

SCHEDULES

SCHEDULE 2

Article 64.

ENFORCEMENT AND EXECUTION OF ORDERS AND REGULATIONS MADE UNDER THE FOOD ACT 1984

1.—(1) In this Schedule—

“the Act of 1984” means the Food Act 1984⁽¹⁾;

“the Minister” means the Minister of Agriculture, Fisheries and Food;

“order” and “regulations” mean, respectively, an order or regulations made under the Act of 1984 and applying to Northern Ireland;

“ship” includes any boat or craft.

(2) In any provision of this Order applied for the purpose of the enforcement and execution of any order or regulation the expression “sampling officer” shall include an officer authorised in that behalf by the Minister.

2. It shall be the duty of the Minister to enforce and execute the provisions of any order.

3. For the purpose of ascertaining whether there is or has been any contravention of the provisions of any order or regulations an inspector of the Minister shall have the like powers of entry as are exercisable under Article 47 and Article 48 by an authorised officer of a district council; and in relation to any such inspector the reference in Article 47(3) to the council shall be construed as a reference to the Minister.

4.—(1) Without prejudice to the application of subsections (2) and (3) of section 20 of the Interpretation Act (Northern Ireland) 1954⁽²⁾ (which relate to offences committed by bodies corporate), in relation to offences under this Order or any regulations, order or byelaw made under it, subsection (2) shall, with the omission of the words “subject to subsection (3)”, apply in relation to offences committed by bodies corporate against any provision of any order or regulations.

(2) In the application by sub-paragraph (1) of the said subsection (2) the expression “director”, in relation to any body corporate established by or under any enactment for the purpose of carrying on under national ownership any industry or part of an industry or undertaking, being a body corporate whose affairs are managed by its members, means a member of that body corporate.

5.—(1) The Minister may, where he is of opinion that the general interests of consumers are affected, institute proceedings for an offence against any provision of regulations made under section 4 or section 7 of the Act of 1984, other than any such provision which it is the duty of a district council to enforce and execute.

(2) A district council shall not, except so far as may be otherwise prescribed by regulations made under section 7 of the Act of 1984, institute proceedings for an offence against any provision of those regulations unless it has given to the Minister fourteen days' notice of its intention to institute the proceedings, together with a summary of the facts on which the charge is founded.

(1) 1984 c. 30

(2) 1954 c. 33 (N.I.)

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(3) A certificate of the Minister that the requirements of sub-paragraph (2) have been complied with in relation to any proceedings shall be conclusive evidence that they have been so complied with; and any document purporting to be such a certificate and to be signed by or on behalf of the Minister shall be deemed to be such a certificate until the contrary is shown.

6.—(1) A person against whom proceedings are brought in respect of a contravention of any order or regulation shall, upon complaint duly made by him, and on giving not less than three clear days' notice of his intention, be entitled to have brought before the court in the proceedings any person to whose act or default he alleges that the contravention of the provisions in question was due, and the following provisions of this paragraph shall have effect accordingly.

(2) Where, in accordance with sub-paragraph (1), another person has been brought before the court and—

- (a) the contravention of the provisions in question has been proved; and
- (b) the original defendant proves that the contravention was due to the act or default of that other person;

that other person may be convicted of the offence.

(3) Where—

- (a) another person brought before the court in accordance with sub-paragraph (1) has been convicted of the offence in accordance with sub-paragraph (2); and
- (b) the original defendant proves that he used all due diligence to secure that the provisions in question were complied with;

the original defendant shall be acquitted of the offence.

(4) Where a defendant seeks to avail himself of the foregoing provisions of this paragraph—

- (a) the prosecution, as well as the person whom the defendant charges with the offence, shall have the right to cross-examine him, if he gives evidence, and any witness called by him in support of his pleas, and to call rebutting evidence;
- (b) the court may make such order as it thinks fit for the payment of costs by any party to the proceedings to any other party to the proceedings.

(5) Where it appears to the Minister or, as the case may be, a district council that an offence against any provision of an order or regulation has been committed in respect of which proceedings might be taken against some person, and the Minister or the council is reasonably satisfied that—

- (a) the offence was due to an act or default of some other person; and
- (b) the first-mentioned person could establish a defence in accordance with the foregoing provisions of this paragraph;

the Minister or the council may cause proceedings to be taken against that other person without first causing proceedings to be taken against the first-mentioned person, and in any such proceedings that other person may be charged with, and, on proof that the contravention was due to his act or default, be convicted of, the offence with which the first-mentioned person might have been charged.

7. The provisions of this Order which are specified in the first column of the following Table shall, subject to the modifications specified in the second column of that Table, apply for the purposes of the enforcement and execution of any order or regulation.

TABLE

<i>Provision of this Order</i>	<i>Modification</i>
Article 38: Paragraph (3)	In sub-paragraph (c), after the word “vehicle” there shall be inserted the words “, ship,

<i>Provision of this Order</i>	<i>Modification</i>
	aircraft”, and for the words “this Order” there shall be substituted the words “the Food Act 1984”.
	After paragraph (3) there shall be inserted the following paragraph— “(3A) Without prejudice to paragraph (3) a sampling officer— (a) may take a sample of milk while at any dairy, or while deposited for collection, or at any time before it is delivered to a consumer in pursuance of a sale by retail; (b) may, at the request of a person to whom any food or substance is, or is to be, delivered in pursuance of a contract of sale, take a sample of that food or substance in the course of delivery, or at the place of delivery.”.
Paragraph (4)	For paragraph (4) there shall be substituted the following paragraph— “(4) Except as provided by paragraph (3A), or with the consent of the purchaser, a sampling officer shall not take a sample of any food or substance 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 such delivery; and nothing in this Article shall authorise a sampling officer to take a sample of any food or substance in a ship (not being a home-going ship within the meaning of the Food Act 1984) or in any aircraft, other than food imported as part of the cargo of that ship or aircraft.”.
Article 40	Paragraph (7) shall be omitted.
Article 44	
Article 47: Paragraph (1)	For the words “this Order”, wherever those words occur, there shall be substituted the words “the Food Act 1984”.
Paragraphs (2) to (7)	
Article 48: Paragraph (1)	After paragraph (1) there shall be inserted the following paragraph— “(1A) 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 ship or aircraft for the purpose

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<i>Provision of this Order</i>	<i>Modification</i>
Paragraph (2)	<p>of ascertaining whether there is in the ship or aircraft any food imported as part of the cargo in contravention of the provisions of regulations made under Part I of the Food Act 1984, and applying to Northern Ireland, being provisions which the district council is required or empowered to enforce.”.</p> <p>For paragraph (2) there shall be substituted the following paragraph—</p> <p>“(2) Paragraphs (3) to (5) of Article 47 shall apply in relation to any ship, aircraft, vehicle, stall or place which may be entered under the powers conferred by paragraphs (1) and (1A) of this Article, and as if any reference to the occupier of premises were a reference to the master, commander or other person in charge of the ship, aircraft, vehicle, stall or place.”.</p>