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STATUTORY INSTRUMENTS

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**1989 No. 846**

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

**PART III**

**ADMINISTRATION AND ENFORCEMENT**

*Administration*

**Authorities responsible for enforcement**

**34.**—(1) It shall be the duty of every district council to enforce and execute in its district the provisions of any Article of this Order or of any regulations made under this Order, with respect to which the duty is not expressly, or by necessary implication, imposed on some other authority.

(2) It shall be the duty of the Department to enforce and execute the provisions of any order made under Article 7.

**Meaning of “authorised officer”**

**35.**—(1) Subject to the provisions of this Article, the expression “authorised officer” means an officer of a district council authorised by that council in writing, either generally or specially, to act in matters of any specified kind or in any specified matter.

(2) Any environmental health officer appointed by a district council in exercise of its powers under section 41 of the Local Government Act (Northern Ireland) 1972<sup>(1)</sup> shall be deemed to be an authorised officer of that council for all purposes of this Order.

(3) A member of the Royal College of Veterinary Surgeons employed by a district council for the purpose of inspection of food shall be deemed to be an authorised officer of the council for the purpose of the examination and seizure of meat under the provisions of Part II relating to food unfit for human consumption.

(4) An officer of a district council shall not be authorised to act under this Order in relation to the examination and seizure of meat unless he is—

- (a) a person deemed to be an authorised officer by virtue of paragraph (2) or paragraph (3); or
- (b) a person having such qualifications as may be prescribed.

*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.

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(1) 1972 c. 9 (N.I.)

- (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.

*Entry, obstruction, etc.*

#### **Power to enter premises**

47.—(1) Subject to the provisions of this Article, an authorised officer of a district council shall, on producing, if so required, some duly authenticated document showing his authority, have a right to enter any premises at all reasonable hours—

- (a) for the purpose of ascertaining whether there is or has been on, or in connection with, the premises any contravention of the provisions of this Order or of any regulations or

byelaws made under it, being provisions which the council is required or empowered to enforce; and

- (b) generally for the purpose of the performance by the council of its functions under this Order, or any such regulations or byelaws.

(2) Admission to any premises used only as a private dwelling-house shall not be demanded under paragraph (1) as of right unless twenty-four hours' notice of the intended entry has been given to the occupier.

- (3) If a justice of the peace, on sworn information in writing,—

(a) is satisfied that there is reasonable ground for entry into any premises for any purpose mentioned in paragraph (1); and

- (b) is also satisfied either—

(i) that admission to the premises has been refused, or a refusal is apprehended and that notice of the intention to apply for a warrant has been given to the occupier; or

(ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry, or that the case is one of urgency, or that the premises are unoccupied or that the occupier is temporarily absent;

the justice may by warrant signed by him authorise the council by any authorised officer to enter the premises, if need be by force.

(4) An authorised officer entering any premises by virtue of this Article, or of a warrant issued under it, may take with him such other persons as may be necessary, and on leaving any unoccupied premises which he has entered by virtue of such a warrant shall leave them as effectively secured against trespassers as he found them.

- (5) Every warrant granted under this Article shall continue in force for a period of one month.

(6) If any person who, in compliance with the provisions of this Article, or of any warrant issued under it, is admitted into a factory or workplace, discloses to any person any information obtained by him in the factory or workplace with regard to any manufacturing process or trade secret, he shall, unless the disclosure was made in the performance of his duty, be guilty of an offence.

(7) Nothing in this Article shall authorise any person, except with the permission of the Department of Agriculture under the Diseases of Animals (Northern Ireland) Order 1981(2), to enter any cowshed or other place in which an animal affected, or suspected of being affected, with any disease to which that Order applies is kept.

#### **Power to enter vehicles, etc.**

**48.**—(1) An authorised officer of a district council shall, on producing, if so required, some duly authenticated document showing his authority, have a right at all reasonable hours to enter any vehicle, stall or place other than premises, for any purpose for which he is authorised under Article 47 to enter premises.

(2) Paragraphs (3) to (5), and paragraph (7), of Article 47 shall apply in relation to any vehicle, stall or place other than premises which may be entered under the powers conferred by paragraph (1) as they apply in relation to premises, and as if any reference to the occupier of premises were a reference to the person in charge of the vehicle, stall or place.

#### **Powers of entry of Departments' officers**

**49.** An officer of the Department or of the Department of Agriculture authorised in writing shall, for the purpose of ascertaining whether there is or has been any contravention of the provisions of

this Order or of any regulation or order made under it, being provisions which that Department is required or empowered to enforce, have the like powers of entry as are exercisable under Article 47 or Article 48 by an authorised officer of a district council; and in relation to such an authorised officer of the Department or of the Department of Agriculture, the reference in Article 47(3) to the council shall be construed as a reference to the Department or, as the case may be, the Department of Agriculture.

### **Persons obstructing execution of Order**

**50.**—(1) A person who wilfully obstructs any person acting in the execution of this Order, or of any regulation, byelaw, order or warrant made or issued under this Order, shall be guilty of an offence.

(2) If—

- (a) a sampling officer applies to purchase any food or substance exposed for sale, or on sale by retail, and tenders the price for the quantity which he requires as a sample, and the person exposing the food or substance for sale, or having it for sale, refuses to sell to the officer the quantity which he requires as a sample; or
- (b) the seller or consignor of any article or substance of which the officer has power to take a sample, or a person having the charge for the time being of such an article or substance, refuses to allow the officer to take the quantity which he requires as a sample;

then the person so refusing shall, subject to paragraph (3), be treated for the purposes of paragraph (1) as having wilfully obstructed the officer.

(3) Where any food or substance is exposed for sale in an unopened container duly labelled, a person shall not be required to sell that food or substance except in the unopened container in which it is contained.

(4) A person who—

- (a) fails to give to any person acting in the execution of this Order, or of any regulation, byelaw, order or warrant made or issued under this Order, any assistance which that person may reasonably request him to give, or any information which that person is expressly authorised by this Order to call for or may reasonably require, or
- (b) when required to give any such information, knowingly makes any misstatement in respect of it,

shall, subject to paragraph (5), be guilty of an offence.

(5) Nothing in paragraph (4) shall be construed as requiring a person to answer any question or give any information, if so to do might incriminate him.