order or of any order or regulation made under this Order.

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

Amendments, repeals, revocations and savings

76.—(1) The statutory provisions specified in Schedule 3 shall have effect subject to the amendments specified in that Schedule (being amendments consequential on this Order).

(2) The statutory provisions specified in Schedule 4 are hereby repealed or revoked to the extent shown in column 3 of that Schedule. [1958 c. 27 \(N.I.\)](#)

(3) In the application of section 29 of the Interpretation Act (Northern Ireland) 1954⁽²⁾ to any repeal or revocation made by or under this Order or the Food and Drugs Act (Northern Ireland) 1958⁽³⁾, subsection (1) and paragraph (a) of subsection (3) shall have effect as if the word “statutory” were omitted wherever it occurs.

(4) Any premises which, immediately before the commencement of this Article, are deemed to be registered under section 17 of the Food and Drugs Act (Northern Ireland) 1958⁽⁴⁾ by virtue of subsection (14) of that section, shall, notwithstanding the repeal of that subsection, be deemed to be registered under Article 18, and the provisions of that Article shall have effect accordingly.

⁽²⁾ [1954 c. 33 \(N.I.\)](#)

⁽³⁾ [1958 c. 27 \(N.I.\)](#)

⁽⁴⁾ [1958 c. 27 \(N.I.\)](#)