



# Food Safety Act 1990

## 1990 CHAPTER 16

### PART IV

#### MISCELLANEOUS AND SUPPLEMENTAL

##### *Powers of Ministers*

#### **40 Power to issue codes of practice**

- (1) For the guidance of food authorities, the Ministers or the Minister may issue codes of recommended practice as regards the execution and enforcement of this Act and of regulations and orders made under it; and any such code shall be laid before Parliament after being issued.
- (2) In the exercise of the functions conferred on them by or under this Act, every food authority—
  - (a) shall have regard to any relevant provision of any such code; and
  - (b) shall comply with any direction which is given by the Ministers or the Minister and requires them to take any specified steps in order to comply with such a code.
- (3) Any direction under subsection (2)(b) above shall, on the application of the Ministers or the Minister, be enforceable by mandamus or, in Scotland, by an order of the Court of Session under section 45 of the Court of Session Act 1988.
- (4) Before issuing any code under this section, the Ministers or the Minister shall consult with such organisations as appear to them or him to be representative of interests likely to be substantially affected by the code.
- (5) Any consultation undertaken before the commencement of subsection (4) above shall be as effective, for the purposes of that subsection, as if undertaken after that commencement.

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#### **41 Power to require returns**

Every food authority shall send to the Minister such reports and returns, and give him such information, with respect to the exercise of the functions conferred on them by or under this Act as he may require.

#### **42 Default powers**

- (1) Where the Minister is satisfied that—
  - (a) a food authority (in this section referred to as “the authority in default”) have failed to discharge any duty imposed by or under this Act; and
  - (b) the authority’s failure affects the general interests of consumers of food,
 he may by order empower another food authority (in this section referred to as “the substitute authority”), or one of his officers, to discharge that duty in place of the authority in default.
- (2) For the purpose of determining whether the power conferred by subsection (1) above is exercisable, the Minister may cause a local inquiry to be held; and where he does so, the relevant provisions of the Local Government Act shall apply as if the inquiry were a local inquiry held under that Act.
- (3) Nothing in subsection (1) above affects any other power exercisable by the Minister with respect to defaults of local authorities.
- (4) The substitute authority or the Minister may recover from the authority in default any expenses reasonably incurred by them or him under subsection (1) above; and for the purpose of paying any such amount the authority in default may—
  - (a) raise money as if the expenses had been incurred directly by them as a local authority; and
  - (b) if and to the extent that they are authorised to do so by the Minister, borrow money in accordance with the statutory provisions relating to borrowing by a local authority.
- (5) In this section “the relevant provisions of the Local Government Act” means subsections (2) to (5) of section 250 of the Local Government Act 1972 in relation to England and Wales and subsections (3) to (8) of section 210 of the Local Government (Scotland) Act 1973 in relation to Scotland.

#### *Protective provisions*

#### **43 Continuance of registration or licence on death**

- (1) This section shall have effect on the death of any person who—
  - (a) is registered in respect of any premises in accordance with regulations made under Part II of this Act; or
  - (b) holds a licence issued in accordance with regulations so made.
- (2) The registration or licence shall subsist for the benefit of the deceased’s personal representative, or his widow or any other member of his family, until the end of—
  - (a) the period of three months beginning with his death; or
  - (b) such longer period as the enforcement authority may allow.

#### **44 Protection of officers acting in good faith**

- (1) An officer of a food authority is not personally liable in respect of any act done by him—
  - (a) in the execution or purported execution of this Act; and
  - (b) within the scope of his employment,if he did that act in the honest belief that his duty under this Act required or entitled him to do it.
- (2) Nothing in subsection (1) above shall be construed as relieving any food authority from any liability in respect of the acts of their officers.
- (3) Where an action has been brought against an officer of a food authority in respect of an act done by him—
  - (a) in the execution or purported execution of this Act; but
  - (b) outside the scope of his employment,the authority may indemnify him against the whole or a part of any damages which he has been ordered to pay or any costs which he may have incurred if they are satisfied that he honestly believed that the act complained of was within the scope of his employment.
- (4) A public analyst appointed by a food authority shall be treated for the purposes of this section as being an officer of the authority, whether or not his appointment is a whole-time appointment.

#### *Financial provisions*

#### **45 Regulations as to charges**

- (1) The Ministers may make regulations requiring or authorising charges to be imposed by enforcement authorities in respect of things done by them which they are required or authorised to do by or under this Act.
- (2) Regulations under this section may include such provision as the Ministers see fit as regards charges for which the regulations provide and the recovery of such charges; and nothing in the following provisions shall prejudice this.
- (3) Regulations under this section may provide that the amount of a charge (if imposed) is to be at the enforcement authority's discretion or to be at its discretion subject to a maximum or a minimum.
- (4) Regulations under this section providing that a charge may not exceed a maximum amount, or be less than a minimum amount, may—
  - (a) provide for one amount, or a scale of amounts to cover different prescribed cases; and
  - (b) prescribe, as regards any amount, a sum or a method of calculating the amount.

#### **46 Expenses of authorised officers and county councils**

- (1) Any expenses which are incurred under this Act by an authorised officer of a food authority in procuring samples, and causing samples to be analysed or examined, shall be defrayed by that authority.

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- (2) Any expenses incurred by a county council in the enforcement and execution of any provision of this Act, or of any regulations or orders made under it, shall, if the Secretary of State so directs, be defrayed as expenses for special county purposes charged on such part of the county as may be specified in the direction.

#### **47 Remuneration of tribunal chairmen**

There shall be paid out of money provided by Parliament to the chairman of any tribunal constituted in accordance with regulations under this Act such remuneration (by way of salary or fees) and such allowances as the Ministers may with the approval of the Treasury determine.

#### *Instruments and documents*

#### **48 Regulations and orders**

- (1) Any power of the Ministers or the Minister to make regulations or an order under this Act includes power—
- (a) to apply, with modifications and adaptations, any other enactment (including one contained in this Act) which deals with matters similar to those being dealt with by the regulations or order;
  - (b) to make different provision in relation to different cases or classes of case (including different provision for different areas or different classes of business); and
  - (c) to provide for such exceptions, limitations and conditions, and to make such supplementary, incidental, consequential or transitional provisions, as the Ministers or the Minister considers necessary or expedient.
- (2) Any power of the Ministers or the Minister to make regulations or orders under this Act shall be exercisable by statutory instrument.
- (3) Any statutory instrument containing—
- (a) regulations under this Act; or
  - (b) an order under this Act other than an order under section 60(3) below,
- shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Before making—
- (a) any regulations under this Act, other than regulations under section 17(2) or 18(1)(c) above; or
  - (b) any order under Part I of this Act,
- the Ministers shall consult with such organisations as appear to them to be representative of interests likely to be substantially affected by the regulations or order.
- (5) Any consultation undertaken before the commencement of subsection (4) above shall be as effective, for the purposes of that subsection, as if undertaken after that commencement.

#### **49 Form and authentication of documents**

- (1) The following shall be in writing, namely—

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- (a) all documents authorised or required by or under this Act to be given, made or issued by a food authority; and
  - (b) all notices and applications authorised or required by or under this Act to be given or made to, or to any officer of, such an authority.
- (2) The Ministers may by regulations prescribe the form of any document to be used for any of the purposes of this Act and, if forms are so prescribed, those forms or forms to the like effect may be used in all cases to which those forms are applicable.
- (3) Any document which a food authority are authorised or required by or under this Act to give, make or issue may be signed on behalf of the authority—
- (a) by the proper officer of the authority as respects documents relating to matters within his province; or
  - (b) by any officer of the authority authorised by them in writing to sign documents of the particular kind or, as the case may be, the particular document.
- (4) Any document purporting to bear the signature of an officer who is expressed—
- (a) to hold an office by virtue of which he is under this section empowered to sign such a document; or
  - (b) to be duly authorised by the food authority to sign such a document or the particular document,
- shall for the purposes of this Act, and of any regulations and orders made under it, be deemed, until the contrary is proved, to have been duly given, made or issued by authority of the food authority.
- (5) In this section—
- “proper officer”, in relation to any purpose and to any food authority or any area, means the officer appointed for that purpose by that authority or, as the case may be, for that area;
  - “signature” includes a facsimile of a signature by whatever process reproduced.

## **50 Service of documents**

- (1) Any document which is required or authorised by or under this Act to be given to or served on any person may, in any case for which no other provision is made by this Act, be given or served either—
- (a) by delivering it to that person;
  - (b) in the case of any officer of an enforcement authority, by leaving it, or sending it in a prepaid letter addressed to him, at his office;
  - (c) in the case of an incorporated company or body, by delivering it to their secretary or clerk at their registered or principal office, or by sending it in a prepaid letter addressed to him at that office; or
  - (d) in the case of any other person, by leaving it, or sending it in a prepaid letter addressed to him, at his usual or last known residence.
- (2) Where a document is to be given to or served on the owner or the occupier of any premises and it is not practicable after reasonable inquiry to ascertain the name and address of the person to or on whom it should be given or served, or the premises are unoccupied, the document may be given or served by addressing it to the person concerned by the description of “owner” or “occupier” of the premises (naming them) and—

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- (a) by delivering it to some person on the premises; or
- (b) if there is no person on the premises to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises.

*Amendments of other Acts*

**51 Contamination of food: emergency orders**

- (1) Part I of the Food and Environment Protection Act 1985 (contamination of food) shall have effect, and shall be deemed always to have had effect, subject to the amendments specified in subsection (2) below.
- (2) The amendments referred to in subsection (1) above are—
  - (a) in subsection (1) of section 1 (power to make emergency orders), the substitution for paragraph (a) of the following paragraph—
    - “(a) there exist or may exist circumstances which are likely to create a hazard to human health through human consumption of food;”;
  - (b) in subsection (2) of that section, the omission of the definition of “escape”;
  - (c) the substitution for subsection (5) of that section of the following subsection—
    - “(5) An emergency order shall refer to the circumstances or suspected circumstances in consequence of which in the opinion of the designating authority making it food such as is mentioned in subsection (1)(b) above is, or may be, or may become, unsuitable for human consumption; and in this Act “designated circumstances” means the circumstances or suspected circumstances to which an emergency order refers in pursuance of this subsection.”;
  - (d) in section 2(3) (powers when emergency order has been made), the substitution for the words “a designated incident” of the words “designated circumstances”;
  - (e) in paragraph (a) of subsection (1) of section 4 (powers of officers), the substitution for the words “an escape of substances” of the words “such circumstances as are mentioned in section 1(1) above”; and
  - (f) in paragraphs (b) and (c) of that subsection, the substitution for the words “the designated incident” of the words “the designated circumstances”.

**52 Markets, sugar beet and cold storage**

In the Food Act 1984 (in this Act referred to as “the 1984 Act”)—

- (a) Part III (markets); and
- (b) Part V (sugar beet and cold storage),

shall have effect subject to the amendments specified in Schedule 2 to this Act.

*Supplemental*

**53 General interpretation**

- (1) In this Act, unless the context otherwise requires—
  - “the 1984 Act” means the Food Act 1984;

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“the 1956 Act” means the Food and Drugs (Scotland) Act 1956;

“advertisement” includes any notice, circular, label, wrapper, invoice or other document, and any public announcement made orally or by any means of producing or transmitting light or sound, and “advertise” shall be construed accordingly;

“analysis” includes microbiological assay and any technique for establishing the composition of food, and “analyse” shall be construed accordingly;

“animal” means any creature other than a bird or fish;

“article” does not include a live animal or bird, or a live fish which is not used for human consumption while it is alive;

“container” includes any basket, pail, tray, package or receptacle of any kind, whether open or closed;

“contravention”, in relation to any provision, includes any failure to comply with that provision;

“cream” means that part of milk rich in fat which has been separated by skimming or otherwise;

“equipment” includes any apparatus;

“exportation” and “importation” have the same meanings as they have for the purposes of the Customs and Excise Management Act 1979, and “export” and “import” shall be construed accordingly;

“fish” includes crustaceans and molluscs;

“functions” includes powers and duties;

“human consumption” includes use in the preparation of food for human consumption;

“knacker’s yard” means any premises used in connection with the business of slaughtering, flaying or cutting up animals the flesh of which is not intended for human consumption;

“milk” includes cream and skimmed or separated milk;

“occupier”, in relation to any ship or aircraft of a description specified in an order made under section 1(3) above or any vehicle, stall or place, means the master, commander or other person in charge of the ship, aircraft, vehicle, stall or place;

“officer” includes servant;

“preparation”, in relation to food, includes manufacture and any form of processing or treatment, and “preparation for sale” includes packaging, and “prepare for sale” shall be construed accordingly;

“presentation”, in relation to food, includes the shape, appearance and packaging of the food, the way in which the food is arranged when it is exposed for sale and the setting in which the food is displayed with a view to sale, but does not include any form of labelling or advertising, and “present” shall be construed accordingly;

“proprietor”, in relation to a food business, means the person by whom that business is carried on;

“ship” includes any vessel, boat or craft, and a hovercraft within the meaning of the Hovercraft Act 1968, and “master” shall be construed accordingly;

“slaughterhouse” means a place for slaughtering animals, the flesh of which is intended for sale for human consumption, and includes any place available

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in connection with such a place for the confinement of animals while awaiting slaughter there or for keeping, or subjecting to any treatment or process, products of the slaughtering of animals there;

“substance” includes any natural or artificial substance or other matter, whether it is in solid or liquid form or in the form of a gas or vapour;

“treatment”, in relation to any food, includes subjecting it to heat or cold.

- (2) The following Table shows provisions defining or otherwise explaining expressions used in this Act (other than provisions defining or explaining an expression used only in the same section)—

authorised officer of a food authority	section 5(6)
business	section 1(3)
commercial operation	section 1(3) and (4)
contact material	section 1(3)
emergency control order	section 13(1)
emergency prohibition notice	section 12(1)
emergency prohibition order	section 12(2)
enforcement authority	section 6(1)
examination and examine	section 28(2)
food	section 1(1), (2) and (4)
food authority	section 5
food business	section 1(3)
food premises	section 1(3)
food safety requirements and related expressions	section 8(2)
food source	section 1(3)
improvement notice	section 10(1)
injury to health and injurious to health	section 7(3)
the Minister	section 4(1) and (2)
the Ministers	section 4(1)
premises	section 1(3)
prohibition order	section 11(5)
public analyst	section 27(1)
sale and related expressions	section 2
unfit for human consumption	section 8(4)

- (3) Any reference in this Act to regulations or orders made under it shall be construed as a reference to regulations or orders made under this Act by the Ministers or the Minister.



- (4) For the purposes of this Act, any class or description may be framed by reference to any matters or circumstances whatever, including in particular, in the case of a description of food, the brand name under which it is commonly sold.
- (5) Where, apart from this subsection, any period of less than seven days which is specified in this Act would include any day which is—
  - (a) a Saturday, a Sunday, Christmas Day or Good Friday; or
  - (b) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of Great Britain concerned,that day shall be excluded from that period.

#### **54 Application to Crown**

- (1) Subject to the provisions of this section, the provisions of this Act and of regulations and orders made under it shall bind the Crown.
- (2) No contravention by the Crown of any provision of this Act or of any regulations or order made under it shall make the Crown criminally liable; but the High Court or, in Scotland, the Court of Session may, on the application of an enforcement authority, declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (3) Notwithstanding anything in subsection (2) above, the provisions of this Act and of regulations and orders made under it shall apply to persons in the public service of the Crown as they apply to other persons.
- (4) If the Secretary of State certifies that it appears to him requisite or expedient in the interests of national security that the powers of entry conferred by section 32 above should not be exercisable in relation to any Crown premises specified in the certificate, those powers shall not be exercisable in relation to those premises; and in this subsection “Crown premises” means premises held or used by or on behalf of the Crown.
- (5) Nothing in this section shall be taken as in any way affecting Her Majesty in her private capacity; and this subsection shall be construed as if section 38(3) of the Crown Proceedings Act 1947 (interpretation of references in that Act to Her Majesty in her private capacity) were contained in this Act.

#### **55 Water supply: England and Wales**

- (1) Nothing in Part II of this Act or any regulations or order made under that Part shall apply in relation to the supply of water to any premises, whether by a water undertaker or by means of a private supply (within the meaning of Chapter II of Part II of the Water Act 1989).
- (2) In the following provisions of that Act, namely—
  - section 52 (duties of water undertakers with respect to water quality);
  - section 53 (regulations for preserving water quality); and
  - section 64 (additional powers of entry for the purposes of Chapter II),for the words “domestic purposes”, wherever they occur, there shall be substituted the words “domestic or food production purposes”.

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- (3) In subsection (2) of section 56 of that Act (general functions of local authorities in relation to water quality), for the words “domestic purposes” there shall be substituted the words “domestic or food production purposes” and for the words “those purposes” there shall be substituted the words “domestic purposes”.
- (4) In subsection (1) of section 57 of that Act (remedial powers of local authorities in relation to private supplies), for the words “domestic purposes”, in the first place where they occur, there shall be substituted the words “domestic or food production purposes”.
- (5) In subsection (1) of section 66 of that Act (interpretation etc. of Chapter II), after the definition of “consumer” there shall be inserted the following definition—
 

““food production purposes” shall be construed in accordance with subsection (1A) below;”.
- (6) After that subsection there shall be inserted the following subsection—
 

“(1A) In this Chapter references to food production purposes are references to the manufacturing, processing, preserving or marketing purposes with respect to food or drink for which water supplied to food production premises may be used; and in this subsection “food production premises” means premises used for the purposes of a business of preparing food or drink for consumption otherwise than on the premises.”

## **56 Water supply: Scotland**

- (1) Nothing in Part II of this Act or any regulations or order made under that Part shall apply in relation to the supply of water to any premises, whether by a water authority (within the meaning of section 3 of the Water (Scotland) Act 1980) or by means of a private supply (within the meaning of Part VIA of that Act).
- (2) In the following provisions of that Act, namely—
 

section 76A (duties of water authorities with respect to water quality); and  
 section 76B (regulations for preserving water quality),

 for the words “domestic purposes”, wherever they occur, there shall be substituted the words “domestic or food production purposes”.
- (3) In subsection (2) of section 76F of that Act (general functions of local authorities in relation to water quality), for the words “domestic purposes” there shall be substituted the words “domestic or food production purposes” and for the words “those purposes” there shall be substituted the words “domestic purposes”.
- (4) In subsection (1) of section 76G of that Act (remedial powers of local authorities in relation to private supplies), for the words “domestic purposes”, in the first place where they occur, there shall be substituted the words “domestic or food production purposes”.
- (5) In subsection (1) of section 76L of that Act (interpretation etc. of Part VIA), after the definition of “analyse” there shall be inserted the following definition—
 

““food production purposes” shall be construed in accordance with subsection (1A) below;”.
- (6) After that subsection there shall be inserted the following subsection—

“(1A) In this Part references to food production purposes are references to the manufacturing, processing, preserving or marketing purposes with respect to food or drink for which water supplied to food production premises may be used; and in this subsection “food production premises” means premises used for the purposes of a business of preparing food or drink for consumption otherwise than on the premises.”

## **57 Scilly Isles and Channel Islands**

- (1) This Act shall apply to the Isles of Scilly subject to such exceptions and modifications as the Ministers may by order direct.
- (2) Her Majesty may by Order in Council direct that any of the provisions of this Act shall extend to any of the Channel Islands with such exceptions and modifications (if any) as may be specified in the Order.

## **58 Territorial waters and the continental shelf**

- (1) For the purposes of this Act the territorial waters of the United Kingdom adjacent to any part of Great Britain shall be treated as situated in that part.
- (2) An Order in Council under section 23 of the Oil and Gas (Enterprise) Act 1982 (application of civil law) may make provision for treating for the purposes of food safety legislation—
  - (a) any installation which is in waters to which that section applies; and
  - (b) any safety zone around any such installation,as if they were situated in a specified part of the United Kingdom and for modifying such legislation in its application to such installations and safety zones.
- (3) Such an Order in Council may also confer on persons of a specified description the right to require, for the purpose of facilitating the exercise of specified powers under food safety legislation—
  - (a) conveyance to and from any installation, including conveyance of any equipment required by them; and
  - (b) the provision of reasonable accommodation and means of subsistence while they are on any installation.
- (4) In this section—

“food safety legislation” means this Act and any regulations and orders made under it and any corresponding provisions in Northern Ireland;

“installation” means an installation to which subsection (3) of the said section 23 applies;

“safety zone” means an area which is a safety zone by virtue of Part III of the Petroleum Act 1987; and

“specified” means specified in the Order in Council.

## **59 Amendments, transitional provisions, savings and repeals**

- (1) The enactments mentioned in Schedule 3 to this Act shall have effect subject to the amendments there specified (being minor amendments and amendments consequential on the preceding provisions of this Act).

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- (2) The Ministers may by order make such modifications of local Acts, and of subordinate legislation (within the meaning of the Interpretation Act 1978), as appear to them to be necessary or expedient in consequence of the provisions of this Act.
- (3) The transitional provisions and savings contained in Schedule 4 to this Act shall have effect; but nothing in this subsection shall be taken as prejudicing the operation of sections 16 and 17 of the said Act of 1978 (which relate to the effect of repeals).
- (4) The enactments mentioned in Schedule 5 to this Act (which include some that are spent or no longer of practical utility) are hereby repealed to the extent specified in the third column of that Schedule.

## **60 Short title, commencement and extent**

- (1) This Act may be cited as the Food Safety Act 1990.
- (2) The following provisions shall come into force on the day on which this Act is passed, namely—
  - section 13;
  - section 51; and
  - paragraphs 12 to 15 of Schedule 2 and, so far as relating to those paragraphs, section 52.
- (3) Subject to subsection (2) above, this Act shall come into force on such day as the Ministers may by order appoint, and different days may be appointed for different provisions or for different purposes.
- (4) An order under subsection (3) above may make such transitional adaptations of any of the following, namely—
  - (a) the provisions of this Act then in force or brought into force by the order; and
  - (b) the provisions repealed by this Act whose repeal is not then in force or so brought into force,as appear to the Ministers to be necessary or expedient in consequence of the partial operation of this Act.
- (5) This Act, except—
  - this section;
  - section 51,
  - section 58(2) to (4); and
  - paragraphs 7, 29 and 30 of Schedule 3 and, so far as relating to those paragraphs, section 59(1),does not extend to Northern Ireland.