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STATUTORY INSTRUMENTS

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**1991 No. 762**

**The Food Safety(Northern Ireland) Order 1991**

**PART II**

**GENERAL PROVISIONS AS TO FOOD**

*Food safety*

**Rendering food injurious to health**

**6.** Any person who renders any food injurious to health by means of any of the following operations, namely—

- (a) adding any article or substance to the food;
- (b) using any article or substance as an ingredient in the preparation of the food;
- (c) abstracting any constituent from the food; and
- (d) subjecting the food to any other process or treatment,

with intent that it shall be sold for human consumption, shall be guilty of an offence.

**Selling food not complying with food safety requirements**

**7.—(1)** Any person who—

- (a) sells for human consumption, or offers, exposes or advertises for sale for such consumption, or has in his possession for the purpose of such sale or of preparation for such sale; or
- (b) deposits with, or consigns to, any other person for the purpose of such sale or of preparation for such sale,

any food which fails to comply with food safety requirements shall be guilty of an offence.

(2) Where any food which fails to comply with food safety requirements is part of a batch, lot or consignment of food of the same class or description, it shall be presumed for the purposes of this Article and Article 8, until the contrary is proved, that all of the food in that batch, lot or consignment fails to comply with those requirements.

**Inspection and seizure of suspected food**

**8.—(1)** An authorised officer may at all reasonable times inspect any food intended for human consumption which—

- (a) has been sold or is offered or exposed for sale; or
- (b) is in the possession of, or has been deposited with or consigned to, any person for the purpose of sale or of preparation for sale;

and paragraphs (3) to (9) shall apply where, on such an inspection, it appears to the authorised officer that any food fails to comply with food safety requirements.

(2) The following provisions shall also apply where, otherwise than on such an inspection, it appears to an authorised officer that any food is likely to cause food poisoning or any disease communicable to human beings.

(3) The authorised officer may either—

(a) give notice to the person in charge of the food that, until the notice is withdrawn, the food or any specified portion of it—

(i) is not to be used for human consumption; and

(ii) either is not to be removed or is not to be removed except to some place specified in the notice; or

(b) seize the food and remove it in order to have it dealt with by a justice of the peace;

and any person who knowingly contravenes the requirements of a notice under sub-paragraph (a) shall be guilty of an offence.

(4) Where the authorised officer gives notice under paragraph (3)(a), he shall, as soon as is reasonably practicable and in any event before the expiration of 21 days from the date of the notice, determine whether or not he is satisfied that the food complies with food safety requirements and—

(a) if he is so satisfied, shall forthwith withdraw the notice;

(b) if he is not so satisfied, shall seize the food and remove it in order to have it dealt with by a justice of the peace.

(5) Where an authorised officer seizes and removes food under paragraph (3)(b) or (4)(b), he shall inform the person in charge of the food of his intention to have it dealt with by a justice of the peace and—

(a) any person who under Article 6 or 7 might be liable to a prosecution in respect of the food shall, if he attends before the justice of the peace by whom the food falls to be dealt with, be entitled to be heard and to call witnesses; and

(b) that justice of the peace may, but need not, be a member of the court before which any person is charged with an offence under that Article in relation to that food.

(6) If it appears to a justice of the peace, on the basis of such evidence as he considers appropriate in the circumstances, that any food falling to be dealt with by him under this Article fails to comply with food safety requirements, he shall condemn the food and order—

(a) the food to be destroyed or to be so disposed of as to prevent it from being used for human consumption; and

(b) any expenses reasonably incurred in connection with the destruction or disposal to be defrayed by the owner of the food.

(7) If a notice under paragraph (3)(a) is withdrawn, or the justice of the peace by whom any food falls to be dealt with under this Article refuses to condemn it, the district council or, as the case may be, the Department of Agriculture shall compensate the owner of the food for any depreciation in its value resulting from the action taken by the authorised officer.

(8) Any disputed question as to the right to or the amount of any compensation payable under paragraph (7) shall be determined by a single arbitrator appointed, failing agreement between the parties, by the Head of the Department concerned; and the provisions of the Arbitration Act (Northern Ireland) 1937(1) shall apply accordingly.

(9) In this Article—

- (a) any reference to an authorised officer includes a reference to a director of public health of a Health and Social Services Board;
- (b) in paragraph (7) the reference to the district council or, as the case may be, the Department of Agriculture includes, in relation to a director of public health of a Health and Social Services Board, the Health and Social Services Board;
- (c) “Health and Social Services Board” means a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972(2).

### **Improvement notices**

**9.**—(1) If an authorised officer has reasonable grounds for believing that the proprietor of a food business is failing to comply with any regulations to which this Article applies, he may, by a notice served on that proprietor (an “improvement notice”)—

- (a) state the officer’s grounds for believing that the proprietor is failing to comply with the regulations;
  - (b) specify the matters which constitute the proprietor’s failure so to comply;
  - (c) specify the measures which, in the officer’s opinion, the proprietor must take in order to secure compliance; and
  - (d) require the proprietor to take those measures, or measures which are at least equivalent to them, within such period (not being less than 14 days) as may be specified in the notice.
- (2) Any person who fails to comply with an improvement notice shall be guilty of an offence.
- (3) This Article and Article 10 apply to any regulations under this Part which make provision—
- (a) for requiring, prohibiting or regulating the use of any process or treatment in the preparation of food; or
  - (b) for securing the observance of hygienic conditions and practices in connection with the carrying out of commercial operations with respect to food or food sources.

### **Prohibition orders**

**10.**—(1) If—

- (a) the proprietor of a food business is convicted of an offence under any regulations to which this Article applies; and
- (b) the court by or before which he is so convicted is satisfied that the health risk condition is fulfilled with respect to that business,

the court shall by an order impose the appropriate prohibition.

(2) The health risk condition is fulfilled with respect to any food business if any of the following involves risk of injury to health, namely—

- (a) the use for the purposes of the business of any process or treatment;
- (b) the construction of any premises used for the purposes of the business, or the use for those purposes of any equipment; and
- (c) the state or condition of any premises or equipment used for the purposes of the business.

(3) The appropriate prohibition is—

- (a) in a case falling within paragraph (2)(a), a prohibition on the use of the process or treatment for the purposes of the business;

- (b) in a case falling within paragraph (2)(b), a prohibition on the use of the premises or equipment for the purposes of the business or any other food business of the same class or description;<sup>60</sup>
- (c) in a case falling within paragraph (2)(c), a prohibition on the use of the premises or equipment for the purposes of any food business.

(4) If—

- (a) the proprietor of a food business is convicted of an offence under any regulations to which this Article applies by virtue of Article 9(3)(b); and
- (b) the court by or before which he is so convicted thinks it proper to do so in all the circumstances of the case,

the court may, by order, impose a prohibition on the proprietor participating in the management of any food business, or any food business of a class or description specified in the order.

(5) As soon as practicable after the making of an order under paragraph (1) or (4) (a “prohibition order”), the district council or, as the case may be, the Department of Agriculture shall—

- (a) serve a copy of the order on the proprietor of the business; and
- (b) in the case of an order under paragraph (1), affix a copy of the order in a conspicuous position on such premises used for the purposes of the business as it considers appropriate;

and any person who knowingly contravenes such an order shall be guilty of an offence.

(6) A prohibition order shall cease to have effect—

- (a) in the case of an order under paragraph (1), on the issue by the district council or, as the case may be, the Department of Agriculture of a certificate to the effect that it is satisfied that the proprietor has taken sufficient measures to secure that the health risk condition is no longer fulfilled with respect to the business;
- (b) in the case of an order under paragraph (4), on the giving by the court of a direction to that effect.

(7) The district council or, as the case may be, the Department of Agriculture shall issue a certificate under paragraph (6)(a) before the expiration of 3 days from being satisfied as mentioned in that sub-paragraph; and, on an application by the proprietor for such a certificate, shall—

- (a) determine, as soon as is reasonably practicable and in any event before the expiration of 14 days from the making of the application, whether or not it is so satisfied; and
- (b) if it determines that it is not so satisfied, give notice to the proprietor of the reasons for that determination.

(8) The court shall give a direction under paragraph (6)(b) if, on an application by the proprietor, the court thinks it proper to do so having regard to all the circumstances of the case, including in particular the conduct of the proprietor since the making of the order; but no such application shall be entertained if it is made—

- (a) before the expiration of 6 months from the making of the prohibition order; or
- (b) before the expiration of 3 months from the making by the proprietor of a previous application for such a direction.

(9) Where a magistrates' court makes an order under Article 11 with respect to any food business, paragraph (1) of this Article shall apply as if the proprietor of the business had been convicted by the court of an offence under regulations to which this Article applies.

(10) Paragraph (4) shall apply in relation to a manager of a food business as it applies in relation to the proprietor of such a business; and any reference in paragraph (5) or (8) to the proprietor of the business, or to the proprietor, shall be construed accordingly.

(11) In paragraph (10) “manager”, in relation to a food business, means any person who is entrusted by the proprietor with the day to day running of the business, or any part of the business.

### **Emergency prohibition notices and orders**

**11.**—(1) If an authorised officer is satisfied that the health risk condition is fulfilled with respect to any food business, he may, by a notice served on the proprietor of the business (an “emergency prohibition notice”), impose the appropriate prohibition.

(2) If a magistrates' court is satisfied, on the application of such an officer, that the health risk condition is fulfilled with respect to any food business, the court shall, by order (an “emergency prohibition order”), impose the appropriate prohibition.

(3) An authorised officer shall not apply for an emergency prohibition order unless, at least one day before the date of the application, he has served notice on the proprietor of the business of his intention to apply for the order.

(4) Paragraphs (2) and (3) of Article 10 shall apply for the purposes of this Article as they apply for the purposes of that Article, but as if the reference in paragraph (2) to risk of injury to health were a reference to imminent risk of such injury.

(5) As soon as practicable after the service of an emergency prohibition notice, the district council or, as the case may be, the Department of Agriculture shall affix a copy of the notice in a conspicuous position on such premises used for the purposes of the business as it considers appropriate; and any person who knowingly contravenes such a notice shall be guilty of an offence.

(6) As soon as practicable after the making of an emergency prohibition order, the district council or, as the case may be, the Department of Agriculture shall—

- (a) serve a copy of the order on the proprietor of the business; and
- (b) affix a copy of the order in a conspicuous position on such premises used for the purposes of that business as it considers appropriate;

and any person who knowingly contravenes such an order shall be guilty of an offence.

(7) An emergency prohibition notice shall cease to have effect—

- (a) if no application for an emergency prohibition order is made before the expiration of the period of 3 days from the service of the notice, at the end of that period;
- (b) if such an application is so made, on the determination or abandonment of the application.

(8) An emergency prohibition notice or emergency prohibition order shall cease to have effect on the issue by the district council or, as the case may be, the Department of Agriculture of a certificate to the effect that it is satisfied that the proprietor has taken sufficient measures to secure that the health risk condition is no longer fulfilled with respect to the business.

(9) The district council or, as the case may be, the Department of Agriculture shall issue a certificate under paragraph (8) before the expiration of 3 days from being satisfied as mentioned in that paragraph; and, on an application by the proprietor for such a certificate, shall—

- (a) determine, as soon as is reasonably practicable and in any event before the expiration of 14 days from the making of the application, whether or not it is so satisfied; and
- (b) if it determines that it is not so satisfied, give notice to the proprietor of the reasons for that determination.

(10) Where an emergency prohibition notice is served on the proprietor of a business, the district council or, as the case may be, the Department of Agriculture shall compensate him in respect of any loss suffered by reason of his complying with the notice unless—

- (a) an application for an emergency prohibition order is made before the expiration of 3 days from the service of the notice; and

(b) the court declares itself satisfied, on the hearing of the application, that the health risk condition was fulfilled with respect to the business at the time when the notice was served; and any disputed question as to the right to or the amount of any compensation payable under this paragraph shall be determined by a single arbitrator appointed, failing agreement between the parties, by the Head of the Department concerned; and the provisions of the Arbitration Act (Northern Ireland) 1937<sup>(3)</sup> shall apply accordingly.

### **Emergency control orders**

**12.**—(1) If it appears to the Department concerned that the carrying out of commercial operations with respect to food, food sources or contact materials of any class or description involves or may involve imminent risk of injury to health, that Department may, by order (an “emergency control order”), prohibit the carrying out of such operations with respect to food, food sources or contact materials of that class or description.

(2) Any person who knowingly contravenes an emergency control order shall be guilty of an offence.

(3) The Department concerned may consent, either unconditionally or subject to any condition that that Department considers appropriate, to the doing in a particular case of anything prohibited by an emergency control order.

(4) It shall be a defence for a person charged with an offence under paragraph (2) to show—

(a) that consent had been given under paragraph (3) to the contravention of the emergency control order; and

(b) that any condition subject to which that consent was given was complied with.

(5) The Department concerned—

(a) may give such directions as appear to that Department to be necessary or expedient for the purpose of preventing the carrying out of commercial operations with respect to any food, food sources or contact materials which that Department believes, on reasonable grounds, to be food, food sources or contact materials to which an emergency control order applies; and

(b) may do anything which appears to that Department to be necessary or expedient for that purpose.

(6) Any person who fails to comply with a direction under this Article shall be guilty of an offence.

(7) If the Department concerned does anything by virtue of this Article in consequence of any person failing to comply with an emergency control order or a direction under this Article, that Department may recover from that person any expenses reasonably incurred by that Department under this Article.

(8) For the purposes of this Article, in the case of food or food sources which have left a designated area within the meaning of section 1(2) of the Food and Environment Protection Act 1985<sup>(4)</sup> and which were subject to an order under that section 1, the Department concerned means the Department of Agriculture.

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<sup>(3)</sup> 1937 c. 8 (N.I.)

<sup>(4)</sup> 1985 c. 48